DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Idaho Department of Health and Welfare DATE: June 18, 1981
Docket No. 80-26-ID-HC
Decision No. 156

RULING ON MOTION FOR RECONSIDERATION OF BOARD DECISION

The Idaho Department of Health and Welfare (State) has submitted a motion dated May 8, 1981, asking the Board to reconsider Decision No. 156, issued March 19, 1981. It is noted preliminarily that Decision No. 156 was issued by the Board Chair pursuant to 45 CFR 201.14, as amended March 6, 1978, and hence the State's motion is appropriately considered only by the Board Chair. Although 45 CFR 201.14 does not explicitly provide for reconsideration by the Administrator of the Social and Rehabilitation Service (for whom the Board Chair is substituted under the amended regulation) of his final decisions, I have determined that the Board Chair has the authority to reconsider such decisions. This determination is based on my authority under the transfer of functions accompanying the March 6, 1978 amendments to 45 CFR 201.14 (at 43 FR 9266-67) to "supplement the §201.14 procedures by utilizing the procedures of 45 CFR Part 16...." I have previously ruled with respect to requests for reconsideration of decisions rendered by the Board under 45 CFR Part 16 that the Board has inherent, discretionary authority to reconsider its decisions.

The factors which will be considered by the Board in determining whether to grant requests for reconsideration of its decisions include the nature of the alleged 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. */ Applying those factors, I have determined not to grant the State's request here.

*/ Ruling of September 11, 1980, Florida Department of Health and Rehabilitative Services, DGAB Docket Nos. 79-68-FL-HC and 80-88-FL-HC. See also, Ruling of November 20, 1980, California Department of Health Services, DGAB Docket No. 80-61-CA-HC; Ruling of November 20, 1980, Community Relations-Social Development Commission in Milwaukee County, DGAB Docket No. 77-12; and Ruling of December 16, 1980, Montana Department of Social and Rehabilitation Services, DGAB Docket Nos. 80-78-MT-HD, 80-31-MT-HD, 79-115-MT-HD, 78-93-MT-HD, and 78-43-MT-HD.

The State's request challenges what it characterizes as three "conclusions necessary to support [Decision No. 156]": "(1) that the obligation to utilize a quarterly computation method to measure maintenance of effort was a statutory, and not a contractual, obligation; (2) that the columns of Reconsideration Record, Exhibit 32, page 2, labeled 'FFP Limit' and 'FFP Claimed,' have no relation, respectively, to the maintenance of effort level and expenditures during the period of disallowance; and (3) that the State failed to show a reasonable method, other than the quarterly computation method, [of calculating maintenance of effort.]" As discussed below, however, Decision No. 156 does not in fact reach the first "conclusion" described by the State. The State's discussion of the second "conclusion" indicates that the State in fact agrees with it, while the State's contention that the third "conclusion" is erroneous is predicated on its disagreement with the second "conclusion." In the absence of any substantial allegation of error or omission, there is no basis for accepting the State's motion for reconsideration.

(1) In the appeal which is the subject of Decision No. 156, the State argued that it could properly demonstrate maintenance of effort by using a method other than the quarterly computation method required by Pub. L. 92-603. The underlying argument was that since the State's Title XIX plan in effect during the audit period referenced only Pub. L. 92-223, it was not bound by the changes effected by Pub. L. 92-603. The State now argues that under a "new standard" established by the Supreme Court in its recent decision in Pennhurst v. Halderman, 101 S. Ct. 1531 (1981), the quarterly computation method in Pub. L. 92-603 was not binding on the State until the State consented to it, and could not in any event be applied to periods prior to the enactment of the statute. The question presented in Pennhurst was whether Congress intended to impose an obligation on the states to provide retarded persons "appropriate treatment" in the "least restrictive environment" as a condition of receiving Federal funds under the Developmentally Disabled Assistance and Bill of Rights Act of 1975. The Court held that the Act did not contain the unambiguous language that would be necessary to impose such an obligation. In so holding, the Court, in language cited by the State in its request for reconsideration in the instant case, stated that--

> ...legislation enacted pursuant to the Spending Power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the Spending Power thus rests on whether the State voluntarily and knowingly accepts the terms of the "contract."

> ...There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. 101 S. Ct. 1539-40.
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> Though Congress' power to legislate under the Spending Power is broad, it does not include surprising participating States with post-acceptance or "retroactive" conditions. 101 S. Ct. 1544.

It is noted, first, that Decision No. 156 did not in fact reach the question whether the State was bound by Pub. L. 92-603 during the period before the State plan was amended to refer to the new statute. The decision expressly states that "[s]ince the State has not shown that it maintained its effort using any reasonable method, the issue whether a method other than the quarterly computation method is permissible as a matter of law need not be reached ." Thus, the State's first point is not properly characterized as a conclusion of Decision No. 156.

Even if the decision had reached that question, it appears that the State's reliance on Pennhurst is misplaced. As pertinent here, the Pennhurst decision stands for the proposition that a state cannot be deemed to have accepted conditions under which Federal funding is made available unless those conditions are clearly expressed in the authorizing legislation. The State has made no contention here, however, that Pub. L. 92-603 did not clearly require a quarterly computation method; rather, it has merely contended that the State did not accept the requirement of a quarterly computation method because the State plan did not contain provision for calculating maintenance of effort on that basis. Thus, Pennhurst does not appear to be germane to the State's position.

(2) Decision No. 156 also considered the State's argument that it maintained its effort because the amounts shown as "FFP Claimed" in Exhibit 32 of the reconsideration record were a net of $15,252 less than the amounts shown as "FFP Limit" in the same exhibit. The decision rejects this procedure, or a similar comparison for each calendar year, as "meaningless for purposes of determining whether the State maintained its effort since it does not involve any comparison of current expenditures with base year costs." The decision goes on to note that, "[i]nstead, the amounts shown for 'FFP Limit'... were themselves derived by comparing current expenditures with base year costs." (Decision, p. 4.) Rather than dispute this conclusion,

the State in its motion for reconsideration agrees with it, asserting that "a comparison of current expenditures with base year costs is inherent in the amount reflected in 'FFP Limit'." If this statement is true, then it cannot also be true that, as argued by the State, "FFP Limit" and "FFP Claimed" are related to the maintenance of effort (base year) level and (current) expenditures during the period of disallowance, respectively. Thus, although the State's second point above is an accurate statement of the decision's conclusion, the State has not provided any basis for a reconsideration of the conclusion.

(3) The State's contention that the Board erroneously concluded that the State failed to show a reasonable method, other than quarterly computation, of calculating maintenance of effort, is predicated on its position that a comparison of "FFP Limit" and "FFP Claimed" on a fiscal year basis shows that it maintained its effort. As discussed in the preceding paragraph, the State has not furnished any basis for a reconsideration of the finding in Decision No. 156 that a comparison of "FFP Limit" and "FFP Claimed" is meaningless for purposes of determining whether the State maintained its effort. Accordingly, there is no basis for reconsideration of the conclusion stated as the State's third point.

The State's motion for reconsideration is denied.

/s/ Norval D. (John) Settle, Chair
Departmental Grants Appeals Board