

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,626
)
Appeal of)

INTRODUCTION

The petitioner seeks to expunge a record in the registry of the Department of Social and Rehabilitation Services (SRS) that she sexually abused a six-year-old girl in 1986. The preliminary question in this case is whether the Department can rely solely on "hearsay" evidence to prove the allegations in this case if the alleged victim, now an adult, is not present for cross-examination at the hearing.

The petitioner has moved for Summary Judgement based on the Department's representation that the alleged victim in the matter is not available to testify at the hearing. At a status conference held on December 19, 2002 the Department indicated it did not contest the facts or the legal arguments contained in the petitioner's **Motion for Summary Judgement**, which is incorporated by reference herein.

ORDER

The petitioner's motion is granted. The Department of Social and Rehabilitation Services may not rely solely on

"hearsay" evidence to prove the allegations in a child sexual abuse record unless the alleged victim is a child age ten or under and is made available to testify pursuant to V.R.E.

804a. Inasmuch as the witness in question is not a child and is not available to testify, the petitioner's name shall be removed from the Department's registry of child sexual abuse.

DISCUSSION

Incorporated by reference herein is the Board's **Interim Ruling** dated October 15, 2001 in Fair Hearing No. 16,391. In that case the Board affirmed the rulings made in two prior cases (Fair Hearing Nos. 16,838 and 16,479) as follows:

. . . as the proponent of the hearsay statements, it is the obligation of the Department to procure the attendance of the child (or mentally disabled adult) witness at the hearing for purposes of cross-examination. If it chooses not to do so, all of the hearsay evidence--therapist and investigator notes, testimony and other recorded statements made by the alleged victim outside of the hearing--would be disallowed to prove the truth of the allegations.

Inasmuch as the Department has not advanced any policy or legal argument that a less stringent standard should apply to adult witnesses, the petitioner's **Motion for Summary Judgement** must be granted.

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