

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,044

)

Appeal of )

)

INTRODUCTION

The petitioner requests an order expunging a decision by the Department of Social and Rehabilitation Services to substantiate in its registry an allegation of child sexual abuse against him.

FINDINGS OF FACT

Prior to the hearing scheduled for December 1, 1994, Michael Duane, Esq., acting on behalf of the Department of Social and Rehabilitation Services, informed the hearing officer that the Department would not put on any evidence in this matter and was prepared to accept a "default" judgment. The hearing officer then notified the petitioner of this information and that his presence would not be required at a hearing.

ORDER

The decision of the Department substantiating a finding of child sexual abuse against the petitioner is expunged.

REASONS

Under the statute at 33 V.S.A. § 4916(h), when a person seeks expungement of a finding placed against him in the registry, the burden is on the "commissioner to establish that the record shall not be expunged." As the Department has failed to put on any evidence in this matter, it must be concluded as a legal matter that the Department has failed in its burden and the petitioner is, therefore, entitled to the relief which he seeks.

Although the Board is not aware of the entire procedural history of this matter, it notes that the better course of action for the Department may have been to request a continuance of the expungement hearing pending the outcome of the related criminal matter or to expunge the record of its own volition.

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