

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/16-216
)
Appeal of)
)
)

INTRODUCTION

Petitioner seeks to reopen the Board's order in Fair Hearing No. B-02/16-216, in which the Board affirmed the denial - by the Department for Children and Families ("Department") - of her request for expungement from the Child Protection Registry. The following is based upon several telephone status conferences held with petitioner and Department counsel.

FINDINGS OF FACT

1. Petitioner's underlying appeal is the subject of the Board's final order in Fair Hearing No. B-02/16-216, issued July 13, 2016. In that case, the Board affirmed the Department's denial of her request for expungement from the Child Protection Registry (on which she had been placed for substantiations for physical abuse, medical neglect, and risk of harm as to her child).

2. Following the Board's order (and within 30 days), petitioner transmitted new information to the Board from a mental health professional that she had recently seen. Her submission was construed as a motion to reopen the Board's prior order. Following the docketing of her request to reopen, petitioner submitted additional new information from another mental health professional. In both instances, the new information was developed well after the Department had initially reviewed (and denied) her request, as well as after the record in her Board appeal had closed. The new information does not specifically address whether petitioner no longer poses a risk to the safety of children.

3. While the new information was ostensibly produced in response to the issues raised by the Department's denial of expungement and the Board's affirmance of that denial, petitioner did not assert any tenable reason as to why this information was not previously submitted.

4. Petitioner is eligible to request expungement, again, as of August 20, 2018. During the status conferences following the docketing of her request to reopen, petitioner was informed that she could contact the Department's Registry Review Unit for any information they might share as to the

Department's expectations of her for establishing that her name should be removed from the Registry.¹

ORDER

Petitioner's request to reopen is denied.

REASONS

Petitioner's underlying appeal was duly heard and decided consistent with Board rules. See Fair Hearing Rule 1000.4.G. Petitioner now seeks to reopen her appeal with the submission of additional evidence. Board rules allow for the reopening of a Board order upon a showing of "good cause." Fair Hearing Rule 1000.4.K.

Petitioner has presented no evidence or even argument that she has "good cause" for failing to submit this evidence previously, when the Department and then the Board considered her appeal. See 33 V.S.A. § 4916c(e) (Board review of expungement decision "based on the record below"). Nor, even if petitioner had presented good cause that she is "procedurally" entitled to reopen, has she shown that this evidence is material to the ultimate issue of her

¹ At one point during this process, petitioner appeared satisfied with a resolution that involved her withdrawing her request to reopen and contacting the Registry Review Unit. She subsequently contacted the Board and it became clear that she still wished to pursue reopening the Board order. In this respect, her request to reopen was, itself, reopened, due to this apparent misunderstanding.

expungement. See 33 V.S.A. § 4916c(b)(1) (person requesting expungement has burden of proving "that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children").

As such, petitioner has failed to show good cause for reopening the Board's prior decision. Therefore, her request must be denied. Fair Hearing Rule No. 1000.4K.

#