

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-10/08-496
)
Appeal of)

INTRODUCTION

The petitioner is the grandmother of two children in the custody of the Department for Children and Families, Family Services Division, pursuant to a Family Court Order in a CHINS (child in need of supervision) action. The petitioner asked for a fair hearing because she wants the Department to place the children with her. The Department has asked the Board to dismiss petitioner's case based on lack of subject matter jurisdiction.

DISCUSSION

The petitioner filed her appeal on October 30, 2008.¹ The Department filed a Motion to Dismiss for Lack of Jurisdiction and Standing on November 24, 2008. A telephone status conference was held on December 2, 2008. Petitioner was given time to seek legal advice and to file a response; petitioner filed a response stating why her grandchildren

¹In her letter, petitioner mentioned a level 1 review from 2007 that was denied. Petitioner was unclear whether she was on the child abuse registry. Petitioner is on the registry and her request for expungement was denied in November 2007. Petitioner can ask for expungement in the future. The law states that a person can ask for a review no more than once in a 36 month period. 33 V.S.A. § 4916c(d). This means that petitioner can next ask for expungement in November 2010.

should live with her. A telephone status conference was held January 5, 2009 in which the hearing officer informed petitioner a recommendation would be filed to dismiss the action.

There is no dispute that the two children in question are the subjects of an ongoing Family Court CHINS case and that the Department has been granted legal control and custody over the children.

The Board has repeatedly ruled that the Board cannot hear cases regarding the placement of children who are in the custody of the Department. Fair Hearings 21,092; 19,952; 18,351; 17,726; and 17,670.

The Board is bound by 33 V.S.A. 5503 which states the Family Court (juvenile court) has "exclusive jurisdiction over all proceedings concerning any child who is...a child in need of care or supervision...". (emphasis added).

Based on the above, the Board cannot review any of the decisions made by the Family Court or the Department regarding the placement of her grandchildren.

ORDER

The Department's Motion to Dismiss the petitioner's appeal is granted.

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