

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,082
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of PATH denying reimbursement under Reach Up to a parent for whose child the petitioner provided day care. The Department has moved to dismiss the petitioner's appeal due to lack of standing under the statutes governing the Board's procedures.

DISCUSSION

The following is a summary of the facts alleged by the petitioner. The petitioner started a small child care business in her home when she became pregnant and could no longer work her previous job. In January 2001 she received conditional approval from the Department of Social and Rehabilitation Services (SRS) to provide Legally Exempt Child Care (LECC) for the children of a person who received Reach Up benefits from the Department of PATH. The LECC certificate qualified the petitioner to receive child care payments from PATH to enable the parent of those children to participate in the PATH Reach Up program.

In late January the petitioner began to provide day care for the children of another parent on Reach Up. She understood that this parent would also apply to Reach Up for LECC payments to be made to her to provide this care. At the same time the petitioner decided to apply to SRS for a regular family day care home certificate.

In February, having not received any payment on behalf of the second family's children, the petitioner called that parent's caseworker at Reach Up and was told that the parent had delayed in filing her application for day care reimbursement. (The Department maintains that at least as of July 2001 the parent had still not applied to Reach Up for payment of child care provided by the petitioner.)

On February 28, 2001 the petitioner was involved in a car accident in which children for whom she was providing care were injured (apparently, not seriously) as a result of not being properly restrained while they were in the car. Immediately thereafter the first Reach Up parent (for whose children the petitioner was receiving LECC payments) withdrew her children from the petitioner's day care. However, the petitioner continued to provide day care for the children of the second Reach Up parent.

In mid April 2001 SRS notified the petitioner that her applications for a family day care home certificate and for LECC approval under Reach Up had been denied. Shortly thereafter, the petitioner stopped providing day care for the second Reach Up parent.

The petitioner maintains that she understood that Reach Up would reimburse her for any child care she provided while the parent's LECC application was pending. However, when SRS denied the petitioner's applications, PATH declined to make any payments to the petitioner for the child care she provided to the second parent. (As noted above, PATH denies that the parent ever applied for child care payments.)

Following the decision by SRS (dated April 17, 2001) the petitioner requested a Commissioner's Review from that agency. She also filed an appeal (received June 1, 2001) with the Human Services Board. SRS held her review hearing on June 22, 2001. In a motion filed July 18, 2001, PATH moved to dismiss the petitioner's appeal against that agency due to lack of standing. On August 3, 2001 SRS notified the petitioner that it had upheld its decisions to deny the petitioner her LECC and Family Day Care Home applications.

At a fair hearing held on August 28, 2001 the petitioner withdrew her appeal against SRS stating that she did not wish

to pursue the denial of her LECC and Family Day Care Home applications at this time. However, she stated that she wanted to appeal the decision by PATH not to reimburse her for having provided day care to the second Reach up parent until mid April while that parent's application for day care reimbursement was allegedly pending.

During a discussion of the Department's Motion to Dismiss the petitioner indicated that the parent of the children for whom she provided care for which she was not paid would be filing an appeal against PATH in her own behalf. The petitioner admits that at no time during these proceedings was she, herself, an applicant for or recipient of any services from PATH. Her applications for LECC approval and Family Day Care Home registration were made to and decided by SRS, and she is not appealing these decisions.

ORDER

The Department's Motion to Dismiss is granted.

REASONS

The crux of the Department's Motion to Dismiss is that the petitioner lacks standing under the Board's statute to appeal a decision by PATH denying day care payments to the parent who was the recipient of and applicant for Reach Up services. 3 V.S.A. § 3091(a) provides:

An applicant for or a recipient of assistance, benefits or social services from the department of social and rehabilitation services, the department of prevention, assistance, transition, and health access, the office of economic opportunity, the department of aging and disabilities, the office of child support, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

As noted above, the petitioner was not an applicant for or recipient of benefits or services from PATH. She provided day care services for a recipient of Reach Up benefits from PATH. Under Section 2348 of the Department's Reach Up regulations payments for child care expenses are based solely on the eligibility of the recipient. The recipient chooses the provider, and if the provider is approved by SRS, PATH can

make day care payments either to the recipient as a reimbursement or arrange for payment to be made directly to the provider under the SRS subsidy program. WAM §§ 2348.2(6)(c) and 2348.4.

The Reach Up day care payment scheme is essentially no different than payments that are made to doctors, fuel dealers, landlords, and providers of various other services to recipients of PATH benefits. If any such provider provides services in anticipation of the recipient's eligibility, and the recipient is found to be ineligible, the provider does not have standing under the above statute to appeal the Department's decision regarding that recipient's eligibility. In such circumstances, the recipient may well be liable to the provider, but the provider gains no status vis a vis the Department regarding the recipient's eligibility for those payments.

In this case, the petitioner certainly has the right to pursue payment for the services she provided directly from the parent who received them; and the parent has the right to file an appeal with the Board and to raise any issue regarding the Department's liability to her. However, it must be concluded that the petitioner, as the provider of the services in question, does not have standing under the above statute to

claim that any payment by the Department of PATH be made directly to her.

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