

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Illinois Department of Public Aid DATE: October 21, 1981
Docket Nos.: 80-49-IL-HC
 80-154-IL-HC
 80-157-IL-HC
 81-33-IL-HC
Decision No. 220

DECISION

The Illinois Department of Public Aid (State) is appealing \$6,249,149 in Federal financial participation (FFP) disallowed by the Health Care Financing Administration (Agency) under Title XIX of the Social Security Act. The claims disallowed were for services to Medicaid recipients by facilities during periods when their provider agreements had expired and not been renewed. The issue is whether, and to what extent, FFP is available during provider appeals.

This decision is based on an Order to Show Cause issued to both parties on August 21, 1981; the records in each case identified in that Order; the Board's letter of correction dated August 27, 1981; the Agency's response; and the State's letter electing not to submit further arguments on its behalf.

In its Order to Show Cause, the Board indicated that it would uphold the disallowance in part and reverse it in part, based on a December 1971 Agency Program Regulation Guide (PRG-11), and the decisions of this Board in similar cases. The Board made tentative findings that Illinois State law 1) mandated the continuation of a provider agreement pending a provider appeal; and 2) for the facilities in these cases, required continued reimbursement for the care of Medicaid recipients, pursuant to the holdings of federal courts.

In the Order to Show Cause the Board proceeded on the assumption that the periods of service involved were coterminous with the quarters encompassed by the disallowances. In its response, the Agency pointed out that this was not necessarily correct. The disallowance may include payments for services rendered in a prior quarter. Because of this possibility, the Agency suggested two other methods of calculating the effect of the Board's proposed decision. The Agency stated its willingness to accept any of the three or any reasonable method proposed by the State.

The Agency also argued in its response that PRG-11 does not require FFP for payments during the first 120 days of a provider appeal because such payments are discretionary under Section 12-4.24(E) of the Illinois Public Aid Code. The Agency did not attempt to refute

the State's argument, noted in the Board's Order, that the State is bound by the decisions of federal courts in Illinois to continue payments except in an emergency, nor did the Agency offer to show that any of the provider terminations involved here were such emergencies.

Conclusion

We find, in view of the State's allegation and in the absence of a showing to the contrary, that there were no emergency situations created by Medicaid patients remaining in the terminated facilities involved in these cases. Thus, in view of the Agency's acquiescence in the State's reasonable interpretation of Illinois law as construed by the federal courts, we do not have to decide the effect of Section 12-4.24(E) of the Illinois Public Aid Code in relation to PRG-11. The Order also noted that PRG-11 looks to the continuation of provider agreements (mandated by Illinois law) and does not specifically refer to payments. Even if the Agency were correct that the substance of PRG-11 looks to the continuation of payments, in these cases the State did have to continue payments as well as provider agreements. Therefore, we uphold the disallowance in part and reverse it in part as set out in the Board's Order to Show Cause and Appendix dated August 21, 1981, incorporating them into this decision.

We leave the computation of the effect of this decision to the parties. Both have indicated acceptance of the solution set forth in the Appendix to the Order, as corrected, but they are free to use any other mutually agreeable method.

/s/ Cecilia Sparks Ford

/s/ Donald F. Garrett

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