

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-06/14-470
)
Appeal of)

INTRODUCTION

Petitioner seeks to reopen an appeal she filed from the proposed closure of her Reach Up Financial Assistance ("RUFA) by the Department for Children and Families ("Department"). The appeal was dismissed by the Board after petitioner failed to appear for her hearing on two consecutive dates. The following facts are adduced from an evidentiary hearing held December 12, 2014.

FINDINGS OF FACT

1. Petitioner receives RUFA and initially filed this appeal on June 18, 2014, in response to the Department's proposed closure of her benefits.

2. The Board scheduled the appeal for hearing on July 11. Petitioner did not appear at hearing and, pursuant to Board rule, was mailed a letter dated July 14 advising her that her appeal would be dismissed if she did not contact the Board within seven (7) working days with a "good cause" reason as to why she failed to appear.

3. Petitioner contacted the Board on July 21 and asked that her appeal be rescheduled. She informed a Board staff person that she had not received the hearing notice but had received the July 14 letter. The letter was mailed to a Sheldon address.¹ Petitioner did not indicate at the time that her mailing address had changed.

4. Over the Department's objection, the hearing officer granted petitioner's request to reschedule the hearing, with the proviso that no further continuances would be granted. The hearing was rescheduled for August 12 and a notice was mailed to the parties.

5. Petitioner failed to appear at the August 12 hearing and the appeal was administratively dismissed by the Board clerk on August 19, pursuant to Board rules.²

6. Petitioner contacted the Board on August 21 and asked about the status of her hearing. She was informed that her appeal had been dismissed because she failed to appear for her hearing. Petitioner provided an updated mailing

¹ Petitioner states that the Sheldon address is that of her son's paternal grandparents and they do not reliably inform her of incoming mail.

² As she had been receiving continuing benefits pending appeal, petitioner's RUFA was closed as a result of the dismissal. Petitioner has since reapplied for RUFA and established new eligibility for benefits; thus, this appeal concerns a closed period of time.

address in Milton and the matter was scheduled on September 19 as a request to reopen her appeal.

7. Petitioner failed to appear on September 19. On September 30, legal counsel entered an appearance on petitioner's behalf, stating that her transportation fell through on September 19, and requesting that her appeal be reopened.

8. After two status conferences were held, the matter was set for hearing on December 12 to resolve petitioner's request to reopen her appeal after it was dismissed for her failure to appear on August 12. Petitioner asserts, through counsel, that she notified the Department of a change of address; the Department represents that it has no record of any such request, leading to a factual dispute regarding whether petitioner was adequately notified of the August 12 hearing.

9. Petitioner testified that she sent the Department a change of address form - from the Sheldon to the Milton address - shortly after her daughter's birth in early June. She further testified that she never received any notice from the Board of the July 11 or August 12 hearings, nor did she receive the July 14 letter from the Board. She cannot explain why the Board's records indicate she stated she had

received the July 14 letter when she contacted the Board on July 21. Petitioner states that she contacted the Board on July 21 because she received a letter that her RUFA had been closed.

10. Petitioner contacted the Department by phone on July 29 regarding her fair hearing request. Her request was confirmed and she was transferred to the Attorney General's office. Petitioner states that she left a message and never received a return call.³

11. The Department has no record of the change of address form petitioner claims she submitted in early June or any record of petitioner making contact at any time during June, July or prior to August 12 about a change of mailing address. Petitioner's RUFA was never closed in July and there is no record of the Department sending her a notice that her RUFA had been closed at or around that time.

12. Petitioner did not notify the Board of her change of address when she contacted the Board on July 21. Petitioner's explanation for this failure is that she believed she had already submitted a change of address form to the Department, despite claiming that she never received

³ There is a record of petitioner's contact with a Department representative on July 29. There was no record admitted or produced of the contact she states she made with the Attorney General's office.

any notice or letter from the Board during July or August. Petitioner also asserts she asked to know the date of her fair hearing when she contacted the Department on July 29.

13. Petitioner's testimony and explanations are found to wholly lack credibility. Petitioner has no rational explanation for why she contacted the Board on July 21 in light of her claim that she never received the July 14 letter.⁴ Petitioner's lack of credibility extends to her claims of having informed the Department of her change of address and asking the Department about the date and time of her fair hearing on July 29. Petitioner otherwise submits no corroborating evidence of her testimony nor does the Department have any record of such.⁵

ORDER

Petitioner's Motion to Reopen is denied.

⁴ If petitioner had acknowledged receiving the July 14 letter, she would have had to explain why she failed to inform the Board of a change in address as the letter was sent to the Sheldon address.

⁵ The Department represents that it would agree to reopen petitioner's appeal if there was any record of petitioner's claim of registering a change of address.

REASONS

Petitioner's initial appeal was duly dismissed consistent with Board rules. See Fair Hearing Rule 1000.3.Q. Petitioner now seeks to reopen her appeal, arguing that she informed the Department of her change of address, and that she contacted the Department on July 29 and was never informed of her August 12 fair hearing. Board rules allow for the reopening of a Board order upon a showing of "good cause." Fair Hearing Rule 1000.4.K.

The sole issue here is petitioner's failure to attend the August 12 hearing, which led to dismissal of her appeal by the Board. As found above - petitioner's explanation and testimony as to why she missed the August 12 hearing, and her claimed effort to register a change of address with the Department as well as ascertain the date of her hearing, lacks reasonable basis, corroboration, and most significantly, credibility. Lacking credibility, she does not establish the facts she asserts.

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

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