STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. J-11/08-529
	)
Appeal of	)

INTRODUCTION

The petitioner appeals the decisions by the Department for Children and Families, Family Services Division substantiating a report that the petitioner sexually abused a child and denying the petitioner's request to expunge that report from the child abuse registry. The Department has moved for summary judgement on both issues based on the petitioner's conviction for the crime of Sexual Assault on a Minor and on the petitioner's failure to verify that she had successfully completed the terms of her probation following her conviction. The issue regarding "substantiation" is whether the petitioner's sexual assault conviction stemming from the same incident is binding on the Board as a matter of collateral estoppel. The issue regarding "expungement" is whether the Department abused its discretion in not removing the petitioner's name from the child abuse registry.

DISCUSSION

The pertinent statutes, at 33 V.S.A. § 4912, include the following:

> (2) An "abused or neglected child" means. . .a child who is sexually abused. . .
> . . .
>
> (8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. . .

There is no dispute in this matter that in 2003 the petitioner was convicted, following her plea of nolo contendere, of the crime of Sexual Assault on a Minor, for which she received a suspended sentence that included probation. The charges included the finding that the petitioner, who was then twenty-three, had sexual intercourse with a fourteen-year-old boy. Then and now, the petitioner maintained that she was drunk at the time and had no memory of the incident. Her probation included alcohol abuse counseling.

The Board has repeatedly and consistently held, and the Vermont Supreme Court has affirmed, that the doctrine of collateral estoppel applies in cases in which there has been a prior adjudication on the issue of child abuse or neglect.

In re P.J., No. 2008-057 [Jan. 26, 2009], (see also *Croteau v. Malloy*, 135 Vt. 64 [1977]). Inasmuch as there is no dispute that the petitioner was convicted of Sexual Assault on a Minor involving the same incident that is under review here, the petitioner cannot now relitigate the issue of whether the report of sexual abuse was substantiated.

In its decision not to expunge the report from its registry the Department noted that the petitioner has failed to produce specific evidence of rehabilitation. This includes verification of successful completion of alcohol counseling and a letter of support from her probation officer. In a telephone status conference held on January 12, 2009 the petitioner admitted that she failed to provide this information to the Department during the commissioner's review in the matter. She also stated cryptically that her probation officer "won't cooperate" in her effort to have the matter expunged from the Department's registry.

However, the petitioner alleged to the Board (at its meeting held on April 1, 2009) that she now had all the documents, except one from her probation officer.

The petitioner wants the matter expunged because she is concerned that she will not be able to work at a job

involving contact with children. While her concerns are legitimate, the Board's authority in reviewing the Department's decision in an expungement request is limited. 33 V.S.A. § 4916c(e) provides that "the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petitioner for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board."

Inasmuch as the petitioner had admittedly failed to provide the Department with reasonable verification of her alleged rehabilitation, it cannot be concluded that the commissioner abused his discretion in denying the petitioner's request to expunge the report in question from its registry. However, it now seems fair that the petitioner be given an additional opportunity to present verification which she claims she now has.

ORDER

For the above reasons the Department's decision substantiating the report in question is affirmed. The matter is remanded to the hearing officer to consider further

evidence and argument regarding expungement. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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