

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. H-03/20-227
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Appeal of)
)

INTRODUCTION

The petitioner moves to reopen his case which was dismissed by the Board Clerk following petitioner's failure to appear for proceedings in his appeal.

FINDINGS OF FACT

1. Petitioner was substantiated for placing his child at risk of physical harm by the Department for Children and Families in February 2019. Petitioner filed an appeal with the Department and the substantiation was reviewed and upheld by the Department's Registry Review Unit by letter dated February 10, 2020.

2. By letter dated February 27, 2020, received by the Human Services Board on March 6, 2020, petitioner filed an appeal of this substantiation with the Board.

3. The matter was scheduled for an initial telephone status conference on April 6, 2020. The Notice asked petitioner to contact the Board Clerk prior to the conference

with a phone number where he could be reached for the conference as none was provided in his notice of appeal.

4. The hearing officer was unable to reach the petitioner by telephone on April 6th as he failed to contact the Clerk with a telephone number. As a result, the Clerk mailed petitioner a letter dated April 7th stating that he had not provided a phone number for the hearing and stating that if petitioner wanted his case reset for hearing, he should contact the Board within seven (7) business days of the date of the letter to show good cause for his failure to appear. The Clerk mailed a second letter, dated June 5, 2020, stating the same information.

5. Petitioner called the Board offices on June 8, 2020 and asked for his case to be reset for hearing.

6. The Department agreed that the case could be set for a "show cause" hearing to provide petitioner the opportunity to provide an explanation for his failure to appear. The hearing officer directed the Clerk to reschedule the case for a show cause hearing, and that if good cause was provided the matter would proceed. The Board Clerk then issued a notice on June 11th setting a status conference for June 29th. The Notice stated:

Hearing will first be held on petitioner's oral motion to demonstrate good cause for missing the prior hearing and if good cause is demonstrated, the matter will proceed.

7. The proceeding to allow petitioner to show cause was convened on June 29th. Petitioner stated that he had not understood that there was more than one pending court/legal matter taking place and he had received a call from the Family Court saying a proceeding there was cancelled and he thought it referred to this case. The hearing officer ruled that petitioner had shown good cause and that the case would proceed on the merits. Deadlines were set for the exchange of witness lists and discovery. However, the hearing officer also warned petitioner that no further continuances would be granted. Following the conference, the petitioner emailed the Board and stated that he had contacted his lawyer (in his Family Court case) and was attempting to obtain the file from that case for use in this proceeding.

8. The Clerk issued a Notice for a subsequent status conference to be held on August 10th. The Notice contained the warning: "PLEASE NOTE: No further continuance will be granted."

9. A status conference was held on August 10th. At that conference, petitioner stated that he was having trouble

getting the file from the Family Court (which he felt would be helpful to him in this proceeding). The hearing officer stayed the case until October 1st, with the agreement of the Department, to provide time for petitioner to obtain the Family Court documents that he was seeking.

10. The Clerk send a Notice for a status conference on October 1, 2020. The Notice contained the warning from the earlier Notice that no further continuances would be granted. The hearing officer convened the status conference on October 1st. Petitioner was called twice and failed to answer. The hearing officer directed the Clerk to issue a Dismissal Order.

11. The Board Clerk issued an Order dated October 2, 2020, stating that the appeal was dismissed based on petitioner's failure to appear for proceedings in the appeal. The letter stated that petitioner had the right to appeal the Order to the Vermont Supreme Court within 30 days.

12. On November 12, 2020, 41 days after the date of the Order, petitioner emailed the Board asking for the dismissal to be reconsidered. Petitioner stated that he had still been trying to connect with his attorney (from the related Family Court case that was completed) but had not been able to reach him on a timely basis and had just heard back from the

attorney on this date. He stated that he thought that when the Family Court case ended, the entire matter had been closed. He also stated that he is a single father, is busy trying to take care of his child, is also employed, and is frequently in areas where he does not have good cell phone reception during working hours.

13. Petitioner's request was treated as a Motion to Reopen and a telephone hearing on the motion was scheduled for December 4, 2020.

14. Petitioner attended the telephone hearing as did an attorney for the Department. When asked to provide an explanation for not attending the October 1st proceeding in his case, knowing that he had been cautioned that no further continuances would be granted, and not contacting the Board prior to the Order of dismissal, petitioner repeated the explanation provided in his email to the Clerk.

15. Petitioner failed to show good cause for his failure to appear for the October 1st status conference. The issues that petitioner noted as an explanation for good cause for his failure to appear were discussed by the parties in June and petitioner was given three (3) additional months to obtain the Family Court information that he wanted to offer as evidence in this proceeding. This was ample time for

petitioner to complete this task - and, in any event, does not explain why he failed to appear for the status conference. Petitioner did not contact the Board Clerk prior to October 1st to indicate that he had a conflict on that date. Nor did petitioner explain why he did not contact the Board Clerk in response to the Order of Dismissal until 41 days after the Order was issued.

ORDER

The petitioner's request to reopen his appeal is denied.

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 1000.3.0.4.

In considering petitioner's request, the Board Fair Hearing Rules provide that dismissed cases may be reopened in certain circumstances:

Motions to reopen. Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Motions to reopen shall be referred to the hearing officer for recommendation as to disposition in accordance with the above rules. Such motions shall be granted only upon a showing of good cause by the moving party.

Human Services Board Fair Hearing Rule 1000.4.K.

Here petitioner was given a second change to proceed to hearing and then again failed to appear in the case.

At hearing, the explanation offered by petitioner as to why good cause existed to reopen this matter was primarily that he had continued to be unable to obtain information from his Family Court attorney. Petitioner's explanation does not establish good cause for failing to appear for the status conference. Further, Board Rules required that a Motion to Reopen be filed within 30 days of the issuance of a Board Order. Here, petitioner's request was untimely as he contacted the Board 41 days after the Dismissal Order was issued. Fair Hearing Rule 1000.4.K.

As petitioner's Motion to Reopen was both untimely and failed to present good cause to reopen his appeal, the petitioner's motion must be denied. See 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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