

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-07/08-309  
 )  
Appeal of )

INTRODUCTION

The petitioner filed a request for fair hearing on or about July 9, 2008 disputing substantiation by the Department for Children and Families that petitioner abused one of his daughters.

The alleged incident took place during 1999. The incident was not reported until January 2006.

The above case was scheduled for hearing on November 24, 2008. On or about November 14, 2008, the Board received a letter from the Department informing the Board that the Department was "unable to secure two critical witnesses, and do not believe...can proceed without them". The Department's lawyer concluded "should the hearing officer determine that the case should be dismissed based upon my inability to proceed, please let me know, and I will inform my client that [petitioner's] name should be removed from...registry."

A telephone status conference was held on November 18, 2008. Two Department witnesses are out of state including the putative victim. The Department's attorney indicated

that he has made numerous efforts to contact the two witnesses to no avail and that he does not have the evidence necessary to go forward with his case. Petitioner's attorney made an oral motion to reverse the Department's decision because the Department did not have the ability to prove their case. The Department said they would not oppose this motion.

#### DISCUSSION

The Department for Children and Families is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are unsubstantiated. 33 V.S.A. §§ 4914, 4915, and 4916.

The fair hearing process allows the individual to challenge the proposed substantiation because a substantiation of abuse has far-reaching consequences on the individual's employment and volunteer activities.

The Department bears the burden of proof by a preponderance of evidence that the petitioner has abused his daughter. The Department must prove their case through admissible and relevant evidence. Fair Hearing Rule 1000.3(O)(5). The Department has admitted that they cannot do so in this case.

Although the matter was brought to the Board's attention as a call for dismissal of petitioner's case, a dismissal does not lead to the relief petitioner is seeking; namely, the removal of his name from the abuse and neglect registry. The case is one of summary judgment in which the Department has conceded they do not have the evidence to support a claim that petitioner abused his daughter on one occasion during 1999. Appropriate relief is a reversal of the Department's decision.

ORDER

The petitioner's motion is granted and the Department's decision to substantiate abuse is reversed. Petitioner's name should be removed from the abuse and neglect registry.

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