

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Community Relations - Social Development DATE: November 20, 1980
Commission in Milwaukee County
Docket No. 77-12
Decision No. 108

RULING ON MOTION FOR RECONSIDERATION OF BOARD DECISION

An attorney for the grantee, who entered the case after a decision was rendered by the Board, has filed a "Motion for Reconsideration of the Board's Decision No. 108" dated November 3, 1980. Although the Board's current regulations at 45 CFR Part 16 do not explicitly provide that the Board may rehear its own determinations, the Board Chair has recently 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 80-68-FL-HC.) Florida's request for reconsideration was granted based on the exceptional circumstances present there, considering factors such as the nature of the alleged error or omission prompting the reconsideration request, the length of time which had passed since the original decision was issued, and any harm that might be caused by reliance on that decision.

Applying this same standard, we have determined not to grant CR-SDC's request. The thrust of the request is that CR-SDC was not accorded a full opportunity to present its arguments. The record shows that this was not the case. The Grantee submitted an application for review which included numerous documents and Statements of Position "which identifies [sic] the questions in dispute, our position on these questions, and the relevant facts with supporting analysis." The Order to Clarify the Record dated December 28, 1978 extensively analyzed the arguments and supporting documents submitted by both parties. The Order stated that based on the Grantee's acknowledged shortcomings in its ability to provide necessary documentation, the Grantee would have another opportunity to provide the information to the Agency. The Agency was to report to the Board about these efforts, and the Grantee was given an opportunity to respond to the Agency's report. In addition, the Grantee was specifically given the opportunity to "fully describe its position on items, if any, which it still desires this Board to consider by way of appeal." (Order, p.3.) After receiving at least six extensions of time, the Grantee submitted on February 4, 1980 what it said was its "concluding commentary and documentation." The Board examined all of

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the submissions and found that nothing had been submitted that altered the tentative conclusions expressed in the Order. A decision was issued on July 3, 1980. The parties were given an opportunity to comment on the decision in accordance with 45 CFR 16.10. In its comments, the Grantee agreed that "the facts stated in the decision are accurate" and notified the Board that a Negotiated Rate Agreement had been executed on May 12, 1980. The Grantee, therefore, has been given three opportunities to fully argue its appeal; two of these opportunities occurred after the Grantee had received documents containing the Board's analysis of the issues. Nowhere did CR-SDC argue that factual disputes existed that could not be resolved by evidence not already in the record and that a hearing was essential. Nowhere did CR-SDC argue that the documents presented were not the best source of evidence to prove its case or that it wished to present oral testimony.

Furthermore, the Board's regulations did not require it to give CR-SDC a hearing in this case. 45 CFR 16.8(b)(2) states that "[w]ith respect to cases involving a dispute as to material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity for a hearing...." It is a determination made by the Panel on a case-by-case basis. The Grantee did not argue at any time that oral testimony was necessary, and the Panel determined that the question of proper documentation could be handled on the basis of written submissions. In addition, it provided the Grantee with the opportunity to present further arguments and evidence after it had submitted its application for review, in accordance with 45 CFR 16.61.

Finally, the Grantee has not requested reconsideration in a timely manner. The Grantee's Motion is dated four months after the date of the Board's decision. The Grantee had had an opportunity to protest the decision. Its comments on that decision pursuant to 45 CFR 16.10 did not request reconsideration but merely asserted the existence of a rate agreement that had been executed before the decision.

The Grantee's request for reconsideration is denied.

/s/ Frank L. Dell'Acqua

/s/ Robert R. Woodruff

/s/ Edwin H. Yourman, Panel Chairman