

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-07/09-410  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, substantiating a report of sexual abuse by the petitioner of two children. The issue is whether the petitioner's appeal is timely.

DISCUSSION

Procedural History

The Department sent the petitioner a notice dated May 1, 2009, entitled "Notice of Substantiation and Intent to Place Name on Child Abuse and Neglect Registry". The Department informed petitioner that the Department substantiated sexual abuse of his children, I.S. and A.S. The Department informed petitioner that if he wanted to appeal the substantiation, he needed to indicate he was appealing by May 17, 2009. The Notice included the following warning:

If you do not indicate your wish to appeal by this date, your name will be entered into the Child Abuse and Neglect Registry.

A pamphlet was included explaining appeal rights and information regarding the affects of placement on the above registry.

The petitioner, through his attorney, wrote the Registry Review Unit on June 30, 2009 requesting an appeal. By letter dated July 9, 2009, the Registry Review Unit informed petitioner that his request was not timely. The petitioner filed a request for fair hearing with the Human Services Board on July 24, 2009.

A telephone status conference was set for September 2, 2009 and continued to October 5, 2009. At that time, criminal charges based on allegations of sexual abuse were pending against petitioner and the case was put on hold by agreement of the parties pursuant to 33 V.S.A. § 4916b(c).

The State dismissed the criminal charges and a telephone status conference was held on November 30, 2009. The Department raised the timeliness of the appeal, but indicated that they would look at whether the case should be reopened since the State dismissed the criminal charges. At a telephone status conference on January 4, 2010, the attorney for the Department suggested that the petitioner's attorney communicate directly to T.Z., registry review director, about reopening the petitioner's case.

A telephone status conference was held on March 4, 2010. The Department indicated that their position is that the petitioner untimely filed for relief and the case should be dismissed. A briefing schedule was set.

Analysis

The statutes governing the placement of a person on the child abuse and neglect registry set out specific timelines and procedures for appeal by an aggrieved individual. The initial appeal is directed to the Department through 33 V.S.A. § 4916a(c) (1) stating:

A person alleged to have abused or neglected a child may seek an administrative review of the department's intention to place the person's name on the registry by notifying the department within 14 days of the date the department mailed notice of right to review in accordance with subsections (a) and (b) of this section. The commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the department has mailed notice of the right to review.

If the individual does not request an administrative review, the decision to substantiate is a final decision and the individual does not have further appeal rights. 33 V.S.A. § 4916a(k).<sup>1</sup>

The Board has dismissed fair hearing requests as untimely when the individual has not made a timely request

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<sup>1</sup>The commissioner may waive this provision and reopen the review upon good cause shown. The commissioner has not done so in this case.

for an administrative review before the Department. Fair Hearing No. J-11/08-501. The Vermont Supreme Court reviewed the Board's reasoning and affirmed the Board. In Re Francis Beer, 2010 VT 31 (E.O. April 5, 2010).

The petitioner is raising a fairness argument pointing out that the petitioner did not receive his mail in a timely fashion since he was staying away from his home because his estranged wife was living on another part of the property. There is no information as to when petitioner claims to have actual receipt of this notice or what steps he took for the timely receipt of his mail.

In addition, the petitioner argues that notice should have been sent to his attorney. Prior to the mailing of the substantiation, petitioner was orally notified during a deposition of a Department supervisor on May 1, 2009 in the criminal case that the Department was substantiating sexual abuse. The petitioner was on oral notice. The petitioner had recourse to set up alternate delivery for his mail or make other arrangements to ensure delivery of his mail.

The essential issue is one of the finality of administrative decisions. As the Court stated in paragraph 13 of the Beer case:

The timely filing of a notice of appeal is not a mere technicality. Rather, this requirement serves specific and important functions:

A notice of appeal...informs the parties and the tribunals concerned that the proceedings are not concluded so that they may respond accordingly, ...We require strict adherence to deadlines for filing notices of appeal primarily to serve the goal of finality.

Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶6, 178 Vt. 61, 869 A.2d 157 (quotations omitted). To allow petitioner's untimely appeal to go forward here would upset the important principle of finality.

The same principles apply here. The statutes delineate timelines by which an individual must ask for an administrative review of a decision to substantiate child abuse. If an individual does not file a timely appeal, the decision to substantiate is final and no further appeal can be taken. Thus, the Board is without jurisdiction to hear a case in which the individual has not sought timely review below.

ORDER

The petitioner's appeal is dismissed as untimely.

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