

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF NEBRASKA,
DEPT OF HEALTH & HUMAN SVS.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
et al,

Defendants.

Civil Action No. 03-1873 (EGS)

ORDER

____ Pursuant to Fed. R. Civ. P. 58 and for all the reason stated by the Court. in its
Memorandum Opinion entered this same day, it. is by the Court heaeby

ORDERED that Plaintiff's Motion.for Summary Judgment is; **GRANTED**; and it is
further

ORDERED that the Defendants' Motion for Summary Judgment is **DENIED**; and it is
further

ORDERED and **ADJUDGED** that the Clerk shall enter final judgment in favor of
plaintiff and shall remove this case from the active calendar of the Court.

Signed: EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE
September 30, 2004

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MEMORANDUM OPINION

I. Introduction

Plaintiff, the State of Nebraska Department of Health and Human Services ("Nebraska"), challenges the determination made by the Department of Health and Human Services Departmental Appeals Board ("DAB"). The determination, known as Decision 1882, disapproved Nebraska's amendment to its cost allocation plan. The amendment proposed by Nebraska allocates the costs of training Nebraska's protection and safety workers ("PSWs") exclusively to the Federal Foster Care and Adoption Assistance Program under Title IV-E of the Social Security Act. Plaintiff claims that this training is specifically developed and designed to meet the requirements of Title IV-E and that this training is only provided to trainees who handle or will handle Title IV-E cases. P1. Resp. at 2 (citing A.R. 493-94). Nebraska seeks review of

the DAFT Decision under the Administrative Procedures Act ("APA") . 5 U.S.C. § 701 et seq.

Defendants are the U.S. Department of Health and Human Services ("HHS") and Tommy Thompson, in his capacity as Secretary of HHS. They argue that the DAB's decision upholding HHS's Division of Cost Allocation's ("DCA") disapproval of Nebraska's CAP was appropriate.

[I]n enacting title IV-E, Congress made no commitment that the federal government, would assume responsibility for overall funding of child welfare programs which have traditionally been funded by the states. Instead, Congress provided for funding of administrative expenditures, including training expenditures, only to the extent that, the Secretary of the Department of Health and Human Services (HHS) finds them necessary for the provision of child placement services and the proper and efficient administrative of the state plan.

DAB Decision at 1 (A.R. 1). Defendants request that the decision be affirmed and this case be dismissed with prejudice.

These are excerts addressing the introduction and conclusion from the 59 page PDF document which can be made available as a separate attachment.

V. Conclusion

Upon consideration of the Cross Motions for Summary Judgment, the Responses, and Replies thereto, the Supplemental Memorandums, the entire record in this case, the governing statutory and case law and for all the reasons stated in this Memorandum Opinion, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendants' Motion for Summary Judgment, is **DENIED**. Following the precedent of this Circuit in *Croplife America v. EPA*, 329 F.3d 376 (D.C. Cir. 2003), the Court will vacate the substantive rule and interpretive rule announced in ACYF-PA-87-05, ACYF-PA-90-01, and ACF-IM-91-15. The agency's previous practice of allowing primary program allocation is reinstated and remains in effect unless and until it is replaced by a lawfully promulgated regulation.

A separate Order and Judgment accompanies this Memorandum Opinion.

Signed: **Emmet G. Sullivan**
United States District Judge
September 30, 2004