

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,927  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the denial of his application for Food Stamps and Supplemental Fuel benefits because of excess income. The Department has moved to dismiss the appeal as being based on the same facts and issues alleged as the basis for a prior appeal which was dismissed by the Board.

FINDINGS OF FACT

1. In October of 1991, the petitioner applied for Food Stamps and Supplemental Fuel Assistance. He was denied due to excess income and on October 21, 1991 his appeal was received by the clerk of the Human Services Board.

2. On October 22, 1991, a notice of hearing was mailed to the petitioner at an address he acknowledges to be correct. He was notified to appear on November 6, 1991 at 2:30 in the Newport District Office.

3. The petitioner denies receiving that notice. There is no record of it being returned to the Board as undeliverable.

4. The petitioner failed to appear at the scheduled hearing and on November 18, 1991, he was sent a second letter by the Board clerk advising him that he had missed the hearing

and that he had ten days to request that it be reset if he could show good cause for failing to attend his original hearing. That letter was also sent to the address which the petitioner acknowledges as correct.

5. The petitioner denies receiving that letter. There is no record of it being returned to the Board as undeliverable.

6. After no response was received to the November 18 letter, the appeal was dismissed by the Human Services Board on December 4, 1991. A copy of that dismissal and his appeal rights was mailed to the petitioner on December 5, 1991 to the same address.

7. The petitioner denies receiving a copy of the Board's order. The order was not returned to the Board as undeliverable.

8. The petitioner lives in a mobile home park and has a mailbox there about fifty to seventy-five feet from his home. He has had no difficulty with losing other pieces of mail and usually picks the mail up himself every day. He has been at his home every day since October. He could offer no explanation as to why he might not have received three letters which were correctly addressed to him.

9. Based on the above evidence, it is found that as the three notices were mailed to the correct address and not returned to the sender it is more likely than not that the petitioner received them. While it is always possible that

a piece of mail could be lost at any given time, it is highly unlikely that three pieces of mail sent in three separate months could all have been lost. Had the petitioner received even one of those letters, he could have known there was a hearing set or some difficulty with the appeal.

10. On or about December 30, 1991, the petitioner called the Department to say that he wanted to go through with the appeal and was advised by the worker that his appeal had been set and dismissed when he failed to appear.

The petitioner then requested that a second appeal be filed on the same October denial. That appeal was transmitted by the Department and received by the Board on December 30, 1991.

ORDER

The petitioner's appeal is dismissed.

REASONS

The Board's rules require that:

Failure to appear. If neither the appellant nor his representative appears at the time and place noticed for the hearing, the hearing officer shall inquire by mail whether the appeal has been withdrawn, and as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within 10 days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

The petitioner's appeal was handled in accordance with the above rules of the Board. If there had been convincing evidence that the petitioner had not received the three notices, there would undoubtedly be good cause for reopening

the proceedings. It is very difficult to prove the non-receipt of mail which has been sent out in the regular course of business and which has not been returned to the sender. If the petitioner had claimed the non-receipt of one letter, it might have been easier to give him the benefit of the doubt. However, the claimed non-receipt of three correctly addressed letters strains credulity.

As the petitioner has shown no good reason why this matter should be reopened by the Board, the Department's motion to dismiss should be granted. The petitioner was advised of this probable outcome at the hearing and encouraged to reapply for benefits immediately if he believes he is still eligible.

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