

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,868
)
Appeal of)
)

INTRODUCTION

The petitioner seeks an order from the Human Services Board directing the Department of Social and Rehabilitation Services (SRS) to reopen an investigation of child abuse concerning the petitioner's child. The issue is whether the petitioner has legal standing to bring this issue before the Board.

DISCUSSION

On July 12, 2002 the Board received a request for hearing from the petitioner to "address the Department of Social and Rehabilitation Services' February 21, 2001 substantiation that I abused my 4-year-old son".

On August 6, 2002 SRS filed a **Motion for Summary Judgement** alleging that its substantiation of abuse against the petitioner was based on a family court relief from abuse order dated January 19, 2001 that the petitioner had sexually abused his son within the meaning of the statute by inappropriately touching his son's penis, and that as a result

the petitioner was collaterally estopped from litigating this issue before the Board.

A status conference was held on September 11, 2002, at which time the hearing officer advised the parties that he was inclined to grant the Department's motion. The matter was continued to allow the petitioner to consult with an attorney about pursuing the matter in family court.

Additional status conferences were held on November 26 and 28, 2002 at which times the petitioner advised that he was pursuing the matter in family court. Following these meetings the matter was again continued.

Another status conference was held on March 12, 2003 at which the petitioner appeared in person and the attorney representing him in family court participated by phone. At that meeting the hearing officer directed the petitioner to decide whether he wished the hearing officer to issue a decision on the Department's **Motion for Summary Judgement** or whether he would withdraw his request for an expungement hearing before the Board without prejudice.

On March 25, 2003 the Board received a written statement from the petitioner "withdrawing any perceived request by me to the HSB for expungement of the February 21st, 2001 finding against me by the Department of SRS", but "resubmitting my

request that the HSB order the Department to reopen and complete its investigation of the January 8, 2001 report that I may have abused my children".

ORDER

The petitioner's pending request is dismissed for lack of standing.

REASONS

3 V.S.A. § 3091(a) provides as follows:

An applicant for or a recipient of assistance, benefits or social services from the department of social and rehabilitation services . . . 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 . . .

33 V.S.A. § 4916(h) provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

In this case the petitioner has withdrawn his request for hearing under 33 V.S.A. § 4916(h) (although he is free to refile it at any time). He is not a recipient of or an applicant for any services or benefits from the Department.

Therefore, it must be concluded that he no longer has standing to file any appeal under 3 V.S.A. § 3091(a).

Even if the petitioner were found to have standing in this matter, his request for relief is clearly beyond the Board's jurisdiction. As noted above, the Department has repeatedly advised the petitioner that it is relying solely on the findings of the family court that he sexually abused his child as the basis of its decision to place the petitioner in its child abuse registry. Unless and until the family court either reconsiders its decision or is overruled by a court of competent jurisdiction (which neither the Board nor SRS is), nothing in the statutes requires SRS to conduct any further investigation into the matter.

At this time, the petitioner's remedies lie solely in family court. His appeal to the Board must be dismissed.

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