STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. V-01/09-30
	)
Appeal of	)

INTRODUCTION

The petitioner appeals the decision by the Department of Disabilities, Aging and Independent Living (DAIL) substantiating a report of abuse by the petitioner of a vulnerable adult. The preliminary issue is whether the petitioner's appeal is timely.

DISCUSSION

The petitioner does not dispute that by a notice dated September 27, 2005 the Department informed her that an allegation of abuse of a vulnerable adult against her had been substantiated, and that she had thirty days in which to appeal that substantiation. She also does not dispute that on February 21, 2006 the Department sent her a notice that her appeal period had expired and that the Department had placed her name on its adult abuse registry.

On January 20, 2009 the Human Services Board received a letter from the petitioner, dated January 15, 2009, that she was appealing the Department's decision in this matter.

The jurisdiction of the Human services Board to consider appeals regarding the Department's substantiation of reports of abuse of vulnerable adults is statutory. 33 V.S.A. § 6906(d) provides that such appeals must be filed with the Board no more than thirty days after the Department's notice of decision. The petitioner's appeal in this matter was not received until more than three years after this deadline had passed. Therefore, the Board does not have jurisdiction to consider it.[1]

The above notwithstanding, the statutes also provide that an individual in the adult abuse registry "may at any time apply to the Department for expungement" of her name from the registry. 33 V.S.A. § 6911(f). In this case the petitioner is free to pursue this course of action, especially if she now has new information pertinent to the matter.[2] However, the Board does not have jurisdiction to

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[1] In her written response to the Department's motion to dismiss the petitioner alleged that she has "received information pertinent to the case". It appears that similar language may have appeared in the Department's notice of decision. However, it cannot be concluded that the Department's use of this language in its notice entitles the petitioner to consideration of her appeal beyond the limits imposed by the statute.

[2] The Board has jurisdiction under 33 V.S.A. § 6911(e) to consider whether the Department is "misusing" the contents of its registry, and under 3 V.S.A § 3091(a) to consider whether the Department is abusing its discretion in considering an expungement request under 33 V.S.A. § 6911(f). In both cases, however, a petitioner must initiate such requests with the Department.

consider the Department's 2005 decision substantiating the report in question.

ORDRE

The petitioner's appeal is dismissed as untimely.

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