

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-06/21-395
)
Appeal of)
)
)

INTRODUCTION

Petitioner appeals a denial of her request for expungement of her substantiations from the Child Protection Registry by the Department for Children and Families (Department). The following is based on telephone status conferences on September 3, 2021, and a review of the record below.

FINDINGS OF FACT

1. Petitioner was substantiated by the Department for sexual abuse of a minor female. The incidents at issue involved petitioner, then approximately 33 years old (now 44), having sexual relations with M.L., who was a 15-year-old friend of petitioner's daughter. M.L. reported that petitioner performed oral sex on her on two occasions during the month of January 2011. At the time of the DCF investigation, petitioner denied the reports. DCF substantiated petitioner for sexual abuse, based on exploitation of M.L. and sexual relations with M.L., on

November 20, 2011. Petitioner did not request a Commissioner's Review hearing and her name was placed on the Child Abuse Registry.

2. While continuing to deny the acts involving M.L., petitioner pled guilty to two (2) counts of Prohibited Conduct¹ involving M.L. and two (2) counts of Violation of Conditions of Release on July 11, 2012. Petitioner was on probation for two and a half years and was then discharged from probation.

3. Petitioner filed for expungement in 2021. A Commissioner's Review of petitioner's request for expungement was held by telephone on February 24, 2021. The Department issued a decision dated June 24, 2021, denying expungement. The Department's notification indicated that it considered all the statutory factors required pursuant to 33 V.S.A. § 4916c. In summary, the Reviewer considered the following information:

- You were substantiated for sexual abuse (exploitation and genital-oral sex) in 2011.
- You deny that you had a sexual relationship with M.L., describing it more as a mother - daughter relationship. On the advice of your attorney, you pled guilty to a charge of prohibited acts. You were on probation for two and a half years, which you

¹ As provided by 13 V.S.A. § 1601a, prohibited conduct is described as follows: No person shall engage in open and gross lewdness.

successfully completed. You never lost custody of your children

- You went to a psychologist and attended an anger management class after an incident in 2002 where you beat up a woman who had said something bad to your daughter. You don't have any alcohol or drug use issues. You do a urine drug test every six months to monitor your paid medication levels. You do not receive any mental health counseling now. You and your wife Louse had been married for four years and were together a year and a half before your marriage. During the investigation, the detective lied when he said you admitted you liked young girls - your wife is six years older than you are. You watch your wife's 4-year-old grandson several days a week and have him overnight once a week.
- You do not work as you are medically disabled. Prior to your disability, you worked at Blockbuster, Yankee Candle, and Crossbeck. You enrolled in the VTC veterinary technician program in 2016 but had to leave in 2018 when your medical problems began.
- You have three adult children - a son who still lives with you, a son who is a manager at Maplefields, and a daughter who is in college. Your wife has six grandchildren.
- Petitioner submitted multiple reference letter regarding her character:
 - From her daughter stating she was always a good mother, working hard to provide her and her siblings with everything they needed. . . You provide a safe, comfortable environment for everyone welcomed into your home. You always treated others as family, but never crossed the line.
 - Letter from her son stating she was always there for him when he was growing up, and now. He and his siblings had whatever they needed and were always taken care of.

- Letter from her wife stating that they have a great relationship, and that petitioner is great with her six grandchildren.
- Letter from her daughter's boyfriend stating that she is a kind and fun person.
- Letter from her friend stating that she has known petitioner for 15 years and that she is a caring and loving mother. The friend states that she knows M.L. and M.L. was questioning her own sexuality and became infatuated with petitioner. Petitioner told the girl that the infatuation was inappropriate and that if she continued petitioner would no longer allow her to come over. The girl got mad and told her mother petitioner was coming on to her. It was all a lie and petitioner would never do anything like that. Petitioner is a responsible person.
- Letter from her daughter's childhood friend stating that she has known petitioner for 10 years, was friends with her daughter, and spent time at petitioner's house. Petitioner was always kind and provided a positive environment.
- Letter from probation officer stating that petitioner was satisfactorily discharged from probation on July 11, 2014.

