



advance with the Department's knowledge), on February 22, 2006. The Secretary's remand order was again on the agenda for executive session. Minutes before that Board meeting was to start, counsel for the Department approached the hearing officer and asked to present oral argument on the issue. Inasmuch as the petitioner had not been notified and the Department had filed nothing since the status conference that had been held on January 13, the hearing officer advised counsel that he doubted the Board would consider an ex-parte argument from the Department. The hearing officer recalls literally shrugging his shoulders and advising counsel to file its request in writing "as soon as possible and see what happens". The hearing officer did not tell or intimate to counsel that the Board would delay or postpone its consideration of the matter at that meeting.

On February 28, 2006, the Board entered an Order declining to consider the matter further. This Order was fully consistent with the hearing officer's advice to the parties on January 13, 2006. On March 1, 2006 the Board received by fax the Department's **Memorandum on the Authority of the Human Services Board to Decline Remand by the Secretary of the Agency of Human Services.**

In its present **Motion to Reconsider** the Department alleges that the Board's actions have been "fundamentally unfair to OVHA". Inasmuch as counsel for OVHA was fully informed of the Board's likely action in this matter on January 13, 2006, and took no further action whatsoever until minutes before the Board meeting on February 22, 2006 (which consisted solely of an ex-parte oral communication with the Board's hearing officer), this claim strikes the Board as disingenuous.

Although deemed entirely unnecessary as a matter of legal procedure or any reasonable standard of fairness, the Board has nonetheless reviewed the March 1, 2006 Memorandum filed by the Department, but finds its arguments unworthy of further consideration. Suffice it to observe that if the "statutory framework" cited by the Department "contemplates that the Board is subject to the Secretary's direction and supervision", what was the legislature's purpose in creating the Board and having the Board make its own rules, hold hearings, and issue its own decisions? (See 3 V.S.A. §§ 3090 & 3091.)

The Department's actions in this matter beg the question *why* it suddenly feels compelled to attempt to completely redefine the Board's role and authority in an appeals process

that has been in place, unquestioned, for over 30 years (more than 12 of which have included the provisions of § 3091[h]), and that has involved more than 20,000 cases (dozens of which have been reviewed by Vermont Supreme Court). The Secretary has determined that the Board used an "incorrect legal standard" in this matter, and has refused to grant the petitioner the benefits ordered by the Board. Under the statutes, and as a basic matter of due process, the petitioner is entitled to appeal that decision to the Vermont Supreme Court (something she has indicated she is anxious to do). Nothing in the "statutory framework" requires her or the Board to be "subordinate" to a "remand" of this matter, which really amounts to nothing more than the agency ordering for itself another bite of the apple to bolster what the Board has found to be the lack of factual support for the Department's initial decision.

The Department's **Motion to Reconsider** is denied.

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