

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-01/13-51  
 )  
Appeal of )

INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner appeals a substantiation determination made by the Vermont Department of Disabilities, Aging, and Independent Living, Adult Protective Services ("DAIL") concerning her alleged neglect of her disabled adult son. After a series of telephone status conferences, this matter was set for a merits hearing on April 16, 2013. DAIL appeared at the hearing with three witnesses. Petitioner did not appear at the hearing. Petitioner subsequently contacted the Board and stated that she had mistakenly appeared for the hearing an hour late. The matter was rescheduled for a merits hearing on November 15, 2013.<sup>1</sup> DAIL appeared at the hearing with three witnesses. Petitioner did not appear at the hearing. In petitioner's absence, DAIL made an offer of proof on the record as to the testimony of its witnesses

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<sup>1</sup> During this timeframe DAIL requested affirmance of the substantiation on collateral estoppel grounds, based on a prior Probate Court proceeding in which petitioner was a party. This request was denied by the hearing officer, leading to the November 15 merits hearing.

which would establish the allegation that petitioner had neglected her disabled adult son.

ORDER

Petitioner's appeal is dismissed with prejudice.

REASONS

There is considerable Board precedent dismissing appeals for the failure of a petitioner to prosecute under a variety of circumstances. See e.g. Fair Hearing No. B-12/12-795 (Petitioner's substantiation appeal, for exploitation of vulnerable adult, dismissed when she departed merits hearing before any evidence was taken); Fair Hearing No. S-05/10-260 (Petitioner in correctional facility failed to file objections to evidence in Commissioner's review of DCF substantiation); Fair Hearing No. L-07/10-308 (Petitioner in Choices for Care appeal failed to file pre-filed testimony and legal arguments as ordered by hearing officer); Fair Hearing No. T-08/09-450 (Petitioner in Choices for Care appeal failed to participate in status conference and failed to respond to Motion to Dismiss); Fair Hearing No. T-04/08-165 (Petitioner's fuel assistance appeal dismissed for failure to participate in proceedings).

Board rules also provide that a failure to appear for a hearing without good cause is a basis for dismissal. See Fair Hearing Rule No. 100.3(Q). Petitioner was mailed notice of the hearing and made no contact with the Board indicating that she would be unable to attend.

In this matter, petitioner has failed to appear for the merits hearing on two separate occasions. On both of those occasions, DAIL arranged for three witnesses to testify on the day of hearing. Additional prejudice is borne by DAIL through any further delay because a substantiated individual's name is not added to the adult abuse registry until the completion of the appeals process. 33 V.S.A § 6906(f) ("If an appeal is filed pursuant to subsection (d) of this section or to a court, the name of the individual shall not be added to the registry until a substantiated finding of abuse, neglect, or exploitation becomes final.").

Petitioner has failed to prosecute her appeal. Based on prior Board precedent and the Board's Fair Hearing Rules, petitioner's appeal must be dismissed with prejudice. See Fair Hearing Rule No. 100.3(Q).

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