

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,491

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Appeal of )

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INTRODUCTION

This is the remaining issue in the above fair hearing which was remanded by the Board for the taking of further evidence. The petitioner appeals a decision by the Department of Social Welfare transferring his case to another office following his move to a different town.

FINDINGS OF FACT

1. On November 22, 1993, the petitioner, a disabled man who receives a number of benefits through DSW, received notice from the Department (as part of a larger notice) that his case was being transferred to another district based on his recent move to another community.
2. The petitioner appealed that decision and it went to the Board on March 11, 1994, whereupon that issue was remanded for further development. Upon remand, the petitioner made a formal request that he be excepted from the office change and received a formal response from the District Director denying that request. During the pendency of these proceedings, the Department agreed to reinstate the petitioner's case at the original office until a final decision was reached by the Board.
3. The evidence shows that the Department assigns its cases to twelve administrative districts consisting of several dozen towns each. The town in which a recipient lives determines which administrative district office will serve her or him.<sup>(1)</sup> These districts are designed and adopted for all state offices by the legislature and are statutorily enacted at 3 V.S.A. § 4001.
4. Before his move, the petitioner lived in Barre, which is in the Barre District office area. Last fall, he moved to Chelsea which is in the Hartford catchment area. 5. The petitioner asked that his case be kept in Barre for several reasons: that the Barre office has handled his case for a long time and is most familiar with it; that the Barre office is somewhat closer to his home than the Hartford office; and that it is more convenient for the petitioner to travel to Barre because he has other business there, as opposed to

Hartford which he has no occasion to visit. The three reasons listed above are supported by the evidence and are found as facts herein.

6. The petitioner offered several other reasons for preferring the Barre office which involved the alleged ineffectiveness, discourtesy and lack of ability of the personnel in the Hartford office. However, there was no

evidence offered to support any of those allegations and they cannot be adopted as facts.

7. The petitioner's request was reviewed by the District Director and passed on to the Chief of Field Operations for a final decision. The decision was made to deny the petitioner's request for an exception because he had failed to demonstrate "extenuating circumstances."

8. The Department does not have a regulation or written policy regarding exceptions to the case assignment scheme. Rather decisions are made subject to an informal, unwritten policy for hardship cases where "extenuating circumstances" are shown. Very few exceptions have been made under this standard, with only two occurring in this district in the last ten years. The two exceptions made were for a suicidal man dying of AIDS who wanted to keep his files as confidential as possible and for a woman with several children whose husband had just committed suicide and who was felt to be in extreme emotional distress. The exception has also been made in other offices where the applicant is a close relative of an office employee in order to avoid the appearance of favoritism or impropriety.

9. Although convenience factors alone are not enough to avoid assignment to the statutory district, commuting difficulties and financial considerations are taken into account by the Operations Chief under the "extenuating circumstances" criteria. However, the petitioner was found to be wanting here because he is not required to visit the office for regular business. As a disabled person he is allowed to conduct all of his business through a toll free telephone number and by mail. He is not required to be present in the office. If he must attend a fair hearing at the new district, his transportation expenses must be reimbursed by regulation.<sup>(2)</sup> Therefore, the Department's factual conclusion that the petitioner will not be significantly inconvenienced either timewise or financially by the reassignment must be accepted as accurate.

10. Exceptions to the usual administrative assignment pose some burdens for the Department. They can be accomplished fairly easily by, in essence, "lying" to the computer about where someone lives, but the ramifications of a number of those changes on office operation is less benign. Staffing decisions in offices are based on projections about the number of cases in a district. Allowing persons to "district shop" for less than compelling reasons could create workload problems. Personnel in each district frequently form beneficial working relationships with town officers and suppliers in their own districts which enable them to deal quickly with emergencies.<sup>(3)</sup> The potential for fraud and duplication of benefits is reduced when case files are uniformly and regularly assigned to districts.

### ORDER

The decision of the Department is affirmed.

## REASONS

The Department's operations are conducted through administrative districts designated by the legislature at 3 V.S.A. 4001 for use by all government entities. Under those designations, Chelsea is in District 3 and Barre is in District 5. See subparagraphs (3) and (5) respectively. The legislature has further mandated that the district office for District 3 towns be located in Hartford. 3 V.S.A. 4002(3). The Department's regulations in both the Medicaid and Food Stamp programs (programs typically used by the petitioner herein) require that case files be opened for those programs in the appropriate administrative district. See M105 and F.S.M. 273.2(c). The procedures manual covering all programs requires that workers match address changes with district offices and transfer files to the appropriate district when needed. See P-2183.

There is nothing in the regulations or procedures which provides for an exception to these administrative directives. However, the Department has an informal, unwritten policy of overriding its administrative dictates in extenuating circumstances. The Department is, thus, not required by law to make such an allowance but does so in order to carry out its mission of serving members of the public in need. Having adopted an oral practice of making exceptions, the only consideration in this case is whether the Department is using rational standards and whether those standards are being applied equally and fairly to the petitioner.

At the outset, there was some confusion in this matter because no process had been set up to allow the petitioner to present his case and to allow the Department to respond. Once he indicated that he was asking for an exception to the Department's transfer, a process of interviewing him and responding to his request in writing should have been initiated. Once appealed, the action to move him should have been suspended until the matter was resolved at the Board level. This procedure was worked out in this matter after the appeal was lodged.

That being said, it is difficult to conclude that the Department's standard for granting exceptions is unreasonable or unlawful. The petitioner argued that "convenience" should be the only standard. However, given the administrative burdens placed on the Department when these requests are made, it is clear that it is not unreasonable for the Department to require something more than convenience. (Although the Department does have an obligation not to overburden recipients and to accommodate them within the districts.) Given the administrative considerations, it is not unreasonable for the Department to use an extenuating circumstances standard.

The final question is whether this standard was fairly applied to the petitioner. It must be concluded that it was. The petitioner has not shown any extraordinary reason why he should be treated differently from other benefits recipients. In fact, given the accommodation that is made for disabled recipients, it is very difficult to see that the new district would even be inconvenient for him. At the very most, it can be said that this change may be irritating for the petitioner because it represents a change. However, he has not shown that such a change places an extraordinary burden on him psychologically or emotionally. The Department's decision is affirmed.

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1. Emergency assistance and expedited Food Stamps which are one time payments can be handled at any office.

2. With respect to non-disabled persons, the Department attempts to accommodate convenience concerns within the assigned districts by setting evening, weekend or home visits where necessary to insure participation.
3. The petitioner asked that officials in his town be subpoenaed in order to show that they do not work with anyone in the Hartford District office. However, those subpoenas were denied by the hearing officer as she felt the burden of taking town officers from their duties far outweighed the minuscule probative value their testimony might have with regard to any crucial fact in this matter.