STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. Y-08/09-441
	)
Appeal of	)

INTRODUCTION

Pursuant to 33 V.S.A. § 6906(d), the petitioner appeals the decision by Department of Disabilities, Aging and Independent Living (DAIL) substantiating a report of exploitation by the petitioner under 33 V.S.A. § 6902(6) allegedly perpetrated against his elderly mother. The following findings of fact are based on the testimony and documents submitted at the hearing in the matter held on February 2, 2010.

FINDINGS OF FACT

1. The petitioner's mother, E, is an elderly woman who lives in an assisted living facility in Middlebury, Vermont. Medicaid now pays some of her costs at the facility. E is responsible to pay the remaining costs as a "patient share" from her Social Security check.

2. E first moved into the assisted living facility in May 2008, after she had moved with the petitioner to Vermont from Florida following a heart attack. For the first several months of her residence at the facility the petitioner paid

her bill in full because E was not yet receiving Medicaid in Vermont. The petitioner told the facility that E was not on Social Security.

3. In November 2008 the petitioner stopped paying the facility.

4. In November 2009 E was found eligible for Vermont Medicaid, retroactive to April 2009. Medicaid made a retroactive payment to the facility effective April 2009, and since that time Medicaid has paid the facility a portion, but not all, of E's monthly expenses.

5. The petitioner does not now dispute that for most or all of the time since November 2008 he was E's representative payee for Social Security. Effective February 2010 (apparently at the instigation and with the help of the Department), a local bank has been acting in that capacity. As a result, E's monthly expenses at the facility have been paid in full as of February 2010.

6. Despite being E's representative payee for all or most of the time in question, the petitioner has not paid anything to the facility in E's behalf from October 2008 through the present.

7. At one point in early 2009 the facility notified the petitioner that it would have to evict E if she did not pay

her overdue bill. In a letter to the facility dated March 27, 2009 the petitioner acknowledged E's debt and stated that he would "begin settling the debt in the not too distant future".

8. E's unpaid debt to the facility from November 2008 through January 2010 is $25,953.42. Out of kindness to E, and in light of E recently getting a new representative payee, and *now* being able to pay her bill in full each month, the facility has not taken any further legal action against her.

9. The petitioner has maintained from the outset in this matter that it was "God's will" that he use E's Social Security payments for his own business ventures, which he says are "confidential" and can't be "disclosed". He says he intends to pay all E's debt to the facility "shortly, God willing". He considers the Department's actions to be unwarranted interference in "family matters".

10. The petitioner brought E to the hearing with him. E appeared confused and uncomfortable. Under leading questions by the petitioner she testified briefly, and wholly unconvincingly, that she "agreed" with the petitioner's testimony.

11. The petitioner admitted that prior to the hearing he had not visited his mother in the previous nine months.

12. It was clear from observations at the hearing, and from the facility owner's testimony and demeanor, that she has a close and caring relationship with E. She testified that, although she considers E to be "competent", she never told E about her unpaid bill because she did not want to upset her because of her fragile health. Her testimony was entirely credible that E was completely unaware that the petitioner was not paying her expenses at the facility.

13. The petitioner has not offered any credible evidence that he ever had permission and authority to use E's income for his own benefit and purposes.

ORDER

The Department's decision is affirmed.

REASONS

There is no dispute that E meets the definition of a "vulnerable adult", which includes an individual who is "impaired due to . . . infirmities of aging". See 33 V.S.A. § 6902(14). Under 33 V.S.A. §§ 6902(6)(A)&(B), "exploitation" includes "willfully using, withholding, transferring or disposing of funds or property of a

vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another" or "acquiring possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress or fraud".

Based on the above findings it must be concluded that by using E's income for himself, leaving E significantly indebted and vulnerable to eviction and being without necessary medical care and personal assistance, the petitioner willfully "used" E's income without "authority" and for his own "wrongful advantage", to E's personal and financial detriment, within the meaning of the above provision. It must also be concluded that by not informing E that he was not using her money to pay her bill at the facility, the petitioner acquired the use and "control" of E's income by "undue influence". Thus, the Department's decision substantiating the incident as exploitation of E by the petitioner must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

# # #