

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-11/11-663
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision by the Department for Disabilities, Aging and Independent Living (DAIL) to substantiate them for financial exploitation of SR. During the appeal, DAIL raised the timeliness of the appeal and filed a Motion for Summary Judgment to dismiss the appeal as untimely. The petitioners have not responded to DAIL's Motion for Summary Judgment.

DISCUSSION

SR is the mother of petitioner TS and mother-in-law of petitioner MS. SR moved to Vermont into the home of the petitioners during December 2009 following surgery. SR brought her funds with her and placed them in a joint banking account with petitioner TS. SR experienced mental decline after the surgery due to the placement of a defective shunt. The underlying allegation is that petitioners wrote checks totaling \$127,721.24 from said bank account from the period of March 17, 2010 to November 15, 2010.

Based on the above allegation, petitioners were substantiated for financial exploitation of a vulnerable adult and were criminally charged.

A Commissioner's Review took place on July 22, 2011 in which the petitioners were represented by their public defender. The Commissioner issued a decision by letter dated August 22, 2011 to petitioners' public defender with a copy to the petitioners. The Commissioner upheld the substantiation and set out the petitioners' appeal right to the Human Services Board within thirty days of the date of the letter. The appeal deadline was September 21, 2011.

The Board received a letter from petitioners dated November 3, 2011 asking for an appeal stating they had previously written DAIL to request an appeal. The petitioners are appearing before the Board *pro se*.

DAIL states that it did not receive any letter from the petitioners within the appeal deadline.

DAIL filed its Motion for Summary Judgment on or about April 12, 2012. In its Motion, DAIL argues that the appeal is untimely, and in the alternative, argues that if the petitioners sent an appeal letter to DAIL within the thirty day appeal deadline, the appeal is still untimely as notice was sent to the wrong venue.

As a result, a hearing scheduled for April 16, 2012 regarding the petitioners' allegations they sent in a timely appeal was not held but an in-person status conference was held. Petitioners were given a deadline to file a response to DAIL's Motion by May 14, 2012.

Petitioners have not filed a response. As a result, DAIL's Statement of Undisputed Material Facts stand including paragraph 14 that states:

The Department has no record of having received any correspondence from the [petitioners] concerning an appeal in the thirty days following the Commissioner's Decision letter.

ORDER

The petitioners' appeal is dismissed as untimely filed. The petitioners can avail themselves of the expungement process in the future.

#