

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: California Department of
Health Services
Docket No. 80-61-CA-HC
Decision No. 123

DATE: November 20, 1980

RULING ON REQUEST FOR RECONSIDERATION OF BOARD DECISION

The Health Care Financing Administration (HCFA) has filed a "Request for Reconsideration of Board's Decision Dated October 2, 1980" in the proceedings identified above. The State of California has responded, disagreeing with the position taken in HCFA's request.

Although the Board's current regulations at 45 CFR Part 16 do not explicitly provide that the Board may rehear its own decisions, the Board Chair has recently ruled that the Board nonetheless has inherent, discretionary authority to reconsider its decisions in exceptional circumstances, considering factors such as the nature of the error or omission prompting the reconsideration request, the length of time which has passed since the original decision was issued, and any harm that might be caused by reliance on that decision. (Ruling of September 11, 1980, Florida Department of Health and Rehabilitative Services, DGAB Docket Nos. 79-68-FL-HC and 80-88-FL-HC.) In the Florida case, HCFA had filed a "Post-Decision Memorandum," revising HCFA's position on interpretation of a regulation. In its original decision upholding the disallowance the Board had given deference to HCFA's earlier interpretation. Florida's request for reconsideration was granted based on the exceptional circumstances present there.

Applying that same standard, we have determined not to grant HCFA's request here. The basis for the request is that HCFA "believes that the decision misconstrues the case of Voe v. Califano, 434 F. Supp. 1058 (D. Conn. 1977), to such an extent that the decision, as it relates to federal funding for the sterilization of individuals under age 21, is incorrect as a matter of law." (HCFA Request, p. 1.) HCFA had several opportunities in this case to brief the effect of the Voe decision, as well as opportunities for written and oral argument in another case involving a similar issue (see, Maryland Department of Health and Mental Hygiene, DGAB Docket No. 78-65-MD-HC, Decision No. 85, February 29, 1980).

As the Board has previously indicated, the Board may find in **exceptional circumstances** that reconsideration is justified; for example, where a **Board decision** contains a clear error of law or where there is newly **discovered** material evidence. Reconsideration is not justified here, however, where HCFA's allegation of error relates to a legal issue which HCFA had extensively briefed and where HCFA's post-decision argument on that issue is not substantially new.

HCFA now claims that the Court in Voe necessarily reached the issue of whether the State could get federal funding for the sterilization sought by the plaintiff. This is substantially the same as HCFA's previous argument that the Voe Court "believed the Federal government to be under no legal obligation to provide FFP even if the State of Connecticut had requested it." (HCFA Memorandum in Reply to Order to Show Cause, p. 4.) We do not find the argument persuasive on the issue of whether California has a right to the FFP claimed here. In Voe, the State of Connecticut had a regulation based on the federal "moratorium," which Connecticut viewed as a regulation prohibiting federal funding for sterilization of individuals under age 21. Thus, Connecticut could not have claimed, as California did before this Board, that it did not have actual notice of the agency's interpretation and application of the moratorium. Furthermore, the circumstances in Voe were distinguishable in that Department policy was less in a state of flux by 1977, when that case arose, than during the period from February 21 through May 12, 1975, when California made the payments in question here.

HCFA's request for reconsideration is denied.

/s/ Nell Minow

/s/ Donald G. Przybylinski

/s/ Norval D. (John) Settle, Panel Chair