

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,759
)
Appeal of)

BACKGROUND

The petitioners were the subjects of Fair Hearing No. 10,488 decided by the board on September 26, 1991. In its decision the board reversed the Department's termination of the petitioners' Medicaid. On October 10, 1991, the Secretary of the Agency of Human Services, pursuant to 3 V.S.A. § 3091(h), reversed the Board's decision and reinstated the decision of the Department. The petitioners then appealed the Secretary's decision to the Vermont Supreme Court, which, pursuant to 3 V.S.A. § 3091(h)(3), stayed the Secretary's decision and reinstated the petitioners' Medicaid pending the petitioners' appeal.

On December 29, 1992, the Department notified the petitioners and the Supreme Court that it was reversing its determination that the petitioners were ineligible for Medicaid, and it moved the Supreme Court to dismiss the petitioner's appeal as moot. On January 6, 1993, the petitioners wrote a letter to the Department disputing some of the factual allegations made by the Department in its notice to them and the Court (see infra). On January 13, 1993, the Supreme Court issued the following Order:

In light of the notice of decision issued by the Department of Social Welfare on December 29, 1992, the matter in controversy herein has become moot. Appellee's motion to dismiss is therefore granted. Parties to bear their own costs.

If appellant wishes to pursue other remedies based on alleged improper treatment received from appellee, she must do so in the first instance at the trial court level.

On January 20, 1993, the Department notified the Board that the petitioners wished to appeal the Department's decision to dismiss the Supreme Court appeal and grant the petitioners Medicaid. On January 23, 1993, the petitioners filed a Motion to Reconsider with the Supreme Court asking the Court to address alleged violations of their rights in the way that the Department had proceeded in their case. On February 1, 1993, the Department filed with the Board a Motion to Dismiss the petitioners' Human Services Board appeal based on res judicata.

On February 5, 1993, the petitioners and the Department appeared at the scheduled fair hearing in this matter. The petitioners informed the hearing officer that the basis of their appeal to the Board was the same as that contained in their Motion to Reconsider filed with the Supreme Court. The hearing officer informed the parties that he was continuing the matter until the Supreme Court ruled on the petitioners' Motion. He directed the parties to notify him as soon as the Court issued a decision, and told the petitioners that they would be given the opportunity to file a written argument with

the Board after the Court had ruled on their pending Motion.

On March 10, 1993, the Supreme Court issued the following decision:

A review of the record indicates that appellants' Medicaid benefits were discontinued effective May 1, 1991, then reinstated retroactive to May 1, 1991. Because there is no further relief this Court could grant on appeal, appellants' appeal from the decision of the Secretary of Human Services (October 10, 1991) is moot. Accordingly, appellants' motion to reconsider the entry order dated January 13, 1993, and reopen this matter is denied.

On March 12, 1993, the hearing officer sent the petitioners a memorandum allowing them until April 9, 1993, to file a written response to the Department's Motion to Dismiss their fair hearing request. On April 5, 1993, the Board received the following from the petitioners:

The fact that Supreme Court Docket # 91-556 (misstated as Docket #1993 by Wendy Burroughs in her 3/11/93 motion to dismiss) was dismissed by the Supreme Court should not affect our right to have Fair Hearing #11,759. The case before the Supreme Court was an appeal of our Medicaid closure. This Fair Hearing does not concern a closure, but is an appeal of the process and rationale used in reinstating our Medicaid, by virtue of a 12/29/92 Medicaid eligibility decision. Also, whether or not an eligibility specialist had the right to reinstate our Medicaid, after it had been closed by the Secretary of Human Services.

Lorraine Hill, told Jim (via phone) that she did not know why we were now eligible. I asked Wendy Burroughs, who stated that it was on the basis of additional information supplied by me, in a 11/91 letter. We are arguing that the facts in that letter were known to the Dept. in 4/91, and we have proof of that. Also, that the Human Service's Board was aware of and used those same facts in their 1991 decision on our case. There are no new facts. Furthermore, if there had been new facts, we want to have explained to us (using state or federal regulations) how those facts would have had impact on our eligibility for Medicaid.

We would like the Human Services Board to rule on whether or not there were "new facts" that would have affected our eligibility. If the Dept. proves the input of "new facts" (11/91)", we would like the Human Service's Board to rule that the Departments stalling for more than thirteen months before reversing our eligibility status, constitutes harassment. Especially since, during those thirteen (plus) months we were fighting our Medicaid closure in the Supreme Court, at great expense (financially, timewise, healthwise, and emotionally). We also hope that the Board can order the Dept. to pay us \$1,000 for the time and money (only) spent in our defense of our eligibility, which they claim (now) that we were eligible for all along.

If we prove, as we expect to, that there were no "new facts" submitted by us, then we ask the Board to rule that the Dept. had no legal right to reverse their position, when the eligibility status was before the Supreme Court. We also seek, in that instance that the Board reverse the Department's decision and ask the Supreme Court to reconsider reopening Docket # 91-556, as it would no longer be a "moot" case.

In conclusion, we are appealing the fact that Lorraine Hill had any right to make any decision regarding our eligibility. We are furthermore appealing the alleged fact, that we submitted additional information (which magically makes us eligible). We have numerous pieces of evidence to submit to disprove this fact. We have the right to have the Dept. explain it's position regarding our eligibility, and how they arrived at that decision. That has not been done, though we've asked. We still expect Cornelious Hogan, Secretary of Human Services, to be at our hearing. We have already asked that he be subpoenaed, regarding this hearing. Lorraine Hill should also be there, if she needs to be subpoenaed, please do so. We were promised the chance to have this hearing, once the Supreme Court made it's decision. This is a brand new issue, we are appealing the way in which we were deemed eligible, as we believe the Dept. had no legal right to make that decision. We have not had a hearing on this and we are asserting our right to be heard, and to hear the Department's position. "Under 3 V.S.A. # 30919(a), an opportunity for a fair hearing before the Board or it's hearing officer must be granted: to any individual requesting a hearing because . . .; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or

services, . . .

or because the individual is aggrieved by agency policy as it affects his or her situation".

DISCUSSION

Appeals to the Human Services Board are governed by 3

V.S.A. § 3091(a), which provides:

An applicant for or a recipient of assistance, benefits or social services from the department of social and rehabilitation services, the department of social welfare, the office of economic opportunity, the department of aging and disabilities, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

The petitioners do not meet the criteria of the second sentence of the above provision because their "assistance" (in the form of Medicaid benefits) is no longer in issue and their current "grievance" against the Department is not directed against any known or articulated "agency policy". As the Supreme Court indicated in its most recent ruling in the matter (supra), if the petitioners wish to pursue "other remedies based on alleged improper treatment" by the Department, they "must do so in the first instance at the trial court level". This would include, of course, any claim for monetary damages. The Human Services Board is

neither obligated nor allowed by statute to address such claims.

ORDER

Inasmuch as the petitioners' continuing grievance against the Department is beyond the Board's jurisdiction to address, the Department's Motion to Dismiss the petitioners' request for hearing is granted.

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