

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/09-19
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, denying her request to expunge her name from the child abuse and neglect registry. The issue is whether the Department abused its discretion when it denied petitioner's expungement request.

A telephone status conference was held on March 24, 2009. The decision is based on the record before the Department and written argument.

FINDINGS OF FACT

1. The petitioner was substantiated for risk of harm to her daughter, JaE, and her son, JeE. On December 14, 2004, the petitioner struck her daughter in the face. Petitioner was intoxicated and had a blood alcohol count of .111. The incident was witnessed by petitioner's son and a neighbor. The Department took petitioner's son and daughter into custody that night. A CHINS (child in need of supervision) action was brought in Family Court and the

petitioner admitted to the risk of harm on January 6, 2005. The children remained in the Department's custody for one year.

2. The petitioner filed for expungement during August 2008.

3. The petitioner submitted the following documentation as part of her expungement request to document activities that support her contention that her behavior and circumstances have changed since the substantiation:

a. Letter from Otter Creek Associates dated September 24, 2008 that petitioner attends weekly therapy sessions to address depression. Petitioner started therapy on August 30, 2008.

b. Letter from Recycle North dated September 18, 2008 that petitioner engaged in 102 hours of community service from April 17 to May 23, 2008 as part of her Reach Up requirements from the Economic Services Division of the Department.

c. Clinical assessment from the Howard Center dated April 30, 2007. The report includes a statement from petitioner that she was undergoing the assessment "to get off probation". The clinical assessment lasted one hour and relied upon petitioner's self-report that she had completed an alcohol and drug program (Quitting Time) and two years of counseling and that she was sober. The report noted that petitioner's self-report about her alcohol use during the time of the incident was not consistent.

d. Letter from the Mercy Connections dated September 24, 2008 indicating weekly attendance at a work preparation program (Kindling Connections Certificate Program) starting August 30.

4. The petitioner did not submit any documentation from Quitting Time or counseling programs to document her past efforts to deal with alcohol abuse or family violence.¹

5. Petitioner has been substantiated two times by the Department.

6. Petitioner filed her request for expungement four years after the substantiation.

7. To support her request for expungement, petitioner informed the Department that she was no longer drinking. Three of her children are now adults. Her two minor children are now sixteen and seventeen years old. Petitioner informed the Department that she completed her Probation.

8. A Commissioner's Review was held on September 17, 2008 between the petitioner and T.Z., Registry Review Unit Director. The Commissioner's Review denying petitioner's request for expungement was issued on December 16, 2008. The Commissioner relied on the following information in making his determination:

¹The Commissioner noted in his review that petitioner did not submit a letter from her Probation Officer. During a telephone status conference, petitioner explained that she was told by her Probation Officer that he was precluded from supplying information. The Department's attorney did not know whether Department of Corrections policy precluded petitioner from obtaining this information. Petitioner's inability to have her Probation Officer write a letter on her behalf is not a factor in this decision.

a. The Department records and police records document a pattern of alcohol abuse with resulting abuse to her children including the following reports:

i. Intake report of April 16, 2005 that petitioner was intoxicated and yelling at children.

ii. Intake report from local police on April 21, 2005 that petitioner was intoxicated and yelling at children.

iii. Intake report regarding July 3, 2005 arrest and detox. Petitioner had a blood alcohol count of .28.

iv. Intake report that on November 3, 2005, petitioner was intoxicated and hit her children.

b. District court information. Petitioner pled guilty on July 6, 2006 to charges of unlawful trespass and disorderly conduct from November 24, 2005 and pled guilty to a charge of violation of probation from June 24, 2006. Conditions of no alcohol use and substance abuse screening were part of petitioner's probation.

9. The Commissioner denied expungement due to concerns that petitioner had not adequately address her underlying problem of alcohol abuse. The Commissioner did not believe that sufficient change had occurred so that this type of incident would not occur in the future.

10. The petitioner appealed the denial of her expungement request on January 9, 2009.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Legislature enacted a statute that allows a person whose name has been placed on the child abuse and neglect registry to petition the Department and ask that his/her name be removed. 33 V.S.A § 4916c.

The applicable provisions are found in 33 V.S.A. § 4916c(b) which states:

The person 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. Factors to be considered by the commissioner shall include:

(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.

A person may appeal to the Human Services Board if the commissioner denies his/her request for expungement. Board authority is set out in 33 V.S.A. § 4916c(e) which states:

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.

The sole issue before the Board is whether the Department abused its discretion when they denied petitioner's request for expungement.

The petitioner had an in-person meeting with the T.Z., Registry Review Unit Director. The petitioner had an opportunity to submit documentation to support her request. The Department considered all the information submitted by the petitioner as well as the information the Department had from its records, district court records, and police reports.

The underlying concern for the Department was whether there was sufficient information that petitioner dealt with her underlying alcohol problem since her alcohol problem fueled her behavior towards her children. The Department found that petitioner's materials did not allay their questions and concerns. In part, half of petitioner's materials dealt with recent work related activities secondary

to her receipt of Reach Up assistance. In part, petitioner's counselor from Otter Creek only verified that counseling had recently started and gave no assessment. In part, the Howard Center assessment was cursory and done to satisfy a probation requirement.

Looking at the Department's reasoning, the Board cannot find that the Department abused its discretion in denying the petitioner's request for expungement. Accordingly, the Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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