

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-06/16-675
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Appeal of)
)
)

INTRODUCTION

Petitioners appeal the decision denying their application for a foster home license by the Department for Children and Families ("Department"). The sole issue is whether petitioners' appeal should be dismissed as out of time. The following is based on telephone status conferences held July 5, 2016, August 1, 2016, and October 3, 2016, as well as a motion and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioners applied for a foster home license sometime during the summer of 2015. By letter dated November 16, 2015, the Department's Family Services Division denied the license application. Although the letter was dated November 16, it indicated a "date mailed" of December 7, 2015.

2. The letter included the following information about appealing the decision:

You have the right to appeal this denial of your license application to the Human Services Board. Your request must be in writing and filed within thirty (30) days of the date of this letter, and should be directed to:

The Human Services Board,
120 State Street
Montpelier, VT 05620-4301 (telephone 828-2536).

3. Petitioners do not dispute receiving this letter or more specifically the mailing date of December 7, 2015, nor have they produced any evidence that might contradict that date, such as the postmark from the envelope in which the letter was mailed.

4. By letter dated January 4, 2016, petitioners mailed a letter to the Family Services Division which was date-stamped as received on January 7, 2016 (a Thursday), the 31st day following (and not including) December 7, 2015. The letter stated, in pertinent part, that "we [petitioners] appeal your decision about our kinship lisenice [sic] we would like information on how we need to proceed with the appel [sic] of all the accusations that you have against us in our denile [sic] letter dated December 7, 2015."

5. The Department did not forward petitioners' letter to the Board. The Board received this appeal on June 23, 2016, when petitioners wrote directly to the Board by email, requesting an appeal.

ORDER

Petitioners' appeal is dismissed as untimely.

REASONS

Appeals from a foster home license application are governed by specific regulations pertaining to such services. *See Licensing Regulations for Foster Homes in Vermont*, promulgated pursuant to 33 V.S.A. Chapters 35 and 49 (as amended, originally effective September of 1992). These regulations provide that:

A licensee or applicant for a license who is aggrieved by a decision of the licensing unit will be granted a fair hearing before the Human Services Board if requested within 30 days of the department's issuance of the decision.

Id. § 043 ("Appeals"). *See also* HSB Fair Hearing Rule 1000.2.F.

The Department argues that petitioners were required to file their appeal directly with the Board, but in any event, their letter received by the Family Services Division on January 7, 2016 was also beyond the 30-day time limit. While there is nothing in the regulations which required petitioners to send their appeal directly to the Board, their letter received by the Department, if only by one day, was out of time. As such, it is well-settled that the Board

lacks jurisdiction to hear their appeal. See e.g. Fair Hearing No. A-02/16-109 (Home Health agency discharge appeal out of time) and Fair Hearing No. M-10/13-785 (substantiation appeal out of time). Nothing in these circumstances warrants a different result here, nor - assuming arguendo the Board may entertain a "good cause" reason for a late filing - have petitioners raised any specific reason(s) out of their control for failing to meet the deadline for appeals.¹

Petitioners' appeal should therefore be dismissed as untimely.² See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹ Of note, a notice of appeal under court rules is generally deemed to be filed as of the receipt of the notice. See *City Bank & Trust v. Lyndonville Savings Bank & Trust Company*, 157 Vt. 666 (1991).

² Petitioners were advised that they are free to apply anew for a foster home license.