

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 16,929  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals several actions of the Department of Developmental and Mental Health Services and its sub-contractor Rutland Mental Health Services. The Department has moved to dismiss the appeals as either moot or outside of the jurisdiction of the Board.

OFFERS OF PROOF

No formal testimony was taken in this matter. A status conference was held on April 25, 2001. The petitioner's guardian was allowed to make an extensive offer of proof to determine whether the Board has jurisdiction over any remaining matters. The petitioner's guardian offered that his evidence would prove that the petitioner and her family moved out of the Rutland area last fall. That the petitioner had been receiving Medicaid waiver services through Rutland Mental Health Services for some years and that the agency agreed to continue providing services to the petitioner based on her assertion that she planned to return to the area as

soon as she was able. (Although emergency services were to be provided by a geographically closer agency.) At some point there was a falling out between the petitioner's guardian and RMHS due to an alleged breach of confidentiality. The petitioner was concerned that RMHS' attorneys might be seeing information regarding the petitioner. He objected to this because he has a negative relationship with RMHS' attorneys based on his prior retention of them in a private case. The petitioner's guardian refused to provide certain release forms to RMHS and RMHS determined to terminate its relationship with the petitioner. The petitioner's guardian decided simultaneously that he no longer wanted RMHS involved with the petitioner's care because he felt the attorneys had soured his relationship with agency personnel and because he wanted to keep information on the petitioner from RMHS' attorneys. The petitioner then engaged Health Care and Rehabilitation Services, a provider near his current place of residence, to supply Medicaid waiver services to the petitioner. Those services are currently being provided by HCRS at the petitioner's request. RMHS owed money to the petitioner's respite care provider which went unpaid for a period of time but which was recently paid in full. The petitioner's guardian requests that the Board declare that

the behavior of RMHS and DDMHS were illegal and improper, to declare that he had been denied due process, that his relationship with RMHS was damaged by a third party (their attorneys) and for the reimbursement of expenses he incurred in dealing with the agencies.

ORDER

The petitioner's appeal is dismissed as his initial requests have become moot and the Board lacks jurisdiction to grant other relief which he seeks.

REASONS

The Board has been empowered by the legislature to hear appeals filed by persons with a developmental disability with regard to decisions made by DDMHS or an agency or program funded by DDMHS<sup>1</sup> to "deny or terminate eligibility for services; to deny, terminate, suspend or reduce services; or when a request is not acted upon promptly." 18 V.S.A. § 8727(b). The petitioner is not claiming that she is currently being denied any service to which she is entitled or that she has made a request which has not been acted upon. Her initial

complaints that she was not being served by RMHS and that her provider had not been paid by RMHS were arguably within the jurisdiction of the Board. However, her subsequent decision to not use RMHS as a provider and RMHS' payment of outstanding amounts owed to her respite worker have mooted out any claims over which the Board had jurisdiction.

The Board has no authority under the statute to take jurisdiction for the purpose of declaring that an agency has treated a recipient rudely, unfairly or improperly unless it is in connection with the termination or reduction of services to which the recipient feels she is entitled and is not receiving. The petitioner's guardian is not claiming that the petitioner is failing to receive any service to which she is entitled. His remaining complaint is that she has been treated unfairly and illegally in the course of her dealings with the Department. If this is true, the petitioner clearly has cause to complain but the Board has no ability to grant a remedy for this complaint. If the petitioner feels that she has been damaged financially or emotionally by actions of the parties, she may have a remedy in a Court. The petitioner should be aware that the Commissioner of DHMSS is required by

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<sup>1</sup> A prior ruling by the hearing officer that RMHS is not a party to this petition is hereby reversed pursuant to this statute and the Board's

statute to set up an internal investigation and resolution procedure for dealing with complaints not covered by human services board review including the manner in which services are provided. 18 V.S.A. 8727(c). The petitioner is encouraged to participate in that process if she desires further satisfaction.

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