

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/08-104
)
Appeal of)

INTRODUCTION

The petitioner appeals alleged denials by the Department for Children and Families, Economic Services of General Assistance (GA) going back to 2005. The preliminary issues are whether the petitioner's appeal is timely and whether the relief she requests is within the Board's jurisdiction to grant.

DISCUSSION

On March 14, 2008 the Board received notification from the Department's Burlington district office (dated the previous day) that the petitioner had appealed that office's denial of an application for GA. The issue identified by the district office was whether the petitioner had verified that she was unable to work.

The Board scheduled a hearing in the matter in Burlington on March 27, 2008. However, on March 20, the notice the Board had sent to the petitioner at her Burlington address was returned with a notice from the post office that the petitioner had moved to an address in Chelsea, Vermont.

On March 26, 2008 the Board sent a notice to the petitioner at her address in Burlington resetting the hearing in Burlington on April 22, 2008.

The petitioner did not appear at her hearing in Burlington on March 27. On April 7, 2008 the notice of the hearing set for April 22 was also returned undelivered. On that same day the Board resent the notice to the petitioner's address in Chelsea. Shortly thereafter the Board learned that the petitioner wished to have her hearing transferred to the Hartford district office, and that she would be represented by Vermont Legal Aid. On April 11, 2008, the Board sent the petitioner and her attorney a notice resetting the hearing in Hartford on the next scheduled day for hearings in that office, May 8, 2008.

On May 8, 2008 the hearing officer met with the petitioner's and the Department's attorneys. The parties agreed that the petitioner would reapply for GA in the Hartford office that day, and that the parties would submit the matter to the Board in writing regarding any other unresolved issues. The Department subsequently informed the Board that it had received medical verification of the petitioner's inability to work on April 23, 2008.

On June 2, 2008 the Board received a lengthy fax from the petitioner complaining about her representation by Vermont Legal Aid in pursuing retroactive GA. The Board faxed a copy of this to the petitioner's attorney. On June 3, 2008 the petitioner's attorney notified that Board that Legal Aid no longer represented the petitioner. The notice included the following:

For the record, Vermont Legal Aid never agreed to pursue General Assistance benefits for (petitioner) retroactive to October 2005. I understand (petitioner) disagrees with this decision, and believes she is entitled to retroactive General assistance payments for October 2005 through April 2007.

Upon receipt of this correspondence the Board scheduled the matter for a telephone status conference on July 10, 2008. At that time, the petitioner stated that she had received Food Stamps when she had applied for benefits following her hearing in Hartford on May 8, and that on June 6, 2008 the Department had given her GA for her rent for June. She stated that prior to her hearing on May 8 a community charity had already paid her rent for April and May.

Based on the parties' representations, there does not appear to be any outstanding issue regarding any denial of GA in 2008 based on the petitioner's lack of verification of her

inability to work.¹ It appears that the petitioner provided this verification in late April and that, since then, it has not been an issue. There has been no claim by the petitioner or her attorney either that the petitioner provided this verification prior to April 2008 or that the Department did not have a basis under the regulations in requiring it. See W.A.M. § 2601. Thus, it cannot be concluded that the petitioner was eligible for GA for rent any time from December 2007 to June 2008.

However, the petitioner also states that she wants to apply for "all retroactive GA". She alleges that the Department didn't "process" fair hearing requests she made regarding GA denials in 2005. The petitioner has filed extensive written arguments and documentation. The gist of her argument appears to be that because of Department actions (or inactions) dating back to the Fall of 2005, the Department should now make a retroactive lump sum payment of all the GA she could have received for rent since that time.

The Board has no record that the petitioner, or anyone acting in her behalf, ever filed a request for hearing prior

¹ The petitioner was advised she could reapply for GA for July. This application is the subject of a separate pending Fair Hearing No. M-07/08-318.

to March 14, 2008, the filing date in this matter. In her oral representations at the status conference and in her written filings the petitioner alleges that she had contacted Law line in the Fall of 2005 and that at that time she was a post graduate student at the Vermont Law School.

Fair Hearing Rule No. 1 provides that appeals from decisions by the Department of Social Welfare (now Economic Services) "shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date his or her grievance arose." (Emphasis in the original.)

In this case, even if it could be found that the Department failed to follow through on requests for fair hearings the petitioner might have made in 2005, there is no question that the petitioner is well educated and a strenuous self-advocate, and that she also had access to legal advice at that time. Inasmuch as nearly three years have elapsed since any "grievance" the petitioner may have had with the Department at that time, her appeal filed in March 2008 concerning alleged eligibility for GA in 2005 must be considered untimely.

The petitioner's complaint really amounts to a claim for monetary damages against the Department. Based on at least two Vermont Supreme Court rulings (one affirming a ruling by the Human Services Board) holding that "an administrative agency may not adjudicate private damages claims", the Board has consistently denied such claims. See Fair Hearing No. 16,043, Scherer v. DSW, Unreported, (Dkt. No. 94-206, Mar. 24, 1999), and In re Buttolph, 147 Vt. 641 (1987).

ORDER

The petitioner's claims for retroactive GA is dismissed as untimely and beyond the Board's subject matter jurisdiction.

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