

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,043
)
Appeal of)

INTRODUCTION

The petitioner appeals a preliminary ruling by the hearing officer that certain of her claims against the Office of Child Support (OCS) be dismissed for lack of subject matter jurisdiction and standing. The issues are whether the petitioner's claims for "monetary damages", "general grievances", and "holding OCS accountable for its actions" are beyond the scope of relief available under the Board's statutes and rules.

DISCUSSION

The petitioner initially filed an appeal with the Human Services Board on July 21, 1999, alleging various errors and omissions on the part of OCS in its pursuit of child support payments in the petitioner's behalf. The petitioner then requested that the matter not be set for hearing until after September 15, 1999. On November 8, 1999 Hearing Officer Shelley Simpson Jerman sent a memorandum to the parties to this and three other OCS cases that were then pending

soliciting written legal argument regarding the jurisdiction of the Human Services Board to hear any appeals involving actions by OCS.

In an "Interim Ruling on Jurisdiction" dated February 25, 2000, that hearing officer determined that the Board had jurisdiction to hear "general grievances" against OCS (as opposed to "claims regarding collection remedies . . . or any claim contesting the validity of the child support debt owed", which were determined to be within the exclusive jurisdiction of the Family Court). Neither of the parties to the instant matter (nor those in any of the other cases affected by the Interim Ruling) takes issue with this ruling. The matter was then set for hearing before this hearing officer on April 7, 2000.

Following continuances agreed upon by the parties, the matter was scheduled for hearing on June 30, 2000. On that date the hearing officer met with the attorneys for the parties. At that time the petitioner's attorney represented that the petitioner had no prayer for relief in the matter other than a claim for monetary damages against OCS for its past errors and omissions in handling her child support case. The petitioner's attorney specifically stated that the

petitioner was not seeking any ongoing services from OCS or any other type of current or prospective relief.

Based on this representation, the hearing officer informed the parties that he would not take any evidence in the matter unless and until the petitioner submitted legal argument convincing him or the Board that the Board had jurisdiction to grant the relief sought by the petitioner. The petitioner's attorney agreed that she would consult with the petitioner and inform the Board and OCS whether she wished to file a written argument on the issues of jurisdiction and relief.

Nothing was heard from the petitioner or her attorney until July 13, 2000, when the petitioner, herself, wrote the hearing officer expressing displeasure with his "treatment" of her at the hearing on June 30, 2000, stating that her attorney was no longer representing her, and requesting "a decision in writing as to why I spent money and time to attend the scheduled fair hearing I was due, only to have you decide not to hear my case."

On July 18, 2000, the hearing officer sent the petitioner and the attorneys for the petitioner and OCS a memo directing the petitioner's attorney to clarify the status of her representation of the petitioner, and giving the petitioner

until August 4, 2000 to file any legal argument she wished to submit.

On July 20, 2000 the Board received a "proposed recommendation" from OCS that the matter be dismissed for lack of subject matter jurisdiction.

On July 25, 2000, the petitioner's attorney sent a letter to the hearing officer stating, *inter alia*, that she was continuing to represent the petitioner, that the petitioner continued to maintain that she is entitled to a hearing, and that she was requesting an extension of time until August 11, 2000 in which to file a formal legal brief on the issue of damages.

By memo dated July 27, 2000, the hearing officer granted the petitioner's request for an extension of time. The petitioner's attorney completed the filing of her written memorandum on August 17, 2000.¹

The petitioner makes essentially three arguments regarding jurisdiction. The first is that the Board has jurisdiction under OCS rules to consider any "general

¹ In addition to the issues addressed in this Recommendation the petitioner's written submissions raise (for the first time) a claim for prospective relief concerning tax offsets based on a letter dated July 21, 2000 the petitioner had received from a paralegal at OCS. The hearing officer has informed the parties that he will retain separate jurisdiction of this aspect of the petitioner's claim. It will not be addressed further in this Recommendation.

grievance" brought by an individual against that agency. The second is that the Board's statutes give it jurisdiction "to hold OCS accountable for its actions". And the third is that the Board has jurisdiction to award monetary "damages" against OCS. These will be addressed in order.

I. General Grievances

The petitioner cites OCS rules defining "general grievances" as all grievances with that agency except those involving collection remedies or the amount and/or validity of the child support debt. (See OCS Rule §§ 2800 and 2802A.) As noted above, the parties do not dispute (and the hearing officers have specifically ruled) that such grievances are within the jurisdiction of the Human Services Board. The petitioner concedes, however, that the "exact nature of such appeals has not been well established". The issue in this case stems from the fact that even though the petitioner harbors grievances against OCS regarding alleged past actions and omissions she is not asking the Board to provide her with any relief other than monetary damages.

3 V.S.A. § 3091(a) provides as follows:

An applicant for or recipient of assistance, benefits or social services from . . . the office of child support . . . may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a

hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services . . . or because the individual is aggrieved by agency policy as it affects his or her situation.

(Emphasis added.)

The emphasized portions of the above section make clear that the Board's jurisdiction is limited to addressing current grievances. In this case the petitioner seeks to have the Board review alleged past actions and omissions by OCS that, by her admission, no longer affect her--other than the fact that she feels she is now entitled to monetary "damages". This, of course, begs the question, addressed below, of whether the Board (or any administrative body) can award damages. That issue notwithstanding, however, it must be concluded that § 3091(a), supra, only confers standing on those individuals with ongoing grievances against an agency that affect their current situations.

