

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: West Virginia Department of Welfare      DATE: November 30, 1981  
Docket No. 80-183-WV-HC  
Decision No. 228

DECISION

This appeal concerned a disallowance by the Health Care Financing Administration (Agency) of \$45,544 claimed by the State under Title XIX of the Social Security Act for 220 abortions.

The Board issued an Order to Show Cause (which is incorporated in this decision) containing the following proposed findings and conclusions: that the portion of the disallowance dealing with three of the abortions during the period April, 1978 - June, 1978 should be upheld, and that while the disallowance for the remaining 217 abortions was correct in principle the record was insufficient to support the amount disallowed, because the record was unclear concerning whether rules applicable during various time periods were accurately applied to abortions during those time periods. The Order, in effect, suggested that the Agency redetermine the amount of the disallowance for the 217 abortions.

By letter dated October 27, 1981, the Agency responded that a redetermination was "unnecessary", arguing essentially that the State had only pursued the legal issue in the case, and had not argued that the requirements were improperly applied. The Agency said:

West Virginia has never asserted that any of the documentation supporting the 217 abortion claims is adequate to meet these requirements. Moreover, it is the agency's understanding that it was the State itself that originally identified these abortions as not meeting the requirements for federal financial participation....

By letter dated November 21, 1981, the State responded to the Board's Order and the Agency's letter quoted above, stating:

This letter constitutes the state's response to the October 13, 1981, Order to Show Cause from the Board. The state refers the Board to its brief submitted on July 9, 1981, on these issues as it believes said brief sets forth the reasons why the Board should not act in accordance with the discussion set forth in its Order to Show Cause.

In response to the response of the agency, the state welcomes an informal conference preferably in the form of a conference telephone call.

The Presiding Board Member for this case conducted a telephone conference on November 24, 1981. Counsel for both parties participated, and an official of the West Virginia Department of Welfare also participated.

The State representatives agreed in the telephone conference that the Agency statement quoted above was correct. The State offered no further comments or argument.

The Board adopts the findings and conclusions in the Order, except for the portion proposing a redetermination of the amount of the disallowance for the 217 abortions. Such a redetermination is unnecessary.

#### CONCLUSION

Based on the foregoing, and the analysis in the incorporated Order to Show Cause, the disallowance is upheld in the amount of \$45,544.

/s/ Norval D. (John) Settle  
Presiding Board Member

/s/ Donald F. Garrett

/s/ Cecilia Sparks Ford