

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,196  
 )  
Appeal of )

INTRODUCTION

The petitioner is pursuing several claims for relief against the Department of Social and Rehabilitation Services (SRS) arising from an investigation conducted by SRS into an incident that occurred in her foster home. The issue is whether the Board has subject matter jurisdiction to consider these claims.

PROCEDURAL HISTORY

In September, 1997, the petitioner received a notice from SRS that her license to provide foster care in her home was being revoked. The petitioner appealed this decision to the Human Services Board on September 24, 1997.

On October 17, 1998, SRS requested a continuance because a review of the case by the Commissioner of SRS had not yet been completed. The petitioner did not oppose this continuance.

On January 8, 1998, SRS notified the Board that the Commissioner's review had been completed and it requested a status conference to identify the issues for hearing. A status conference was held on February 20, 1998. At the conference SRS explained to the hearing officer that its decision to revoke the petitioner's foster home license was

based on SRS's belief that, based on an incident of sexual activity that had occurred in the petitioner's home (not disputed by the petitioner), one of the petitioner's own children was at risk if foster children continued to be placed in her home.

In response to SRS's position the petitioner identified certain witnesses, including her child's therapist, that she maintained would establish that her child had the ability to protect himself from inappropriate sexual activity that might be initiated by foster children in the home. The parties then agreed to continue the matter to allow SRS to interview those witnesses and to reconsider its position regarding the petitioner's license in light of what those witnesses said.

On March 18, 1998, SRS notified the Board that it had interviewed the petitioner's witnesses and had reconsidered its position and would not revoke the petitioner's foster home license. On March 31, 1998, the petitioner informed the Board that she still wished to have a fair hearing.

The hearing officer held a status conference on May 12, 1998. The petitioner appeared in person and the attorney for SRS participated by speakerphone. At that time SRS again stated that it had reversed its decision to revoke the petitioner's license and that it, therefore, thought the petitioner's appeal should be dismissed. The petitioner did not dispute that her license had not been

revoked, but in a rambling presentation she made several claims against SRS, of varying specificity, that she stated she wished to pursue through fair hearing. Each of those claims is discussed below.

DISCUSSION

1. The petitioner requests that SRS "clean" the records of its investigation of the incident that occurred in the petitioner's home and expunge any mention of her son being involved in this incident. SRS has agreed to allow the petitioner to view its file in this matter, but it submits that the Board cannot order it to expunge its files regarding investigations of foster homes and foster children.

The petitioner has problems with the manner in which SRS investigated the matter, and she apparently believes that the records of the incident will stigmatize her son; but, as noted above, she does not dispute that the incident occurred. Therefore, it does not appear that the petitioner's request falls under the purview of 33 V.S.A. § 4916(h), under which a person may petition the Board for an order expunging an "unsubstantiated" report of child abuse from the SRS child abuse "registry".

The hearing officer is unaware of any other provisions in the statutes or regulations regarding investigations of sexual abuse that occur in SRS foster homes, and the

petitioner provided no other legal basis for her request for expungement. 3 V.S.A. § 3091(d) provides, inter alia, that the Human Services Board: "shall consider, and shall have the authority to reverse or modify, decisions of the agency based on rules which the board determines to be in conflict with state or federal law. The board shall not reverse or modify agency decisions which are determined to be in compliance with applicable law." 33 V.S.A. § 306(b) gives SRS the authority to prescribe standards for "records to be kept and reports to be filed".

Absent any indication that SRS has violated this or any other provision in its statutes or regulations, the petitioner's request to expunge SRS's records in this matter must be denied.

2. The petitioner next claims that SRS, while allowing her to keep her license, does not plan to place any foster children in her home. SRS denies this, although it admits that no placements had been made to the petitioner's home in the few months that had elapsed between the time of the reversal of its decision revoking the petitioner's license and the date of the status conference. Regardless of when and whether SRS actually places foster children in the petitioner's home, the Board has repeatedly held that it does not have the authority to intervene in placement decisions regarding children who have been placed in SRS custody by the juvenile court,

which has "exclusive jurisdiction" in such matters. See 33 V.S.A. § 633 and Fair Hearing Nos. 15,108, 9455, and 7809.

The Board has no factual basis not to take the representations of SRS at face value<sup>1</sup>, and no legal basis to order SRS to make present or future foster care placements.

3. The petitioner demands "letters of apology" from SRS, one to her and one to the foster child involved, regarding its actions in this case. Again, there being no legal requirement for SRS (or, to the hearing officer's knowledge, for any public agency) to do so, the Board has no statutory basis to order such relief.

4. The petitioner wants the Board to hold SRS "responsible" for any future therapy her son may require as a result of the SRS investigation that occurred. The Board has long adhered to the widely accepted legal principle that "damages" are not available through the administrative hearing process and do not constitute "appropriate relief" under 3 V.S.A. § 3091(d). See, e.g., Fair Hearing No. 12,080. The petitioner must pursue this grievance in court.

5. As other "damages", the petitioner seeks reimbursement from SRS for her costs in establishing

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<sup>1</sup>It should be noted, however, that the petitioner has indicated that if she does not prevail in this hearing she will pursue other legal options, including a lawsuit against SRS. In light of this, it would be difficult to fault a decision by SRS to refrain from making foster placements in the petitioner's home until all potentially pending legal action involving the petitioner has been resolved.

suitable areas of her home for "crisis beds" and a "therapeutic bed". She also seeks attorneys fees she allegedly incurred as a result of these proceedings. For the reasons expressed in paragraph 4, above, these requests cannot be considered "appropriate relief" the Board is empowered to grant under its statute. Again, the petitioner is free to seek redress through the courts regarding these claims.

6. The petitioner also demands that SRS provide her with her son's school records so she can determine what the school told SRS about him. SRS has indicated that the petitioner may review its record of its investigation. Presumably, this will include any information provided to SRS by her son's school. If it does not, however, it is clear that the Human Services Board does not have any legal authority over any school district to make this information available to the petitioner.<sup>2</sup> See 3 V.S.A. 3091(a).

7. The remaining complaints of the petitioner concern disputes with internal SRS practices and policies regarding the administration of foster homes. They are:

- a. She wants her foster home administered by another district office;
- b. She wants SRS to submit to an "outside agency" review of its investigation procedures

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<sup>2</sup>The petitioner may well have other legal remedies in this regard under federal and state education statutes.

involving children with special needs;

c. She wants SRS to write her a "letter of recommendation" that she is a good foster care provider;

d. She wants SRS to "counsel" her as to what she should do to get SRS to make future foster placements in her home; and

e. She wants to be able to "interview" SRS personnel to determine what they know about the incident that occurred in her home.

These requests are similarly deemed to be beyond the scope of the Board's statutory authority to order the agency to do. By law, the Commissioner of SRS "may exercise the powers and perform duties required for effective administration of the department, and he shall determine the policies of the department". 33 V.S.A. § 304(a). Absent an allegation that there has been a violation of a specific statute or regulation, the Board has held that it has no jurisdiction to consider complaints about specific workers (see Fair Hearing No. 12,994) and it has similarly refrained from reviewing internal agency policies that do not directly affect an individual's claim for benefits or a license. See 3 V.S.A. § 3091(a) and Fair Hearing No. 15,218.

ORDER

Inasmuch as the Board does not have subject matter jurisdiction to address any of the petitioner's remaining grievances against SRS, her appeal is dismissed.

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