

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/12-60
)
Appeal of)

DISCUSSION

On February 9, 2012, a fair hearing commenced in the above case. The petitioner's daughter, JS, appeared on behalf of the petitioner.

JS applied for long-term care Medicaid on behalf of her mother on or about October 4, 2011. The Department issued a Notice of Decision on January 9, 2012 denying the application because of failure to provide verification after the Department requested certain documentation over several months. JS appealed this decision.

On February 9, 2012, JS asserted that she had complied with Department requests and provided the necessary documentation. JS then informed the Board and the Department that the petitioner died on January 2, 2012. A Department Long-Term Care Medicaid supervisor explained that the Department would not be seeking reimbursement against the estate because long-term care Medicaid had not been granted.

The hearing officer halted the hearing because the question arose whether the case was a live controversy or

moot. JS was referred to the Attorney Referral Service. A telephone status conference was scheduled to hear their respective positions.

A telephone status conference was held on March 8, 2012. The Department asked for a dismissal based on mootness pointing to past Board precedent. JS had consulted with counsel; she is in the process of being named administrator of petitioner's estate. JS wants the case to go forward because the nursing home is owed monies for petitioner's care. JS may not understand that, in cases of long-term care Medicaid, the Department normally seeks reimbursement from the estate.

The issue is whether the case is moot.

Impact of Petitioner's Death

The Board first looked at whether a petitioner's death renders a case moot in Fair Hearing No. 18,450 & 18,476. The Board found that the underlying action did not survive the death of the petitioner. See also Fair Hearing No. B-04/10-194.

The Vermont Supreme Court dismissed an appeal as moot when the petitioner died during the course of the appeal; the appeal did not survive the death of a petitioner. Pickering v. Department of PATH, Docket 2002-490 (2004).

The issue of petitioner's eligibility for long-term care Medicaid is no longer a live controversy and the case is dismissed.

ORDER

Petitioner's case is dismissed as moot.

#