

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,581

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Appeal of)

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INTRODUCTION

The petitioner appealed the Department's decision terminating his daughter's essential person (EP) grant when the person designated as her EP was found eligible for SSI. The issue is whether the petitioner's appeal should be dismissed due to his failure to appear at his hearing.

FINDINGS OF FACT

The petitioner filed this appeal on April 12, 1995, following notification from the Department that his daughter's EP grant would close due to her EP's eligibility for and receipt of SSI benefits. A fair hearing was set for May 12, 1995. The petitioner failed to appear at that hearing and did not notify the Board or the Department in advance that he would not be attending the hearing.

On May 17, 1995, the Board, pursuant to its rules, ⁽¹⁾ sent the petitioner a notice that his appeal would be dismissed unless he contacted the Board within ten days and showed good cause why he did not attend his hearing.

On May 22, 1995, the petitioner called the Board to say that his daughter was sick on the day of the hearing and was having seizures, and that he forgot to call the Department that day. The petitioner asked that his hearing be reset. On May 25, 1995, the Board sent the petitioner a notice stating that his hearing had been rescheduled for June 12, 1995 at 2:30 p.m.

On May 31, 1995, the Department's attorney called the Board to inform it that the petitioner had requested another continuance because of a doctor's appointment on June 12. The Department informed the Board that benefits were continuing and that it would not agree to a continuance.

On June 5, 1995, the hearing officer instructed the Clerk of the Board to call the petitioner to inquire as to the time of his doctor appointment on June 12, and to offer the petitioner any other time that day that would not conflict with that appointment. When the Clerk reached him, the petitioner immediately

became hostile and abusive, and stated that he no longer wished to participate in this "biased process" and that he would take his complaint to court. The petitioner did tell the Clerk, however, that his daughter's doctor appointment was at 11:00 a.m. on June 12, 1995. The Clerk informed the petitioner that if he did not appear at his hearing his case could be dismissed.

On June 6, 1995, the Board received the following two letters from the petitioner, one addressed to the hearing officer, the other addressed to the Board Chairman:

The petitioner did not appear at his scheduled hearing on June 12, 1995.

ORDER

The petitioner's appeal is dismissed.

REASONS

At no time, either in his letters or in his "conversation" with the Clerk of the Board, has the petitioner indicated that his daughter's doctor appointment precluded his appearing at any time for a hearing on June 12, 1995. The petitioner's only response to the Board's offer of setting the hearing for a different time that day has been the angry tirades described above.⁽²⁾ As noted above, benefits were (and are) continuing in this case pending the resolution of this fair hearing, and the matter was already continued after the petitioner failed to appear at a prior hearing. In light of this, it was not unreasonable for the Board to at least inquire of the petitioner if he could attend a hearing on June 12 at another time.

Although the hearing officer hesitates to have the petitioner fall victim to his own intemperance, it is relevant to consider that, ultimately, there is little, if any, likelihood that the petitioner will prevail on the "merits" of his appeal in this matter. The regulations are clear that persons designated as "essential persons" cannot themselves be eligible for SSI.⁽³⁾ There does not appear to be any dispute in this matter that the designated EP has, indeed, been found eligible for SSI.⁽⁴⁾ Thus, there is virtually no likelihood that a further continuation of the hearing in this matter will result in anything but the further "overpayment" of benefits that will have to be recouped from the petitioner's ongoing ANFC grant.⁽⁵⁾ For these reasons the petitioner's appeal is dismissed.

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1. See Fair Hearing Rule No. 16.

2. The petitioner's allusion to the hearing officer's "bias" may be based on a prior decision involving the petitioner issued by the Board in Fair Hearing No. 13,048, in which the Board affirmed the Department's decision denying the petitioner general assistance.

3. W.A.M. § 2751 provides, in pertinent part:

An "essential person" is defined as:

. . .

a person living in the same household with an aged, blind or disable person (or couple), who is not himself or herself eligible for SSI/AABD or for Aid to Needy Families with Children (ANFC). . . .

4. The Department represents that the EP is currently receiving medicaid on the basis of her eligibility for SSI.

5. See W.A.M. § 2234.2, 2242.4, and 2714.3.