

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,925
)
Appeal of)
)

INTRODUCTION

The petitioner asks for a hearing on behalf of his niece, A.E., with regard to a variety of decisions made by the Department of Developmental and Mental Health Services. DDMHS has moved to dismiss this matter as not within the jurisdiction of the Board. The petitioner has asked to reargue this matter.

FINDINGS OF FACT

1. The petitioner concedes that none of the facts of his guardianship status have changed since a prior appeal was decided by the Board on December 12, 2003. He is neither the legal guardian of his niece nor has he been authorized by her court-appointed legal guardian to file an appeal on her behalf. A copy of that decision, Fair Hearing No 18,376, is attached hereto and all the findings and conclusions of law from that decision are incorporated herein.

ORDER

The motion of DDMHS to dismiss this matter for lack of jurisdiction is granted. The petitioner's motion to reargue the matter is denied.

REASONS

The Board held in Fair Hearing 18,376 that unless and until the petitioner becomes the legal guardian of his adult niece, A.E., who is a legally incompetent person, he has no standing to bring any appeal on her behalf before the Human Services Board. The petitioner clearly does not have the permission of the legal guardian (which is DDMHS) to bring an appeal on her behalf. The petitioner has been told repeatedly that if he has concerns about actions of the guardian he needs to take those concerns to the probate court which has apparently granted him party status in the guardianship proceedings. His complaints are primarily about actions taken by the guardian which he feels are not in the interest of his niece.

The petitioner's request to reargue the hearing on the motion to dismiss before the hearing officer contained no new factual allegations regarding jurisdiction or legal arguments that would warrant a rehearing of the matter. It is based

solely upon his frustration at not being allowed to reargue the same legal issues already raised, argued and decided in Fair Hearing No. 18,376.

The only new legal argument raised by the petitioner at the hearing on the motion to dismiss was that the Board's own rules allow him to file this appeal on behalf of his niece:

Rule 2 Right to Representation.

The appellant may present his or her own case or obtain representation by a friend, relative or legal counsel.

Fair Hearing Rules, Eff. Oct. 16, 1995

That rule only means that the niece's legal guardian could authorize a friend, a relative of the niece or her lawyer to represent her at a hearing before the Board. It does not allow a friend or relative to file an appeal without the authorization of the appellant. The petitioner clearly does not have the authorization of the appellant's legal guardian to file this appeal.

The petitioner was duly notified of his right to file an appeal to the Supreme Court with regard to the Board's prior decision and he apparently did so on March 25, 2004. Unless and until the Supreme Court reverses the Board's jurisdictional decision, all appeals which the petitioner may bring on behalf of A.E. will be summarily dismissed unless

there is a specific allegation in the appeal that the petitioner has either been appointed the legal guardian of his niece or has been authorized by the legal guardian to proceed on her behalf.

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