

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,109
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision of the Department of Social and Rehabilitation Services (SRS) denying her application for a Legally Exempt Childcare Certificate (LECC). The Department has moved to dismiss the petitioner's appeal as untimely.

FINDINGS OF FACT

1. The facts necessary to dispose of the Department's motion are not in dispute. By a certified letter mailed to the petitioner on April 3, 2001, the Department denied the petitioner's application for a LECC to provide day care in her home to the child of an ANFC Reach Up recipient. The petitioner signed for this letter on April 4, 2001. The letter included specific and prominent instructions that the petitioner had 30 days in which she could appeal the Department's decision to the Human Services Board.

2. On May 21, 2001, the Board received a letter from the petitioner requesting a hearing "on child care services". In

the letter the petitioner alleged: "I have been denied monies owed me while child care services were provided." The letter was dated May 5, 2001.

3. A hearing on the Department's Motion to Dismiss was held on June 21, 2001. At that time the petitioner did not dispute the dates she received the Department's notice of decision and when she filed her appeal to the Board. The petitioner did not explain the more-than-two-week discrepancy between the date on her appeal letter and the date it was received by the Board other than to state she had been in contact with Lawline about the case and had been unsure how to proceed.

4. The petitioner was accompanied to the hearing by the parent of the child for whom she had provided day care. The petitioner stated that her appeal mostly concerned the fact that she had not been paid for childcare she had already provided to the parent under Reach Up. The petitioner alleged that the parent had been approved by Reach Up for her to provide this care on an interim basis while her application for a LECC was pending, and that Reach Up had refused to pay her for these services when her LECC was denied by SRS.

5. The hearing officer informed the petitioner and the parent of the child for whom she had provided day care that

under the Board's rules (see infra) they were still within the time period to appeal the decision by Reach Up, which is administered by the Department of PATH, regarding reimbursement. The petitioner and the parent indicated that they wished to pursue this appeal, and a separate docket number has been assigned to this aspect of their case; and it is presently awaiting a hearing. The petitioner was also advised that she can reapply to SRS for a LECC.

ORDER

The Department's Motion to Dismiss the petitioner's appeal against SRS as untimely is granted.

REASONS

Rule No. 1 of the Board's Fair Hearing Rules reads as follows:

1. Requests for fair hearings. A hearing may be requested by an applicant or recipient of assistance, benefits or social services, or by a licensee or an applicant for a license, as provided at section 3091 of Title 3.

The agency shall respond to any clear indication (oral or written) that a person wishes to present his case to a higher authority by helping that person to submit a request for hearing in the form provided by this rule or by advising that person to obtain legal representation.

Appeals shall be commenced by mailing a request for fair hearing to the hearing officer for the human services board. A copy of the request shall be mailed to the assistant attorney general representing the agency.

Requests shall include: a) the name and address of the appellant; b) a statement of the basis for the appeal; and c) a statement of what action is expected of the board.

Appeals from decisions by the Department of Social Welfare¹ shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he wished to present his case to a higher authority within 90 days from the date when his grievance arose. All other appeals must be made within 30 days from the date the grievance arose.

(Emphasis in the original.)

The petitioner does not dispute that the Board received her appeal letter forty-seven days after she received the decision by SRS denying her LECC application. Absent any compelling reason for this delay it must be concluded that the petitioner's appeal against SRS is untimely and should be dismissed.

However, under Rule 1 the petitioner's (and/or the parent's) appeal against PATH for the alleged decision by Reach Up refusing to reimburse her for day care services already performed is timely and will be heard as a separate proceeding.² Also, the petitioner is free to reapply to SRS for a LECC.

¹ Now PATH.

² It is not clear whether the petitioner has legal standing to bring an

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appeal against PATH separate from the parent who was the actual Reach Up recipient. This issue will be dealt with at the time of the hearing.