

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,035
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Aging and Disabilities (DAD) approving his involuntary discharge from the Vermont Veterans Home, a residential care facility licensed by DAD. In a case of first impression before the Board, the issue is whether the petitioner's discharge from the Veterans Home was in compliance with the Department's regulations.

FINDINGS OF FACT

1. The petitioner is a sixty-nine-year-old man who moved to the Vermont Veterans Home in 1997.

2. The Veterans Home is a Residential Care Home licensed by DAD to provide personal care or supervision to individual residents who do not need full-time nursing care. (See 33 V.S.A. § 7102(1)).

3. As part of its regulation of such facilities DAD has adopted regulations governing, inter alia, the discharge of residents from residential care homes (see infra). Under those

regulations individuals subject to a discharge may contest their transfer by filing a request for hearing before the Human Services Board pursuant to 3 V.S.A. § 3091.

4. The petitioner in this matter is a chronic alcoholic whose history was known to the Veterans Home when he was admitted. At the time of his admission the petitioner signed an agreement with the home to refrain from consuming alcohol in or on the grounds of the facility, not to return to the facility in an intoxicated state, and to cooperate with the facility in ongoing treatment.

5. According to the testimony of Veterans Home staff, the petitioner's drinking became a problem shortly after his admission. Early in 1999 he fell while intoxicated and was later discovered to have fractured his leg during an unsuccessful voluntary hospitalization at a VA facility in Massachusetts. In March 1999, his problems escalated to the point that he would come back drunk to the Veterans Home from a bar in the community virtually every afternoon. During this time he became increasingly verbally belligerent, argumentative, and abusive with staff and other residents. His outbursts sometimes disrupted meals in the dining room and interfered with the peaceable use of common areas of the facility. Staff was frequently called to intervene. Because he was drinking while

taking Antibuse, he would frequently vomit, and this therapy had to be discontinued.

6. The petitioner does not dispute that he was drinking during this time, but he maintains that he was never intoxicated and that his confrontational behavior resulted from his aggressive advocacy for the rights of other patients during a time in which the Veterans Home was under investigation for chronic problems relating to issues of patient care. The petitioner admits (even boasts), however, that he could routinely tolerate between ten and twelve drinks a day, but denies that this would have caused him to be intoxicated.

7. Based on the credible testimony of the staff members of the Veterans Home (and discounting the petitioner's entirely incredible testimony) it is found that the petitioner's behavior during this period was the result of severe alcohol abuse and posed a clear threat to his own health and the safety and welfare of other residents and staff of the Veterans Home.

8. Despite frequent verbal warnings by staff and his having been given a written discharge warning, the petitioner's abusive and disruptive behavior continued as a result of his continued drinking.

9. On May 6, 1999, the Veterans Home notified the petitioner in writing that it intended to discharge him in 30

days as a result of his continued drinking and disruptive behavior.

10. Even after receiving this notice, the petitioner's behavior continued unabated. However, he cooperated with the staff of the Veterans Home in arranging a voluntary admission in May 1999, to the Brattleboro Retreat.

11. Following his stay in Brattleboro, which the petitioner describes as successful, he voluntarily accepted a placement at a residential home in Massachusetts. At the time of his hearing (November 16, 1999) the petitioner was residing in a group home in Bellows Falls, Vermont. Although there is evidence that he has not been a problem at this home, the petitioner stated he wants to return to the Veterans Home because he his present home is "too restrictive".

12. The Veterans Home has its own written Alcohol Substance Abuse Policy that includes several steps to be taken in cases of residents abusing alcohol. The petitioner maintains that the Veterans Home did not follow this policy before it notified him of his discharge from the facility.

13. In its administrative review of the Veterans Home's actions in this matter (dated June 25, 1999) the Department concluded that the petitioner's discharge was "reasonable in that the facility could not meet his needs, and other residents

of the facility were endangered by his behaviors", and that the facility "followed appropriate discharge procedures".

ORDER

The Department's decision is affirmed.

REASONS

Section 5.3 of the DAD Residential Care Home Licensing Regulations provides, in part, as follows:

a. Involuntary Discharge of Residents

- (1) . . . An involuntary discharge may occur only when:
- i. the resident's care needs exceed those which the home is licensed to provide; or
 - ii. the home is unable to meet the resident's assessed needs; or
 - iii. the resident presents a threat to himself or herself or the welfare of other residents or staff.

The petitioner in this case argues that the above regulation should be "strictly construed" because of the severe consequences to an individual who faces involuntary discharge from a facility that is, in effect, his home. To this effect the petitioner cites other sections of the Department's regulations relating to residents' human rights and the recognition of their privacy and dignity. The Department does

not necessarily disagree with this aspect of the petitioner's argument, but it points out that the regulations refer to the rights of all residential care home residents—not just those facing involuntary discharge. In light of this, the Department argues that in view of the petitioner's behavior his discharge from the Veterans Home was necessary to protect the dignity, comfort, and safety of the other residents of that facility, and was, therefore, entirely consistent with the intent of the regulations.

The evidence in this matter fully supports the Department's position in this regard. As found above, the petitioner's behavior posed an ongoing threat to his own health and safety as well as to that of the other residents and staff of the facility who were being continually subjected to his verbal abuse and bellicose confrontations. Thus, it must be concluded that the requirements of Part iii of the above regulation were clearly met.

The petitioner further argues, however, that the Department's decision should be reversed because it failed to require the Veterans Home to follow its own Alcohol/Substance Abuse Policy at the time it discharged him. The Department maintains that its role as the licensing authority only requires it to enforce state regulations—not in-house facility policies.

The petitioner does not maintain that the Veterans Home policy was in conflict with any state regulation. Nor has he cited any law that would require the Department to enforce such policies. This is not to say that the petitioner in this case may not have a basis for further action against the Veteran's Home based on an alleged violation of its policies. It is simply to hold that when such policies are not inconsistent with state regulations, a review of whether these policies were followed is beyond the scope of the Department's authority and the Board's jurisdiction to review.¹

Finally, the petitioner argues that the Department did not afford him due process in its review of the Veterans Home's decision to discharge him by not giving him an opportunity to provide information opposing his discharge and by not fully explaining his rights in the appeals process. Although there was limited evidence taken on this issue, the record is clear that the petitioner was represented by an attorney from the outset of his appeal to DAD; and there is no indication that he ever requested an in-person hearing or that the Department ever denied him the opportunity to submit any information before it

¹ The Board feels compelled to note, however, that even if it had such jurisdiction, the "violations" of Veterans Home policy alleged by the petitioner are at best technical; and that given the repetitiveness and severity of his behavior it appears the petitioner was given ample, if not an

made its decision in this matter. At any rate, the petitioner has now been afforded the opportunity, and has fully availed himself, of a full de novo Human Service Board hearing. Therefore, even if it could be found that DAD's review process was procedurally deficient, it must be concluded that any alleged prior violations of due process regarding the petitioner's appeal rights have now been fully cured.

In light of the above it must be concluded that DAD's actions in this matter were in accord with its regulations; and, therefore, its decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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excess of, "due process" by the Home before it decided to discharge him from their facility.