

list witnesses, and estimate the amount of time required for hearing. The petitioner returned her form on March 27, 2001. The Department did not return its form and did not contact the Board.

The matter was set for hearing in Burlington on May 23, 2001. The petitioner appeared prepared to testify in her own behalf. The Department did not appear at the hearing and did not contact the Board.

On May 25, 2001 the Board received a letter by fax from the Department's attorney (which did not appear to have been copied to the petitioner) in which the attorney apologized that he had "inadvertently neglected" to note the date of the hearing and asked that a one-hour hearing be set to present the Department's evidence.

On June 7, 2001 the hearing officer sent the Department's attorney the following memorandum:

"The Department is directed to furnish me and the petitioner with an offer of proof in this matter, including the names of any witnesses it intends to call and the sources of their knowledge of the facts of the case. If the Department does not plan to call the alleged victim in the matter it should submit a memorandum as to the admissibility of any hearsay statements that will be offered. The deadline for this submission is June 22, 2001."

As of July 9, 2001, the Board had received no response from the Department, other than a notice dated July 6, 2001 that another attorney was representing the Department. 33 V.S.A. § 4916(h) provides that when an individual files a request for a hearing with the Board concerning a report of child abuse in the SRS registry, "the burden shall be on the commissioner to establish that the record shall not be expunged". In this case, the Department failed to timely comply with all three directives of the Board concerning this matter, i.e., returning the hearing acknowledgement form, appearing at the hearing, and responding to the hearing officer's specific request for an offer of proof. The Department's inattention to its responsibilities in this matter far exceeds any reasonable standard of "excusable neglect". Therefore, it must be concluded that the Department is in default on meeting its burden of proof in this matter and judgement should be entered in favor of the petitioner.

ORDER

The petitioner's request to expunge the report of child abuse in question is granted.

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