

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,318

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Appeal of)

INTRODUCTION

The Department of Social Welfare has filed a Motion to Dismiss the petitioner's request for fair hearing in this matter due to the petitioner's failure to appear at the time and place scheduled for his hearing.

ORDER

The Department's Motion to Dismiss is granted.

DISCUSSION

The Department's Motion to Dismiss accurately and succinctly sets forth and documents the procedural history of this matter and the prior rulings of the hearing officer in the scheduling of this fair hearing. The record reflects that on the day in question, May 11, 1995, the hearing officer arrived at the Hartford District Office at approximately 9:45 a.m., about fifteen minutes before the petitioner's hearing was to begin. The petitioner's hearing was the first matter on that day's schedule. When he arrived, the hearing officer was informed by Department personnel that the petitioner had left the hearing site after a disagreement as to whether he would be allowed access to the hearing room prior to the commencement of his hearing.

At approximately 9:55 a.m. the Clerk of the Human Services Board called the hearing officer to report that the petitioner had called her from a local restaurant to complain about not being allowed access to the hearing and to await word from the hearing officer or the Department as to the status of his hearing. The hearing officer instructed the Clerk to call the petitioner back to tell him that if he returned immediately to the District Office he would be given an opportunity for hearing. When the Clerk called the petitioner back, however, he had already left the restaurant. The petitioner's own Memorandum alleges that after calling the clerk he waited "nine minutes" before leaving the area.

The petitioner's arguments in this matter are wholly specious. As has been the case in prior fair hearings, it appears that the petitioner's primary interest is to engage the Department and the Board in protracted legal wranglings on every conceivable procedural minutiae of his case. Because of this, the instant case has now been pending for six months. The petitioner was clearly warned that this case would be dismissed if he failed to appear at his hearing on May 11, 1995. Rather than appear at this hearing the

petitioner manufactured yet another dispute, this one concerning a purported "right" to prior access to the hearing room, and he voluntarily left the hearing site when that "issue" was not resolved to his immediate satisfaction. Under these circumstances, alone, his appeal should be dismissed.

It is also clear, however, that, ultimately, the petitioner has no colorable claim whatsoever on the "merits" of his case--i.e., that the Department is precluded from seeking verification of any assets the petitioner owns that are currently in another country.⁽¹⁾ Because there is no conceivable likelihood that the petitioner would prevail on the merits of his appeal, the dismissal of his case at this

time is all the more appropriate.

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1. See Medicaid Manual § M230 and Food Stamp Manual § 273.8.