

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 01-50338

STATE OF TEXAS,

Plaintiff-Appellee,

VERSUS

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant-Appellant.

Appeal from the United States District Court
For the Western District of Texas

(A-99-CV-56-SS)

June 7, 2002

Before HIGGINBOTHAM, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This is an action for judicial review of a decision rendered by the United States Department of Health and Human Services (HHS) through the agency's Departmental Appeals Board (DAB). The decision at issue involves the government's administration and review of States' accounting for administrative costs in

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

cooperative, federally funded, State administered programs. Specifically, the DAB held that Texas' increase in the enrollment of approximately 55,000 higher education employees who previously were insured under plans maintained by state colleges and universities caused an improper dilution of prior federal contributions to the State's Uniform Group Insurance Program (UGIP). The DAB directed the State to return the amount diverted, which was stipulated by the parties to be \$3,037,200.

On judicial review of the DAB decision, the district court granted summary judgment in favor of the State. The district court rejected the DAB's holding that the addition of the higher education employees was dilutive and caused the improper shifting of federal funds. According to the district court, the DAB's decision was "purely theoretical" and "unsupported by any evidence on the record." Thereafter, HHS's motion for reconsideration and/or amendment of the judgment was denied.

Having carefully reviewed the entire record of this case, and having fully considered the parties' respective briefing on the issue in this appeal, we conclude that the DAB's decision was neither arbitrary, capricious, nor an abuse of discretion. Therefore, we REVERSE the district court's judgment in this case and grant summary judgment in favor of HHS.