

reside. In August 2004 the petitioner, through his attorney, notified the Department that he had sold his house in Duxbury, Vermont for "net proceeds" of \$64,550. The petitioner further informed the Department that through a series of transactions following that sale he had allegedly disposed of all the proceeds of the sale. By notice dated September 1, 2005, the Department notified the petitioner that his Medicaid would end on September 13, 2005 because he had transferred resources totaling over \$37,000, thus triggering a disqualification period from August 1, 2004 until March 2, 2005. The petitioner appealed this decision to the Board on September 14, 2004, and his Medicaid benefits have continued since that time.

A status conference was held on October 5, 2004, at which time the petitioner informed the hearing officer that he would be filing a motion to dismiss in the matter. The hearing was continued until November 4, 2004.

On October 26, 2004, the petitioner submitted a written objection to submitting documents that had been requested by the Department's attorney. On October 27, 2004, the petitioner submitted a "Motion to Dismiss".

At a status conference held on November 4, 2004, it was agreed that the hearing officer would rule on these motions

and other pending matters following the hearing officer's review of the parties' written submissions.

On January 11, 2005 the petitioner submitted a request for a "stay" of the Board's consideration of this matter due to the petitioner having "commenced suit seeking declaratory and injunctive relief against the Department in U.S. District Court for the District of Vermont". On January 19, 2005, the Department filed its written opposition to this request and requested a ruling from the hearing officer on the pending "discovery issue". The petitioner filed a written reply opposing the Department on January 24, 2005.

On February 2, 2005, this hearing officer sent the parties the following Memorandum:

Regarding the pending motions and status of the above matter, please note the following:

1. The Department's requests to produce, contained in its letter to petitioner's counsel dated October 7, 2004, is granted. The petitioner shall have until February 11, 2005 to furnish the Department with all the information requested in that letter. Failure to provide this information will result in a recommendation that the Department's decision be affirmed based on the petitioner's failure to provide reasonable verification of his financial status.

2. By February 18, 2005 the Department shall furnish the petitioner and the Board with a concise written explanation of all the factual and legal bases of the action it is taking in the petitioner's case.

3. The petitioner's Motion to Dismiss is denied.

4. The matter shall be set for hearing on the merits. No further continuances will be granted. Any further motions and all procedural and evidentiary issues will be dealt with at the hearing.

In a filing dated February 17, 2005 (received by the Board on February 22, 2005) the Department submitted a "Statement of Law and Facts" and represented that the petitioner had not produced any documents pursuant to paragraph 1 of the hearing officer's February 2 Memorandum.

On February 28, 2005, the petitioner sent the following letter to the hearing officer:

Because the hearing officers are both defendants in an action brought by Petitioner in U. S. District Court, and because counsel for the Hearing Officer and the Board is representing the Department in this fair hearing, I move for the appointment of a new hearing officer to hear the evidence and make recommendations of law to the Board in this case. HSB Rule #3 requires that the hearing be conducted by "an impartial hearing officer appointed by the board who is not involved in any way with the action in question." Given the posture of the federal course case, I believe you no longer meet the rule's definition of "impartial hearing officer." Because the same analysis applies to Ms. Simpson Jerman, I request the Board appoint a different hearing officer in this case.

Thank you for your attention to this matter.

To date, neither the Board nor its hearing officers have received any summons or legal notification from any court that they are parties to or "defendants" in any pending legal matter. The above notwithstanding, the petitioner has not

made any showing that either of the Board's hearing officers, or the Board itself, can no longer be deemed to be "impartial".

To date, the petitioner has not furnished the Department with the information ordered by the hearing officer in his February 2, 2005 Memorandum.

ORDER

The petitioner's appeal is dismissed.

REASONS

Fair Hearing Rule No. 11 provides, in pertinent part:

Conduct of the hearing. Upon request a party shall promptly furnish an adverse party with copies of all documents and records that are relevant to the issues raised by the appeal. Disputes on the question of relevancy shall be resolved by the hearing officer in the first instance, subject to the board's review on the motion of either party.

In this case, there can be no dispute that the petitioner ignored the hearing officer's directive to provide certain information to the Department. The Vermont Rules of Civil Procedure specifically allow for dismissal of actions in such circumstances. (See V.R.C.P. 37.) Although, to the Board's knowledge, it has never directly addressed such noncompliance, there can be little question that dismissal of an appeal under such circumstances is within the reasonable

generic power of any administrative tribunal, and clearly within the Board's statutory authority to establish rules and to provide "appropriate relief". (See 3 V.S.A. §§ 3091[b] & [d]).

As a more general matter, all applicants for and recipients of Medicaid are required to cooperate in verifying all sources and potential sources of income and resources, and their applications may be denied for their failure to do so. See W.A.M. §§ M126 & M131. The resource limit for Medicaid is \$2,000. See Procedures Manual § P-2420C(1). In this case, the Department became aware in August 2004 that the petitioner had sold his house for at least \$64,550, but that he was alleging that through a series of transactions that none of this money should be considered a resource to him or subject to any transfer of resources penalty. *Based on the limited information provided by the petitioner*, the Department assessed a "transfer penalty" of ineligibility through March 2, 2005 for the reasons given in its notice dated September 1, 2004. Whether or not this action is ultimately upheld, the Department is clearly within its rights, not to mention its legal responsibility (see e.g., W.A.M. §§ M102, M126, and M131), to *subsequently* attempt to *further* investigate all the remotely and arguably relevant

circumstances surrounding the petitioner's divestiture of this amount of money, and to determine if the petitioner *otherwise* meets all conditions and requirements of continuing eligibility.

Provided the Department provides him with adequate notice of any subsequent decision in this regard (which the hearing officer required it to do in his February 2, 2005 Memorandum), the petitioner is free to challenge any such action in a *de novo* hearing. However, the petitioner cannot at the outset selectively provide information regarding his finances and then seize on the wording of a single written notice provided by the Department as a basis to unilaterally resist as "irrelevant" subsequent attempts by the Department to obtain further financial information from him.

As noted above, following the hearing officer's February 2, 2005 Memorandum, the petitioner did not file any objection or motion for the Board to review the hearing officer's ruling within the deadline that was given (February 11, 2005). He simply chose to ignore it. It was only following the hearing officer's March 10, 2005 recommendation of dismissal that the petitioner submitted a written response and appeared before the Board at its meeting on March 23, 2005. At that time, he essentially reiterated the same

"relevancy" arguments previously submitted and implicitly rejected by the hearing officer in his February 2 rulings. For the reasons stated above, the Board also rejects those arguments.

Under these circumstances (and considering the fact that this matter has now been pending, with continuing benefits to the petitioner, since September 2004) the petitioner's refusal to abide by the directive of the hearing officer regarding the furnishing of additional information requested by the Department constitutes compelling grounds for dismissal of his appeal. If the petitioner is willing to follow the directives of the hearing officer consistent with the Board's rules, he is free to refile his appeal in this matter. However, he shall not be entitled to continuing benefits pending any further consideration of this matter by the Board or its hearing officers.

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