

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Social Services Board of North Dakota DATE: July 1, 1981
Docket No. 79-160-ND-HC
Decision No. 166

RULING ON REQUEST FOR RECONSIDERATION OF BOARD DECISION

The Social Service Board of North Dakota (State) has filed a request for reconsideration of the decision identified above.

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).

The State has requested reconsideration on three grounds:

(1) that the decision does not state whether the Board has jurisdiction to invalidate HCFA's interpretation of the applicable statutory and regulatory requirements as unreasonable; (2) that the decision fails to state whether the Board has jurisdiction to invalidate agency action because of failure to comply with the Administrative Procedure Act, 5 USC 553; and (3) that the decision fails to apply relevant statutory and case law in determining that the requirements of a HCFA Action Transmittal are interpretative in nature.

We have determined not to grant the State's request in this instance. 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.

The Board is bound by all applicable laws and regulations (42 CFR 16.8(a)). While it is not the Board's role to substitute its judgment for that of the Agency, the Board does not regard as controlling the interpretation of a statute or regulation made by the Agency and offered in a form other than regulation. The Board does have a policy to defer to the Agency's expertise and accords the Agency's interpretation substantial weight. (New York Department of Social Services, Decision No. 101, May 23, 1980, page 6; California Department of Health Services, Decision No. 158, March 31, 1981, page 7.)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 2 -

This policy need not be restated in every decision, particularly where, as here, the State had not raised it as an issue. The Board's decision concluded that the Agency's policy was reasonable, and the Board deferred to the Agency's interpretation as expressed in the Action Transmittal. We see no need for the decision to have elaborated the issue further, nor do we see any useful purpose in reconsidering the decision on that basis. Furthermore, even if this Board were to hold that it did not have jurisdiction to invalidate the Agency's interpretation as unreasonable, it would have no effect on the outcome of the State's appeal in this instance.

The Board's decision concluded that the Agency's Action Transmittal was interpretative rather than substantive and that the State's obligations under Section 1903(g) and the regulations had not been substantially altered by the interpretation; this determination was based on the Board's considered application of relevant law, including the case law previously pointed to by the State. Both parties received full opportunity to present their arguments on this issue, in response to the Board's Invitation to Brief, dated February 23, 1981. The Board will not reconsider its decisions simply because a party alleges that the Board should reconsider arguments previously made by the parties (Ruling on Motion for Reconsideration of Board Decision, California Department of Health Services, Docket No. 80-61-CA-HC, Decision No. 123, November 20, 1980). The State does not present the Board with anything more than a conclusory statement that the Board has failed to apply the law, nor does the State point to additional relevant law.

In view of the Board's determination that the Action Transmittal was merely interpretative in nature and that the State's obligations had not been substantially altered by the Action Transmittal, we did not discuss whether the Agency's action was invalid because of a failure to promulgate the interpretation according to 5 USC 553. Thus, there was no need to discuss whether the Board would have jurisdiction to invalidate the Agency action on that basis.

The request of the Social Service Board of North Dakota for reconsideration of Decision No. 166 is denied.

/s/ Donald F. Garrett

/s/ Alexander G. Teitz

/s/ Cecilia Sparks Ford, Panel Chair