II. Jurisdiction to Hold OCS Accountable for its Actions

As noted above, the petitioner asks the Board to make findings regarding several alleged actions and omissions of OCS regarding its past handling of her case. The petitioner admits that she, herself, is no longer affected by those actions (except for damages). However, based on her alleged

experiences, she seeks a ruling from the Board ordering OCS to make certain changes in the way it processes claims, communicates with its clients, and evaluates and monitors staff performance. She argues that such relief is within the Board's jurisdiction because of its alleged "supervisory" relationship to OCS.

The petitioner's position is directly contrary to well established law. 3 V.S.A. § 203 provides that administrative agencies and boards "shall exercise only the powers and perform the duties imposed by law. . ." The Vermont Supreme Court has held that the above statute is "unambiguous and absolute on its face"; and that administrative authority "cannot arise through implication. An explicit grant of authority is required". Miner v. Chater, 137 Vt. 330, 333 (1979).

The scope of the Board's authority to grant relief is set forth in 3 V.S.A. § 3091(d) as follows:

After the fair hearing the Board may affirm, modify or reverse decisions of the agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the agency to provide appropriate relief including retroactive and prospective benefits. The board shall consider, and shall have the authority to reverse or modify, decisions of the agency based on rule 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, even

though the board may disagree with the results effected by those decisions.

(Emphasis added.)

In interpreting the above provision, the Vermont Supreme Court has held "that the subject matter of appropriate relief is 'benefits' or a benefit-like award". Scherer v. DSW, Dkt No. 94-206 (Mar. 24, 1999). It has also been held that the Board does not have jurisdiction over "practices and procedures" of an administrative agency other than to address a specific grievance by an affected individual. See Swan v. Stoneman, 635 F.2d 97 (2d Cir. 1980).

It is thus clear that the Board's relationship to the agency is anything but "supervisory". The changes in OCS policy and procedures sought by the petitioner would affect every client of that agency (presumably including many who would have no complaints whatsoever about the agency's present policies). This is clearly beyond the scope of the Board's jurisdiction. The law is clear that the Board's review is limited to specific "decisions" by an agency, not its general practices.

The petitioner correctly points out that in a prior HSB decision, Fair Hearing No. 13,294, the Board made several findings against OCS similar to the ones now being alleged by

the petitioner. In that case, however, the petitioner had a clear ongoing grievance with the agency, and the Board's findings in that case were pertinent to, and support for, the relief that was ordered, which was entirely prospective and specific only to the petitioner in that case.² In this case, the petitioner makes no claim for ongoing relief for herself other than monetary damages. Thus, this matter is clearly distinguished from Fair Hearing No. 13,294. (Not incidentally, it should be noted that in Fair Hearing No. 13,294 the Board specifically rejected that petitioner's claim for monetary damages [see infra].)

In her memorandum the petitioner also refers to an earlier ruling by the Family Court in this matter that "the magistrate cannot rewrite (OCS) policy". The petitioner infers from this that the Board is the "only forum where this can happen". While it would be a novel legal argument that an administrative body can assume such powers simply by default, the petitioner is simply mistaken that no other avenue of redress exists for citizens opposed to the policies and procedures of an administrative agency. By law, an agency's power to prescribe and enforce rules is "subject to the

² That relief was to order OCS to file a lien and force a sale of real property owned by the absent parent and to take other "timely enforcement

approval by the Governor". See 3 V.S.A. § 206. Beyond that, if agency policies and procedures are alleged to be unlawful, there is always the potential availability of individual or class action judicial relief.³

III. Damages

The heart of the petitioner's complaint, however, is her claim for monetary damages against OCS. Unfortunately in this regard, the petitioner must acknowledge the existence of at least two Vermont Supreme Court rulings (one affirming a ruling by the Human Services Board) holding that "an administrative agency may not adjudicate private damages claims". Scherer v. DSW, Id., and In re Buttolph, 147 Vt. 641 (1987). The petitioner makes no real legal argument against these holdings, but urges they should be overturned as a matter of the law's "never ending need for keeping common law principles abreast with the time" (citing Rotherberg v. Olenik, 128 Vt. 295, 305 [1970]).

action" against him.

³ The petitioner might argue that judicial relief is beyond her means to pursue. However, it cannot be concluded that the difficulty in obtaining alternative available relief confers jurisdiction in and of itself on a more-easily-accessed tribunal. See Sienkiewicz v. Dressell, 151 Vt. 421, 424 (1989).

This argument, though audacious⁴, ignores the fact that this issue is a matter of statute, not common law. As the petitioner acknowledges, the rulings in the above-cited Supreme Court cases proscribing the awarding of damages by an administrative agency are based on an axiomatic tenet of administrative law--that administrative agencies obtain "only such adjudicatory jurisdiction as conferred on them by statute, with nothing presumed in favor of their jurisdiction". See Gloss v. Delaware and Hudson, 135 Vt. 419, 422 (1977). In the face of these rulings the petitioner nonetheless makes no claim whatsoever that any statute confers jurisdiction on the Board to award monetary damages.

ORDER

The petitioner's claims regarding general grievances, holding OCS accountable for its actions, and monetary damages is dismissed on the basis of lack of standing and subject matter jurisdiction.⁵

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⁴ The Rotherberg Court was being asked to overturn the "ancient" legal principle of caveat emptor as it applied to product warranties. The holding in Scherer, supra, regarding the Board's authority to award damages is only five years old--hardly "ancient" by common law standards.

⁵ The hearing officer will maintain jurisdiction over the petitioner's claims for non-monetary prospective relief (see footnote 1, supra).