

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-04/10-217
)
Appeal of)

INTRODUCTION

The petitioner filed an appeal with the Board on April 28, 2010 disputing the increase in petitioner's patient share under the Long-term Medicaid program administered by the Department for Children and Families, Economic Services Division. The petitioner's appeal referenced the Notice of Decision dated April 16, 2010. The Department issued the April 16, 2010 Notice of Decision to implement the decision of the Human Services Board in Fair Hearing No. B-08/09-444.

On April 26, 2010, the Secretary pursuant to 3 V.S.A. § 3091(h) issued a Secretary's Reversal of the Board's decision in Fair Hearing No. B-08/09-444. The Secretary's Reversal reinstates the Department's decision at issue in the above fair hearing. As part of the Secretary's Reversal, he set out the petitioner's right to appeal his decision to the Vermont Supreme Court within thirty days pursuant to 3 V.S.A. § 3091(h) (3) and Vermont Rules of Appellate Procedure 13. If the petitioner appeals to the Vermont Supreme Court, the

petitioner can ask for a stay of the Secretary's decision pending the appeal.

As a result of the Secretary's Reversal, the Department rescinded the April 16, 2010 Notice of Decision and issued a corrected Notice of Decision to Implement the Secretary's Reversal on May 10, 2010 incorporating language of the petitioner's appeal rights to the Vermont Supreme Court.

The Department filed a Motion to Dismiss based upon mootness and lack of jurisdiction. The petitioner filed a responsive pleading.

DISCUSSION

The Board addressed mootness in Fair Hearing No. 17,272 stating on pages 5-6 that:

[t]he Vermont Supreme Court has said that as a general rule a case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." In re S.H., 141 Vt. 278, 280 (1982) quoting from United States Parole Commission v. Geraghty, 445 U.S. 388, 396 (1980) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)).

See also Fair Hearing Nos. 18,450 & 18,476, and A-10/09-539.

The petitioner does not address mootness in her response. The petitioner appealed a Notice dated April 16, 2010. The Notice is rescinded and does not present a live

controversy. The petitioner attempts to piggyback this appeal onto the subsequent Notice issued May 10, 2010 that was issued to implement the Secretary's Reversal of Fair Hearing No. B-08/09-444.¹

But, the petitioner does not address the proper forum to review the basis of the Secretary's Reversal of the Board's decision in Fair Hearing No. B-08/09-444. The Department is taking steps to implement the Secretary's Reversal as it relates to the Notice of Decision dated July 24, 2009 that formed the basis of said appeal.

If the petitioner disagrees with the Secretary's Reversal, the proper forum is the Vermont Supreme Court where she can seek a stay of the implementation of the Secretary's Reversal. 3 V.S.A. § 3091(h)(3).

ORDER

The Department's Motion to Dismiss is granted.

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¹ Patient share is redetermined on a periodic basis. The petitioner may request a redetermination if she believes her circumstances have changed.