

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,206

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Disabilities and Aging (DAD) terminating the petitioner's participation in the Medicaid Home and Community Based Services (HCBS) Waiver Program. The issues are whether the petitioner's claims are moot and otherwise outside the jurisdiction of the Human Services Board.

DISCUSSION

The petitioner is an elderly woman who until recently lived at home with her adult son. The petitioner applied and was found eligible for a HCBS waiver in August, 1991. Under this program the petitioner received personal care attendant services in her home and was able to deduct the cost of these services in the determination of her eligibility for medicaid. The services were provided by professional aides under the aegis of the local home health care nursing agency.

Documents submitted by the parties indicate that in December, 1991, these aides refused to go into the petitioner's home because of alleged harassing behavior from the petitioner's son. In March, 1992, the petitioner's son filed a complaint against the home health care agency with the Commissioner of DAD. Although there is some dispute as to the extent of communications between DAD and the petitioner's son in the months following his complaint, on October 19, 1992, the Commissioner wrote to the petitioner's son informing him that he (the Commissioner) did not have the authority to order the home health agency to send aides into the petitioner's home against their will. The letter also informed the son that because no home health care aides were willing to come into the petitioner's home, the petitioner's HCBS waiver would soon be terminated. Documents show that the petitioner received a copy of a Memorandum from DAD to the home health agency dated October 30, 1992, informing them that the petitioner had been terminated from the medicaid waiver program effective October 19, 1992.

In December, 1992, the petitioner's son followed up his complaint by contacting the Vermont Attorney General, who referred the matter to the DAD Director of Licensing and Protection. Following a meeting

between the petitioner's son and the Director, the Director sent the petitioner's son a letter dated January 14, 1993, informing him that DAD was seeking authorization from the federal agency that monitors compliance by providers with medicaid regulations to investigate the son's allegations against the home health agency. On May 21, 1993, the Director sent a letter to the petitioner's son informing him that DAD had found his complaints against the home health agency to be unsubstantiated.

On August 3, 1993, an attorney representing the petitioner filed a request for a fair hearing with the Human Services Board claiming that the petitioner should have her HCBS waiver reinstated because DAD had not provided her with adequate advance notice of its termination. A few days earlier, however, on July 30, 1993, the petitioner was hospitalized. She remained in the hospital for about ten days and was then placed in a nursing home, where it is anticipated she will remain living for the rest of her life.

On September 15, 1993, the petitioner's attorney withdrew his representation of the petitioner in this fair hearing. On September 17, 1993, in a conference telephone call, the petitioner's son informed the hearing officer and DAD's attorney that he wished to continue the appeal in the petitioner's behalf.

A hearing was held on September 22, 1993. The petitioner's son indicated that in addition to the appeal that had been filed on behalf of his mother by her attorney he wished to appeal the decision by DAD not to substantiate his complaint against the home health agency.

ORDER

The petitioner's appeal of the termination of her HCBS waiver is dismissed as moot. The petitioner's son's appeal over DAD's investigation of his charges against the home health agency is dismissed for lack of standing and lack of subject matter jurisdiction.

REASONS

There is no dispute in this matter that the petitioner's HCBS waiver was terminated only after the home health agency had ceased providing her with services. The petitioner received no home health care services after the termination of her waiver. Therefore, she has suffered no monetary loss in the determination of her medicaid eligibility during that time. Moreover, because she is now in a nursing home and will not return to her home, she can never again qualify for an HCBS waiver--which is predicated on an individual receiving home health services in her home. See 42 C.F.R. § 440.180. Therefore, it must be concluded that her appeal is moot.⁽¹⁾

As for the issue raised by the petitioner's son, 3 V.S.A. § 3091(a) provides as follows:

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 officers, 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 petitioner's son is neither an applicant for nor a recipient of any benefit, service, or license from either DAD or any other agency named in the above statute. His only relationship with DAD is as a complainant about the sufficiency of the investigation it conducted regarding his mother's former home health services provider. This is not sufficient under § 3091(a) either to confer standing on the petitioner's son to file a request for hearing with the board or for the board to exercise subject matter jurisdiction over the petitioner's grievance with the agency. The son's situation is analogous to that of an individual who reports an allegation of child abuse to SRS. That individual cannot appeal to the Human Services Board if SRS determines that the allegation of abuse is unsubstantiated. That is a matter, like this one, solely in the agency's discretion.

For all the above reasons all aspects of this appeal are dismissed.

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1. There is also no indication that the petitioner even wishes to continue her appeal. It does not appear that her son is her legal guardian or has any authority or permission to act in her legal behalf.