4. The Department also reviewed Vermont Court records. In addition to the records involving the plea to Prohibited Conduct in 2012, petitioner has a conviction for Knowingly Sheltering a Runaway Child on July 11, 2012. In addition, there was a Final Relief from Abuse Order issued against petitioner on April 20, 2015, and petitioner subsequently pleaded guilty to a criminal charge of Violation of an Abuse Prevention Order on November 2, 2015; this was an incident

involving a female victim who was petitioner's former partner.

5. The Reviewer found that the substantiation occurred nine years prior to the Review Hearing. At the time of the substantiation, M.L. was 15 years old, had known petitioner for about five years and was in foster care.

6. At the review hearing, the petitioner stated that she had successfully completed probation, that the RFA Order related to her then current partner trying to get access to a battered women's shelter and petitioner denied any culpability; however, petitioner admitted that she pled guilty to violation of the RFA Order. Petitioner argued that she had been in a stable committed relationship for over five years and gets along with all her children and her partner's grandchildren. Petitioner stated that she does not drink alcohol but is taking prescribed medications.

7. The Reviewer found that petitioner's continued denial of the events with M.L. was puzzling particularly in light of the fact of the 2012 convictions involving her admission to lewd conduct with M.L. Petitioner's failure to take responsibility for her actions was further evidenced by her denial of any culpability regarding the violation of the RFA Order despite her conviction for violation of the Order.

The Reviewer found that the lack of any subsequent substantiations was a positive factor, but that the egregious nature of the 2011 substantiation outweighed that fact. Finally, the Reviewer found that petitioner had not engaged in any meaningful treatment regarding her sexual behavior with a minor and therefore remained at a greater risk to reoffend. In summary, the Department had a reasonable basis to deny the expungement.

ORDER

The Department's denial of petitioner's expungement request is affirmed.

REASONS

A person on the Registry may periodically request expungement of their substantiation(s) and removal from the Registry. See 33 V.S.A. § 4916c. During an expungement review, the individual requesting expungement "shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children." *Id.* Expungement requests are governed by the following criteria:

- (1) The nature of the substantiation that resulted

- in the person's name being placed on the registry.
- (2) The number of substantiations, if more than one.
 - (3) The amount of time that has elapsed since the substantiation.
 - (4) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.
 - (5) Any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment or education.
 - (6) References that attest to the person's good moral character.

33 V.S.A. § 4916c(b).

If the Department denies the request for expungement a person may appeal to the Human Services Board. The Board's standard of review is set out in 33 V.S.A. § 4916c(e):

The person shall be prohibited from challenging his or her substantiation at hearing, and the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board.

33 V.S.A. § 4916c(e).

Based on this standard, the sole issue before the Board is whether the Department abused its discretion in denying

petitioner's request for expungement. The burden is on the petitioner to show that the Department abused its discretion.

Abuse of discretion arises if the entity conducting the review totally withholds its discretion or exercises its discretion on clearly untenable or unreasonable grounds. *Brown v. State, 2018 VT 1, ¶38*. If the Department has a reasonable basis for its decision, the Board must defer to that decision even if another result might have been supportable or a different conclusion reached. *In re L.R.R., 143 VT 560, 562 (1983)*.

In and of itself, petitioner's continued denial of engaging in the conduct for which she substantiated justified the Department's denial of the expungement. This is particularly so considering the 2012 convictions for Prohibited Acts and Violations of Conditions of Release, petitioner's criminal convictions relating to her conduct involving M.L. Petitioner's explanation that she was acting on advice of counsel is not credible. Further, petitioner's position that she is also not at fault for the 2015 RFA Order or the criminal charge of violating that Order supports the concern that petitioner fails to take responsibility for her actions.

The Department's decision stated a related concern that petitioner's continued denial of the offenses and her corresponding failure to engage in sexual offense counseling leaves her at a continued risk of re-offense. These concerns provide a rational basis for the denial of expungement and, therefore, the Department's decision is justified by the evidence presented.

For these reasons, it cannot be concluded that the Department's denial of expungement is an abuse of discretion. The Department's decision thus meets the standard applicable in expungement appeals and must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

#