

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: New Jersey Department of Human Services DATE:
 The Matheny School, A Special Hospital December 24, 1980
 Docket No. 80-8-NJ-HC
 Decision No. 140

DECISION

The New Jersey Department of Human Services (New Jersey) appealed the January 8, 1980 disallowance by the Deputy Administrator, Health Care Financing Administration (Agency) of \$239,123 claimed by New Jersey as Federal financial participation (FFP) under Title XIX of the Social Security Act. The claim was based on services provided to Medicaid recipients by the Matheny School during the period January 1, 1971 to July 8, 1976.

By letter dated March 9, 1977, a program officer in the Bureau of Health Insurance of the Social Security Administration notified the Director of the New Jersey Class C Special Hospital titled The Matheny School (Matheny) that it had been approved as a Medicare provider, retroactive to July 9, 1976. In an April 14, 1977 letter the Regional Commissioner of the Social and Rehabilitation Service advised the Director of the Division of Medical Assistance and Health Services of the New Jersey Department of Institutions and Agencies that FFP would not be available for claims by Matheny for FFP prior to July 9, 1976. That determination was made official in an August 12, 1977 letter from the Acting Assistant Director for Financial Management, HCFA, to the Commissioner of the New Jersey Department of Human Services. HCFA upheld the disallowance and New Jersey filed an Application for Review by the Board under 45 CFR Part 16.

By letter dated March 21, 1980, the Board directed specific questions to both parties and asked HCFA also to respond to the Application for Review. On May 28, 1980, HCFA responded, after extensions of time. On November 6, 1980, New Jersey filed its reply, a revised Application for Review. On November 21, 1980, the Board issued an Order directing New Jersey to show cause why its appeal should not be:

- (1) Denied because the State has not shown that it has complied with the requirement that FFP is available only for certified providers;
- (2) Denied because that State has not shown that the Matheny School was exempt from the requirement of certification.

New Jersey responded on December 16, 1980.

As set forth in 45 CFR §249.10(b)(1) (1976), FFP is available for inpatient hospital services to Medicaid recipients in an institution qualified to participate in the Medicare Program. New Jersey admits that Matheny was not certified as meeting Medicare standards until July 9, 1976, when the State accepted the School's plan of correction for eliminating deficiencies. These were Life Safety Code deficiencies identified by the State survey agency in July 1976.

New Jersey admits that deficiencies existed prior to certification, but argues that the Agency has not shown that these deficiencies existed from 1971. New Jersey also maintains that because the Agency allegedly failed to specifically alert the State to the requirement that Matheny be certified, the Agency should not be entitled to reimbursement of payments made for services rendered over a five year period.

These arguments are not persuasive. For its part, New Jersey has not shown and admittedly cannot show that Matheny was free of disqualifying deficiencies during the period. Instead, New Jersey argues that had it known it was necessary to do so it would have corrected the deficiencies.

New Jersey also has not shown that mailing the 1972 directory, listing Matheny as a special hospital, to the regional office actually put the responsible officials in the Agency on notice that Matheny was not certified. There are mechanisms for states to use in seeking the advice and guidance of the Agency but the State has not shown here that it sought such assistance. New Jersey is responsible on its own for learning what the requirements for FFP are and for demonstrating that a facility has met them.

Conclusion

We find that New Jersey failed to show that it was entitled to FFP for services to Medicaid recipients by Matheny during a period when that facility was not a qualified provider.

/s/ Cecilia Sparks Ford

/s/ Donald F. Garrett

/s/ Norval D. (John) Settle, Chair