

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,376
)
Appeal of)

INTRODUCTION

The petitioner seeks to reopen a decision of the Board dated June 18, 2003 in which it was determined that the petitioner's appeal against the Department of Developmental and Mental Health Services (DDMHS) should be dismissed both because the petitioner lacked standing to file such an appeal and because the Board lacked jurisdiction to hear the subject matter. The petitioner appealed the decision to the Vermont Supreme Court which dismissed the appeal on August 6, 2003 due to the petitioner's failure to comply with the Court's rules.

DISCUSSION

For purposes of the petitioner's motion, his allegations are assumed to be true. The petitioner reiterated that he wishes the Board to take jurisdiction over this matter for the purpose of ordering the Commissioner of DDMHS to finish an investigation with regard to the guardianship of his niece, A.E., and to ultimately grant guardianship to him. He agrees that he is not the current legal guardian of his niece but

says that he is the "de facto" guardian since he is involved in her daily care. He also wants the Board to declare that there is some kind of conflict in the fact that the DDMHS attorney opposing him in this matter is also representing the Commissioner who is acting as guardian for his niece. His niece has her own attorney, who does not work for DDMHS, in the guardianship proceeding.

ORDER

The petitioner's request to reopen the matter is denied.

REASONS

The petitioner has alleged no new facts with regard to his situation. He still does not have guardianship over his niece and still seeks the Board's intervention in matters which are solely within the jurisdiction of the state's courts. See 14 V.S.A. § 3062. The petitioner claims that 3 V.S.A. § 3091(a) nevertheless gives him a right to bring a grievance before the Humans Services Board concerning "agency policy as it affects his situation" including a "policy" with regard to guardianship proceedings.

The petitioner is relying on the wrong statute as the right to appeal a decision from the Department of Developmental and Mental Health Services is found at 18 V.S.A.

§ 8727(b). That statute, as the Board pointed out previously allows a person with a developmental disability or "the person's guardian" to appeal decisions with regard to services provided by DDMHS. Id. It does not allow persons who are not guardians to file any appeal and it does not allow even a guardian to file an appeal with regard to actions taken by state courts in guardianship proceedings. Even if 3 V.S.A. § 3091(a) did apply in this case, the Board is clearly prohibited under that provision from interfering in functions which are clearly delegated to state courts. See In re Kirkpatrick 147 Vt. 637 (1987).¹

The petitioner has alleged no new facts nor grounds upon which to reopen this matter. The Board advised the petitioner in its previous decision to address his concerns to the probate and family courts which are making the decisions with which he is dissatisfied. He is urged again to contact those bodies and not to persist in bringing his cause before a forum

¹ In that case, the Supreme Court said that when a statute placed exclusive jurisdiction of a matter before the Court, the Board's involvement can only extend to whether or not the agency, in that case SRS, is paying for services ordered by the Court consistent with its regulations.

that clearly has no legal authority to provide him with the remedy he seeks.

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