

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-04/13-263
)
Appeal of)

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner moves to reopen and reconsider the Board's administrative dismissal of her appeal of the Department for Children and Families' ("Department") finding that her childcare program was in violation of licensing regulations. Petitioner's appeal was dismissed for her failure to appear at her merits hearing scheduled on January 30, 2014.

This appeal was initially filed in April of 2013. After a series of status conferences and related efforts to resolve the matter, it was scheduled for a merits hearing on January 30, 2014 - this date was verbally agreed to by the parties during a telephone conference on December 3, 2013. A notice of hearing dated December 10, 2013 was mailed to both parties. On the day of hearing, petitioner did not appear. The Department appeared at hearing represented by counsel and with its witnesses.

Pursuant to Board rule, petitioner was mailed a letter dated January 31, 2014 stating that her case would not be

reset for hearing unless she contacted the Board to show good cause as to why she did not appear, and that if she did not contact the Board within seven (7) working days of the letter, her appeal would be dismissed. Petitioner did not contact the Board within this time period, and her appeal was dismissed by administrative order of the Board clerk dated February 12, 2014.

Petitioner then contacted the Board by letter dated February 24, 2014, appealing the dismissal and stating that she did not receive her notice of hearing until the day after the hearing date, and that is why she did not attend. Petitioner's letter was treated as a request to reopen and reconsider the Board's administrative dismissal of her appeal and a telephone status conference was scheduled and held on

March 17 with the parties.^{1 2} During the status conference, petitioner reiterated that she had not received her notice of hearing until the day after the hearing date. She did not dispute that the parties had agreed to the hearing date during the December 3 telephone status conference, but stated that when she did not receive a notice, she believed she may have recorded the wrong date. To the extent she believed she may have recorded the wrong date, petitioner did not explain why she never contacted the Board to confirm the date, or why she failed to contact the Board at or after the time she states she received the hearing notice, or why she failed to contact the Board within seven (7) business days after receiving the letter requesting a show of good cause. Petitioner has not produced the envelope that contained the hearing notice she received, to establish a postmark date.

¹Notably, petitioner stated that her notice of the telephone status conference indicated that it was scheduled on March 18 at a different time of day. Petitioner was requested to fax a copy of her telephone status conference notice to the Board, because it appeared to differ with the notice provided to the Department and the hearing officer. The Board was subsequently apprised by petitioner that she was looking at a different meeting notice and had been mistaken, although she had not yet located the Board notice for the telephone status conference. Petitioner was available for and participated in the March 17 phone conference after being informed by email of the correct date and time.

² It should be noted that petitioner has indicated both a desire to reopen her appeal and to also appeal the February 12 dismissal to the Vermont Supreme Court. The administrative practice of the Board is to hear the request to reopen while preserving a petitioner's appellate appeal rights, if so requested.

Petitioner indicated that her husband has a serious health condition that has led to several hospitalizations and that she has at times relied on someone else to retrieve her mail.³

ORDER

Petitioner's motion is denied.

REASONS

The administrative dismissal of petitioner's appeal was in accordance with Board rules regarding a failure to appear at hearing and subsequent failure to respond to a request to show good cause. See Rule 1000.3Q. Petitioner has offered no credible explanation for her failure to appear at hearing and no explanation of any kind for her failure to contact the Board until February 24 about her appeal, despite the Board's various notices and mailings to her. Of particular significance is petitioner's failure to contact the Board after the date she states she received her hearing notice, and her failure to contact the Board in response to the January 31 letter. Petitioner has offered no evidence - such as a postmark - that contradicts the Board's record of having

³Despite these circumstances, petitioner's reliability as a reporter of what she has received and when is impacted by her continued insistence that the notice of the telephone conference was for March 18 not March 17.

mailed her hearing notice December 10, nearly two months prior to the date of hearing. As such, Petitioner has failed to show good cause for reopening and reconsidering the Board's decision and therefore her motion must be denied. Fair Hearing Rule No. 1000.4K.

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