

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. L-11/19-760
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Appeal of)
)

INTRODUCTION

Petitioner appeals the possibility that he might lose a housing voucher awarded to him pursuant to his participation in the Pathways Program, which is supported with funds from the Agency of Human Services and administered by the Vermont Department of Mental Health. The following facts are adduced from telephone status conferences held on December 13, 2019 and February 14, 2020. A preliminary issue is whether the Board has jurisdiction over this matter because there is not any live case in controversy, as petitioner has not yet lost his entitlement to the housing voucher, nor is there even a credible threat that this will occur.

FINDINGS OF FACT

1. On November 24, 2019, petitioner filed a notice of appeal requesting in effect, a declaratory ruling, to order the Pathways Program not to suspend the housing voucher

petitioner obtained from them to secure his residential housing.

2. At the December 13, 2019 telephone status conference petitioner acknowledged that at that point in time, his voucher was still in effect and that the Pathways Program had taken no action that he was aware of to change the status of his voucher. Petitioner expressed concern that his recent incarceration in the Southern State Correctional Facility might result in the revocation of the voucher.

3. Counsel for the Vermont Department of Mental Health volunteered to inquire as to the status of petitioner's voucher and to report back at the next status conference.

4. Petitioner did not appear for a follow up telephone status conference scheduled for January 13, 2020. However, counsel for the Vermont Department of Mental Health reported that he had learned that there was no intent on the part of the Pathways Program to revoke petitioner's housing voucher. He also reported that he had received reliable information indicating that petitioner was no longer incarcerated.

5. Following receipt of a letter from the Human Services Board that petitioner must demonstrate good cause for missing the status conference or risk his appeal being dismissed, a hearing was held on February 14, 2020 at which

petitioner testified he had been in court at the date and time of the previous status conference and had been recommitted to the custody of the Department of Corrections.

6. The Hearing Officer found that petitioner did have good cause for missing the status conference on the grounds stated above and the matter proceeded. Petitioner acknowledged that following his release from incarceration he had resumed residence in the apartment he had secured by using the housing voucher from the Pathways Program and that he had no proof or documentation that the voucher had been or was in the process of being revoked. However, he reiterated his concern that a revocation might occur in the future and ruminated on what might then happen to his possessions, and whether he would then be entitled to a return of his security deposit.

7. Petitioner's conjectural concerns about a potential but as yet unrealized revocation of his housing voucher do not support a finding that the Board has jurisdiction in this matter.

ORDER

The petitioner's claim for relief is premature, and as it does not present a live case or controversy, the Board

does not have jurisdiction over the matter and therefore, the appeal is dismissed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the petitioner bears the burden. See Fair Hearing Rule 1000.3.O.4.

The scope of the Board's authority to grant relief is set forth in 3 V.S.A. §3091(a) as follows:

a) An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and Families, of Vermont Health Access, of Disabilities, Aging, and Independent Living, or of Mental Health, or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.

3 V.S.A. §3091(a)

It is presumed for the purposes of this appeal that the Board would have authority to hear and order relief in a case in which a petitioner alleged that the Pathways Program did in fact revoke his housing voucher. See Stevens v.

Department of Social Welfare, 159 Vt. 408 (1992) (Board has statutory authority to determine whether department's decision conflicts with state or federal law and to grant equitable relief as a remedy of a violation of law).

But here, even assuming the Pathways program (as funded through DMH) falls under the Board's jurisdictional statute, there is no authority to hear the matter because the petitioner does not and cannot claim that a benefit has been denied to him or that he is aggrieved by any action of the agency or policy of the agency as it affects his situation. Insofar as the voucher has not been revoked there is no 'live case or controversy' and in effect, no case for the Board to rule upon.

For the above reasons, petitioner's appeal must be dismissed as beyond the Board's jurisdiction. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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