

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Contested
Case of Lutheran Social Services

v.

Minnesota Department of Human
Services.

ORDER ON MOTION FOR
CERTIFICATION
TO THE AGENCY

The above-entitled matter is before the undersigned Administrative Law Judge on prehearing motion to certify to the Commissioner. On July 1, 1996, the Administrative Law Judge issued an Order granting the motion for partial summary disposition filed on behalf of Lutheran Social Services. In response to that Order, the Department has filed a Motion to Certify pursuant to Minn. R. 1400.7600.

Steven J. Lokensgard, Assistant Attorney General, Suite 900, 445 Minnesota St., St. Paul, Minnesota 55101-2127, appeared on behalf of the Minnesota Department of Human Services ("Department"). Samuel Orbovich, Esq., Orbovich & Gartner, 710 North Central Life Tower, 445 Minnesota St., St. Paul, Minnesota 55101, appeared on behalf of Lutheran Social Services ("Provider"). Written submissions were received from both parties.

Based upon the record herein, and for the reasons set forth in the following memorandum, the Administrative Law Judge makes the following:

ORDER

The Department's motion for certification to the agency is GRANTED.

Dated: August 16, 1996

Sara D. Jay
Administrative Law Judge

MEMORANDUM

On July 1, 1996, the Administrative Law Judge issued an order granting the Provider's Motion for Partial Summary Dismissal, and denying the Department's Cross-Motion for Partial Summary Dismissal. The parties had agreed that the threshold legal issue was whether the "Federal Allocation Rule" has been repealed by implication by 1990 legislation. The Administrative Law Judge found that the rule had not been repealed by implication, and ordered a further pre-hearing conference to discuss any remaining factual issues, and, if necessary, schedule hearing on such issues. The Order was provided to the Commissioner at the time of issuance.

The parties are in disagreement as to whether there are any factual issues properly remaining to be heard. However, the parties are in agreement that the Order on Motion for Partial Summary Judgment involves a controlling question of law, and it is clear that there is reasonable ground for a difference of opinion.

Minn. R. 1400.7600 provides six factors to consider in deciding the appropriateness of certification, including:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- ...
- E. whether it is necessary to promote the development of the full record and avoid remanding

As noted above, the issue involved -- implied repeal of the federal allocation exception -- is a controlling question of law. The Department asserts, and the administrative law judge agrees, that it would materially advance the ultimate termination of the hearing to have the controlling question of law decided prior to an evidentiary hearing. If the Department is correct, and the rule was repealed by implication, the factual issues (if any) will center on the application of the Minnesota allocation formula to the Provider's expenses. If, on the other hand, the administrative law judge's ruling is upheld, the Department expects to be able to contest whether the Provider has an approved federal allocation plan.

From evidence submitted to date, the Department did not question the existence of the Provider's approved federal allocation plan. See Exhibits to Notice and Order for Hearing. The Department disallowed the Provider's allocations on the asserted basis that there was no exception for federal allocation plans in the allocation of central office costs. Id. The Provider asserts that the Department will need to amend its notice of hearing if it wishes to proceed on a different basis, i.e., that the Provider does not have an approved federal allocation plan. The Department apparently would argue that it questioned the existence of the federal allocation plan during the desk audits. These factually-based issues need not be resolved at all if the Order is not affirmed by the Commissioner. Thus, certification will avoid remand in case of reversal, and will provide certainty as to what issues must be developed in the record, whether the Order is affirmed or reversed.

Any delay caused between the ruling and the motion to certify will not materially adversely affect the prevailing party. In fact, the prevailing party does not oppose certification.

In sum, the Order meets at least three of the conditions for certification, and therefore the motion to certify is granted.

S.D.J.