

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,409
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Appeal of)
)

INTRODUCTION

The petitioner appeals a decision of the Department of Aging and Disabilities (DAD) to terminate her home-based Medicaid waiver services based on allegedly falsified payment claims submitted by her representative ("surrogate") daughter for services provided to the petitioner by her caretaker granddaughter.

DISCUSSION

This matter began in February of 2003 when DAD proposed to terminate the elderly petitioner's Medicaid waiver services unless she agreed to get a new "surrogate" employer. The person acting as her employer for purposes of hiring caretakers for her was her daughter and the caretaker hired was her granddaughter. DAD believed that the daughter and granddaughter were filing fraudulent claims for services provided to the petitioner. The petitioner in this matter was represented originally by Vermont Legal Aid. The appeal went through a number of status conferences while the parties

negotiated. During this time, the petitioner continued to receive waiver services pending appeal and by April she had agreed to accept a new "surrogate" employer, the Visiting Nurse Association. At that point the petitioner was reinstated as a waiver recipient with no gap in her services. However, the issue remained as to whether the caretaker granddaughter should have been paid for the period from December 8, 2002 through February 24, 2003 based on the claims she filed. Legal Aid continued to pursue that claim on behalf of its client, the petitioner. In October 2003, before a hearing was held, DAD asked for "summary judgment" in the matter. This motion was opposed by Vermont Legal Aid which represented that there were factual disagreements and that a hearing would be needed.

On November 19, 2003, before DAD's motion was ruled on, the petitioner died. Vermont Legal Aid asked for and was given leave to withdraw from the case as the death of its client mooted any need to protect the "personal autonomy" of this elderly woman. The daughter and granddaughter protested this move but the hearing officer agreed with Legal Aid that it was not its mission to represent providers seeking payment for services rendered to clients who no longer could benefit from this payment. The daughter and granddaughter were

advised to obtain their own private counsel but stated that they could not do so. DAD moved to dismiss this matter for mootness and lack of jurisdiction.

ORDER

The Departing of Aging and Disabilities' motion to dismiss this matter is granted.

REASONS

The petitioner who filed the appeal in this matter is deceased. Regardless of what authority the petitioner's daughter or granddaughter may have had to pursue this case on her behalf before her death, they can only continue to represent her after her death if they are the representatives of her estate. See Wells v. Foss, 81 Vt. 15 (1908). The petitioner's daughter and granddaughter admit that they do not represent her estate and the estate representative has made no appearance in this matter. Therefore, there is no petitioner to continue this appeal. However, the daughter and granddaughter seek to substitute themselves as the real parties in interest in this matter as they believe DAD owes them money.

The right of a person to have her appeal heard before the Human Services Board is strictly governed by statute. The

applicable statute specifically provides that "an applicant for or a recipient of assistance, benefits or social services from . . . the department of aging and disabilities . . . or an applicant for a license or a licensee . . . may file a request for a fair hearing with the human services board. 3 V.S.A. § 3091(a). The daughter and granddaughter do not seek assistance, benefits, social services or a license from DAD. They seek payment for services they claim they provided to a beneficiary of a DAD program. While they may be persons with a grievance against DAD, they are not persons with the kind of relationship to DAD described in the above statute. They therefore do not have "standing" to appear before the Board for adjudication of their claim and their request to pursue this appeal in this forum must be denied.

The petitioners argue that dismissal is unfair to them because if the case had been decided before the petitioner's death they would have had a chance to present their case before the Board. It is true that the deceased petitioner had standing before this Board. However, after her initial claim for benefits was resolved, the only remaining issue became DAD's obligation to pay the provider granddaughter under a contract with her. At that point the Board was presented with a different kind of claim than one for benefits or services.

In addition to standing, the statute cited above grants jurisdiction to the Board to hear only those claims specifically enumerated therein: " a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied" or affected by agency policy. 3 V.S.A. § 3091(a).

The claims enumerated in the statute do not include claims for payment to providers. While the petitioner was understandably interested in the claim of her granddaughter, it was not, in fact, her claim. This claim was a dispute between DAD and the granddaughter provider, not between DAD and its client, the petitioner. The only real interests at stake in this appeal, are those of the daughter and granddaughter. The Board has no jurisdiction under the statute to hear those kinds of claims whether they are brought by the petitioner or by someone else. Therefore, it is irrelevant that the petitioner has since died since she herself could not have brought this provider payment claim before the Board.

This dismissal does not mean that the daughter and granddaughter cannot obtain a remedy, only that it cannot be granted by this forum. They are encouraged to speak with an

attorney about what forum may hear their claim and what recourse they may have against DAD.

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