

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Georgia Department of Medical Assistance
Docket No. 81-19-GA-HC
Decision No. 207

DATE: August 28, 1981

DECISION

The Georgia Department of Medical Assistance (State) appealed from a penalty disallowance of \$77,710.68 made by the Health Care Financing Administration (Agency) pursuant to Section 1903(g) of the Social Security Act (the Act) for 19 alleged violations of Medicaid utilization control requirements during the quarter ending March 31, 1980. The Agency determined, after it conducted a validation survey, that physicians had not recertified in a timely fashion the need for care of 18 patients in seven skilled nursing facilities (SNFs), and that one patient did not have a plan of care established in a timely fashion, as required by Sections 1903(g)(1)(A) and (B). The State submitted, with its appeal, documentation for six patients in three facilities; the Agency examined it, accepted it as evidence of valid recertifications, and reduced the disallowance to \$44,406.10.

This decision is based on the State's application for review, the Agency's letter notifying the Board of a reduction in the disallowance, the Board's Order to Show Cause, the Agency's Response, and the State's letter stating that it would offer no further arguments on its behalf.

The Board issued an Order to Show Cause on June 16, 1981, in which it stated that the appeal file appeared to show that the violations of the Act were clear because 12 patients were recertified between 61 and 64 days after the last prior recertification, rather than "at least every 60 days" [Section 1903(g)(1)(A), 42 CFR 456.260(c)]. The Board's Order noted the Agency's position with regard to other cases presently before the Board, also involving violations of Section 1903(g)(1)(A). The Board pointed to its recent decisions holding that the Agency has no discretion under the Act to waive a penalty, once it is clear that violations exist, no matter how minor or how few the violations are.

The Agency's response to the Order to Show Cause confirmed that the recertifications for 12 patients were not made within 60 days, and confirmed the Agency's position that it has no discretion under the statute to waive or modify the 60-day requirement nor to waive the penalty for minor violations.

The State responded by simply stating that it wished to make no further arguments (State Response to Order to Show Cause, July 27, 1981). Therefore, we uphold the reduced disallowance based on the analysis set forth in the Board's Order to Show Cause dated June 16, 1981, incorporating it into this decision.

Conclusion

We conclude that the disallowance of \$44,406.10 must be sustained on the grounds that the violations of Section 1903(g) and its implementing regulations were clear and that the State did not dispute that they were violations, and that the Agency has no discretion under the Act to waive such violations or the resulting penalty.

/s/ Norval D. (John) Settle

/s/ Cecilia Sparks Ford

/s/ Alexander G. Teitz