DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Missouri Department of Social Services DATE: September 8, 1981
Docket No. 79-230-MO-HC
Decision No. 193, June 30, 1981

RULING ON REQUEST FOR RECONSIDERATION OF BOARD DECISION

On July 30, 1981, the Health Care Financing Administration (HCFA) filed a request for reconsideration of the decision identified above. On August 4, 1981, the State filed an objection and asked for time to respond to HCFA's arguments in the event that the Board decides to reconsider the decision.

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.

HCFA requests reconsideration on the ground that the part of the decision reversing the disallowance for Federal financial participation (FFP) for Medicaid coverage of certain Supplemental Security Income recipients prior to October 1, 1977, the effective date of a State plan amendment deleting a limiting definition of disability, was in conflict with the following prohibition against the retroactive application of plan amendments which appears in appropriation acts for the Agency throughout the period involved:

> In the administration of titles I, IV (other than part C thereof), VI, X, XIV, XVI, and XIX, payments to a State under any such titles for any quarter in the period beginning April 1 of the prior year, and ending June 30 of the current year may be made with respect to a State plan approved under such title prior to or during such period, but no such payment shall be made with respect to any plan for any quarter prior to the quarter in which such plan was submitted for approval. (Emphasis added.) P.L. 94-439 (1974) U.S. Code Cong. & Ad. News, 1891.

We have determined not to grant HCFA's request for reconsideration. The Board decision at issue here does not contain an error of law as HCFA alleges.

The Agency's reliance on what it terms an "absolute" statutory bar to the payments in question is misplaced. The payments in this case were made pursuant to a court order. The State plan was amended so as not to conflict with that order, by changing the definition of disability. Moreover, the plan amendment does not purport to apply to services prior to October 1, 1977 — only the court order covers that period.

HCFA has recognized in its regulation implementing the appropriation language that FFP may be available on some basis other than a State plan amendment by inserting the conditional phrase "except where otherwise provided." 45 CFR §205.5(b). HCFA does not here repudiate that regulation, and we assume that it is valid.

As we pointed out in our decision, the basis for payment here is 45 CFR 205.10(b)(3). Where we find, as we did here, that such court-ordered payments are within the scope of the Medicaid program, FFP is available for such payments. If we held that "within the scope" means only when authorized by the State plan, we would fail to give effect to the regulation, rendering it meaningless. We have refused that interpretation by the Agency in other cases and we reject it again here. The Agency recognized the application of the court order provision to payments prior to the effective date of a State plan amendment in its General Counsel's opinion (cited in our decision), which it submitted to this Board as part of its briefing in this case and which it has not repudiated.

The Agency failed to present the argument raised here during the 18 months this appeal was pending, despite ample opportunity to do so. If the statutory prohibition were as absolute as the Agency depicts it, then this argument should have been the Agency's major point, made early on. As presented in this Motion, it appears to be no more than an attempt to reassert Agency arguments rejected by our decision.

The request of HCFA for reconsideration of Decision No. 193 is denied.

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz

/s/ Donald F. Garrett, Panel Chair