

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,364
)
Appeal of)

ORDER

The Board declines to take any further action in this matter. 3 V.S.A. § 3091(h) allows the Secretary to reverse or modify a decision of the Board but does not, in the Board's opinion, authorize him to order the Board to take any procedural action regarding the conduct of the Board's hearings. See 3 V.S.A. § 3091(b).

The Board issued a final Order on the merits of this matter on August 31, 2004. On October 1, 2004, it turned down the Department's request to reopen the matter to consider additional evidence. As of October 1, 2004, the Department had not "proffered" any additional evidence. At the time, Department's counsel had represented to the Board only that such evidence was "in the process" of being gathered. To date, other than lack of diligence, the Department has offered no excuse or explanation why it could not have obtained this evidence in a more timely manner.

The above notwithstanding, it should also be noted that the factual basis of the Board's August 31st decision in this

matter was the relative weight of the medical evidence as it specifically relates to the petitioner. Following the Secretary's Reversal dated October 18, 2004, the Department submitted documents consisting of copies of Web pages and professional conference and journal articles. It is presumed that these documents are offered to bolster the professional opinion of its expert (noted, and credited, in the Board's Findings of Fact) regarding orthodonture, in general, as a treatment for TMJ. Even if the recently submitted documents were to be accorded full weight favorable to the Department, inasmuch as they do not specifically refer to the petitioner, they would not alter the Board's essential Findings of Fact.

For the above reasons, the Board perceives no factual or legal basis upon which to reopen or otherwise reconsider its decision in this matter. It appears the Secretary has reversed the Board's August 31st decision based on his conclusion that the Board's decision "implicates the validity" of a Department regulation. If the Secretary also believes it is legal error for the Board to have failed to consider any specific evidence, and if (in light of that, or any other, evidence) the Secretary believes that the Board's findings "lack any support in the record", he may, pursuant to § 3901(h), also reverse on that basis. At this point, however,

any further consideration of this matter by the Board is unwarranted and inappropriate.

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