

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9017 &  
 ) 9050  
Appeal of )

INTRODUCTION

The petitioners appeal the alleged failure of the Department of Social Welfare (DSW) to calculate and pay benefits in accordance with a federal court order.

FINDINGS OF FACT

The parties have stipulated to the facts which are attached hereto as Exhibits one and two and are incorporated herein by reference.

ORDER

The petitioners' appeals are dismissed.

REASONS

The petitioners in this matter request a fair hearing because they are aggrieved by the Department's failure to comply with an order of a federal court. They argue that the Board has jurisdiction to hear this case citing the following portions of the statute as authority:

. . . [A]n opportunity for a fair hearing will be granted to any individual requesting a hearing because his claim for assistance [or] benefits . . . is denied, or is not acted upon with reasonable promptness; or because he is aggrieved by any other agency action affecting his receipt of assistance [or] benefits . . .  
3 V.S.A. § 3091(a).

. . . The board shall consider, and shall have the authority to reverse or modify, decision of the agency based on regulations which the board determines to be in conflict with state or federal law.

The clear import of the statute is to provide persons aggrieved by actions of the Department of Social Welfare an opportunity for a hearing and to confer authority upon the Human Services Board to declare those actions to be valid or invalid under state or federal law. The Board itself may issue orders but has no power to enforce those orders and must rely on the judicial system to do so:

A party to an order or decree of the board or the board itself or both, may petition the supreme court for relief against any disobedience of or noncompliance with the order or decree . . . 3 V.S.A. § 3091(g).

In this case, the petitioners are not asking the Board to reverse or modify a decision of the agency with regard to calculating Food Stamp benefits. They do not need to do that because they already have a decision on the matter from the federal court. What they are asking is that the Board order the Department of Social Welfare to carry out the federal court's order with regard to changing its regulations, identifying and notifying class members, and calculating retroactive benefits. While the petitioners characterize the Department's failure as grievable agency actions, in effect the board is really being asked to enforce the order of the federal court. It must be concluded that the Board has no ability to do so.

Even if the board had the ability, the appropriateness of asking a state administrative agency to enforce a federal court order is questionable. Clearly, the proper authority to turn to for noncompliance with an order is the authority

which issued the order, the federal court. That Court, unlike an administrative tribunal, has an arsenal of weapons available to enforce its orders, including injunctions, special writs and contempt proceedings. The issuing authority also has an inherent interest in the integrity of its orders and the efficacy of its processes, which supplies a further rationale for seeking enforcement through it rather than another adjudicative body.

Nothing herein is meant to convey approval of the Department's actions. If a court has ordered the Department to take certain steps by a specified deadline, and that order is not appealed, those steps must be timely taken. However, if those steps are not taken, the Board does not have the authority to see that they are. No order by the Board in this matter could add anything to the rights of the parties (which have already been declared by the federal court) or aid in the enforcement of the court's order. (The Board would have to go to the Supreme Court to enforce its order.) Therefore, the Department's Motion to Dismiss is granted.<sup>1</sup>

FOOTNOTE

<sup>1</sup>The Department argued that the Board has no jurisdiction over this matter because it is in federal court. That contention does not dispose of the matter because it is quite possible to have concurrent jurisdiction of the same matter in federal and state proceedings. The decision here turns on the fact that the matter has already been decided by a federal court and is in the enforcement stage.

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