

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-02/20-192
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Appeal of)
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INTRODUCTION

Petitioner ostensibly appeals a termination of services through the Choices for Care program as administered by the Department of Disabilities, Aging and Independent Living ("Department" or "DAIL"). Although the Department subsequently reversed its initial decision (due to policies established as a result of the Covid-19 pandemic), petitioner continues to assert there is a basis for his appeal. The Department has moved to dismiss the appeal for lack of subject matter jurisdiction; petitioner was given opportunity to respond but has not submitted any response.

FINDINGS OF FACT

1. Petitioner has received personal care services through Vermont's Choices for Care ("CFC") program - falling under Vermont's Medicaid waiver - for several years. Last year, petitioner's need for services under the CFC program

was subject to an annual review, as contemplated and required by CFC rules.

2. For reasons that are (at this point) unclear and immaterial, petitioner's review did not take place as scheduled. Petitioner contacted the Board in January 2020 to file an appeal, asserting that his services were going to be terminated and requesting continuing benefits.

3. After that appeal was docketed by the Board, the Department responded that petitioner's services were not (at that point) subject to termination, because no notice had been issued - but, in any event, petitioner's case concerned an "adverse benefit determination" under state regulations, not a termination of his Medicaid eligibility. As such, the Department asserted that his appeal was subject to an internal appeal process (also known as a "Commissioner's Review") which needed to be initiated and completed before any appeal to the Board could be made.

4. Petitioner agreed to initiate a Commissioner's Review process but did not agree to withdraw his Board appeal. The Board subsequently dismissed petitioner's appeal for lack of jurisdiction, by order dated March 9, 2020. See Fair Hearing No. R-01/20-11.

5. In the meantime, the Commissioner's Review process completed - and resulted in a decision (dated February 19, 2020) by the Department to end petitioner's services for failing to participate in his annual reassessment - leading to the instant appeal. In April 2020 the State of Vermont accelerated its response to the Covid-19 pandemic and modified some of its program requirements, including those applying to the Medicaid program (which includes CFC services). On May 6, 2020 the Department issued an amended Commissioner's Review decision to petitioner, notifying him that the Department was allowing a temporary variance which waived the necessity of conducting the annual reassessment, and therefore had reversed the decision to terminate his services (although noting that the reassessment could be required in the future when the variance ends).

6. Following this decision, the Department moved to dismiss petitioner's appeal, by motion dated June 25, 2020, on the grounds that it was now moot. During a status conference on July 8, 2020, petitioner argued that his appeal should remain open based on his allegations that his case management providers were not complying with the Americans with Disabilities Act ("ADA") and his claims that he was

unable to hire personal care workers due to Vermont Department of Labor policy.¹

7. At his request, petitioner was given opportunity to respond in writing to the Department's motion, with a deadline of July 27, 2020. To date, no response has been received.

8. Nothing in the record establishes that DAIL, including to the extent its role includes oversight or regulation of local agencies involved in the provision of CFC-related services, has taken any action or inaction reducing or affecting petitioner's eligibility or benefits.

ORDER

Petitioner's appeal is dismissed as moot.

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.

¹ Regarding the ADA issue, the Department has referred petitioner to the CFC Grievance process. Regarding any potential hiring barriers posed by Department of Labor policy, the connection to DAIL is unclear.

Petitioner's appeal presents a threshold question of "mootness" i.e., whether it remains subject to Board jurisdiction based on the Department's reversal of the initial decision appealed by petitioner. The Board's jurisdictional statute provides as follows:

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.

There can be no dispute that petitioner no longer faces the termination of services that initially led to his appeal; the Department's original action which would have ended petitioner's services has been reversed by the Department's subsequent decision. Because petitioner had continuing benefits during the pendency of the appeal, he did not suffer any loss of benefits as a result of the Department's initial decision terminating services. With respect to petitioner's

contention that Department of Labor policies affect his ability to hire caregivers, petitioner has not established that DAIL has any connection with this issue. With respect to petitioner's contention regarding the accessibility of case management services through local agencies that help facilitate his receipt of CFC services, nothing in the record establishes that this constitutes "Agency action *affecting* his . . . receipt of assistance, benefits or services. . ."²

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

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² As noted above, petitioner requested the opportunity to respond in writing to the Department's motion to dismiss and failed to do so. While there is nothing that prevents the Board from hearing an ADA-related claim, it must still concern an issue falling under the Board's grant of jurisdiction. Moreover, petitioner is continuing to receive the same level of benefits that he was receiving before his appeal and as the Department has argued, he has the option of filing a grievance regarding his issues with local agencies providing case management services.