

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-02/17-67
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Appeal of)
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INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division regarding the termination of his eligibility for 3SquaresVT benefits (Food Stamps). The preliminary issue is whether the Board has jurisdiction to consider the underlying basis of the petitioner's appeal.

FINDINGS OF FACT

1. The Department determined that the petitioner had intentionally failed to report income from wages in 2016 resulting in an overpayment of 3SquaresVT benefits of \$178 in August 2016.

2. On October 17, 2016 the petitioner signed an "Administrative Disqualification Hearing Waiver" in which he agreed that he would be disqualified from receiving Food Stamps for one year. On the waiver form the petitioner checked the following box:

I do not admit that the facts as presented are correct. I have chosen to sign the waiver, however, and understand that a disqualification penalty will be imposed.

3. On October 21, 2016, the Department notified the petitioner that effective December 1, 2016 his 3SquaresVT would be terminated and that he would be ineligible to receive benefits during a "sanction period" of twelve months.

4. On February 3, 2017 the Board received notification from the Department that the petitioner had filed an appeal regarding his ineligibility for 3Squares VT.

5. At a telephone hearing held on April 4, 2017 the petitioner stated that he now regrets signing the waiver, and that he now wishes to contest the underlying facts of his disqualification.

ORDER

The petitioner's request to contest the Administrative Disqualification Hearing Waiver is dismissed for lack of Human Services Board jurisdiction.

REASONS

Administrative Disqualification Hearings based on alleged intentional program violations by recipients are governed by 3SquaresVT Rule § 273.16 (which tracks federal

regulations at 7 C.F.R. § 273.16). That rule includes the following at § 273.16(f)(2)(ii):

No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however[,] is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

The Vermont Supreme Court has held that the above provision precludes any jurisdiction by the Human Services Board to consider any aspect of an appeal after a waiver of an administrative disqualification hearing has been executed. *Bourne v. Department of Social Welfare*, 156 Vt. 219 (1991). In that case the appellant had made allegations of undue coercion and misrepresentations by the Department at the time she had signed her waiver. The Court reversed the Board's decision allowing her to rescind the waiver and contest the facts underlying her disqualification, and held that the exclusive remedy for such claims in Vermont was with the superior court. *Id.* at 221.

Under the above regulations the petitioner in this matter may pursue his appeal in court. However, in light of the foregoing, there is no factual or legal issue regarding

the petitioner's ongoing eligibility for Food Stamps that the Board has jurisdiction to consider.

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