

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Missouri Department of Social Services DATE: August 31, 1981
Board Docket Nos. 79-16-MO-HC
79-53-MO-HC
79-54-MO-HC
79-99-MO-HC
80-80-MO-HC
80-131-MO-HC
81-9-MO-HC
81-45-MO-HC

Decision No. 175

RULING ON REQUEST FOR RECONSIDERATION OF BOARD DECISION

The Health Care Financing Administration (Agency) has submitted a request for reconsideration of the decision identified above.

Although the Board's current regulations at 45 CFR Part 16 do not explicitly provide that the Board may reconsider its own decisions, the Board Chair has ruled that the Board nonetheless has inherent, discretionary authority to reconsider its decisions in exceptional circumstances (ruling of September 11, 1980, Florida Department of Health and Rehabilitative Services, DGAB Docket Nos. 79-68-FL-HC and 80-88-FL-HC). Reconsideration would clearly be justified where a Board decision contains a clear error, where there is newly discovered material evidence, or where one of the parties may have been severely prejudiced by some error or omission. This decision does not present such a case.

The Agency has requested reconsideration on grounds that the Board misapplied HSA-PRG-11 to the extent that it determined that FFP is available under court orders which were issued after the provider agreement had already expired. The relevant portion of PRG-11 provides that FFP will continue where "State law provides for continued validity of the provider agreement pending appeal". The Agency notes that Victoria and Hillhaven involve instances in which the provider agreements had expired prior to the appeal and, accordingly, the court order did not provide for "continued validity" but rather "reinstatement" of the provider agreement. The Agency argues that PRG-11 does not apply in such a case and, therefore, the Board should not have overturned the

disallowance of FFP for services provided at Victoria for the period November 1, 1976 through September 30, 1977, and at Hillhaven for the period November 1 through December 31, 1976.

The Board denies the Agency's request on grounds that 45 CFR 205.10(b)(3) provides an independent basis for the Board's decision in Missouri, with respect to the two facilities in question here.

In Ohio Department of Public Welfare, Decision No. 173, April 30, 1981, the Board concluded that:

Pursuant to PRG-11 [Medical Services Administration-Program Regulation Guide-11, issued December 20, 1971] and 45 CFR §205.10(b)(3), FFP is available in the cost of covered services to Medicaid recipients in nursing homes with provider agreements that have been terminated or have not been renewed, where a facility appeals the adverse determination and a state or federal court orders the state to continue payments because of that appeal, thereby effectively continuing the provider agreement. (Ohio at 14.)

Although the Agency notes in its motion for reconsideration that the Board's decision in Missouri was based on Ohio, the Agency overlooks the fact that Ohio in turn was based on Section 205.10(b)(3) as well as PRG-11. Section 205.10(b)(3) makes FFP available for:

Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

The Missouri decision follows the rationale of Ohio with respect to both facilities, and with respect to Hillhaven specifically holds that FFP is available under Section 205.10(b)(3) alone. In certain other recent cases the Board has also found FFP to be available under Section 205.10(b)(3) alone. (See New York Department of Social Services, Decision No. 181, May 29, 1981, and California Department of Health Services, Decision No. 203, July 31, 1981.)

The Board notes in Ohio that even where the provider agreement has expired prior to the court order, FFP is available if the court order can be linked to the termination of Medicaid payments. (Ohio at 15 and at 3 of Appendix.) With respect to both Victoria and Hillhaven, the language of the court orders ties them directly to the termination of Medicaid payments. (Missouri, at 2, 5.) Since Section 205.10(b)(3) is an independent basis for the Board's decision for Victoria, we need not decide here whether FFP for the period November 1, 1976 through September 30, 1977 could be based on PRG-11 alone.

Accordingly, the State's request for reconsideration is denied.

/s/ Norval D. (John) Settle

/s/ Donald F. Garrett

/s/ Cecilia Sparks Ford, Panel Chair