STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,128
	)	
Appeal of	)	

INTRODUCTION

The petitioner requests that the Board reopen this matter, which was dismissed on December 17, 1999.

FINDINGS OF FACT

1. On August 3, 1999 the then-Department of Social Welfare (now PATH) Morrisville District Office received a letter from the petitioner requesting "assistance" in light of a prior denial of an application for benefits. Apparently, the district did not initially interpret the letter as an appeal of the prior denial. Eventually however, on September 21, 1999, the district forwarded the letter to the Human Services Board as an appeal of its prior decision.

2. On September 28, 1999 the Board mailed the petitioner a notice that a hearing on his appeal was scheduled in Morrisville on October 21, 1999. The Board mailed the notice to the address the petitioner had provided to the Morrisville district office.

3. The petitioner did not appear at the hearing on October 21, and did not notify the Department or the Board of his inability to attend.

4. On November 5, 1999, the Board mailed the petitioner a letter pursuant to Fair Hearing Rule No. 14 stating that his appeal would be dismissed unless he contacted the Board within seven days to show good cause for his failure to appear.

5. Hearing nothing from the petitioner, at its meeting on December 15, 1999, the Board ordered the petitioner's appeal dismissed. The Order included the provision that it could be appealed to the Vermont Supreme Court within 30 days. The Order was entered on December 17, 1999, and mailed to the petitioner.

6. The Board heard nothing from the petitioner until January 27, 2000, when it received notice that the petitioner had appealed a subsequent decision by the Department.

7. That appeal (Fair Hearing No. 16,302) was eventually settled in the petitioner's favor. However, at one of the several meetings with the hearing officer during the course of that appeal (hearings were scheduled in that case on February 24, March 29, April 20, May 18, and June 15, 2000), the petitioner indicated that he also wanted to appeal decisions that had been made in his case by the Department in the summer of 1999. Upon determining that those decisions had been the subject of a prior fair hearing request that had been

dismissed, the hearing officer advised the petitioner to file a written request with the Board to reopen that dismissal.

8. The petitioner filed his request with the Board on June 27, 2000, alleging, inter alia, that he had been "actively pursuing" Fair Hearing No. 16,128 since August of 1999.

9. At a hearing on this motion to reopen, held on July 13, 2000, the petitioner maintained that he had not received the notice of his hearing and had called the Board when he received his 7-day letter. The Board has no record of any contact from the petitioner during this period. The petitioner confirmed that the Board had mailed everything to his correct address, but he could offer no explanation as to why he hadn't received it.

ORDER

The petitioner's request to reopen this matter is denied.

REASONS

Fair Hearing Rule No. 14 provides as follows:

> 14. Failure to appear. If neither the appellant nor his or her representative appears at the time and place noticed for the hearing, the clerk shall inquire by mail as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within 7 working days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

There is no question in this matter that the Board's action in dismissing the petitioner's appeal was in accord with the above Rule.

Although the Board has held that it, as any administrative body, has the "inherent power" to vacate its own orders, it has done so on a case by case basis only when it has determined that it is "when justice requires". See Fair Hearings No. 9,403 and 11, 281, and 14,882. In deciding whether to reopen cases the Board has looked to Rule 60 of the Vermont Rules of Civil Procedure (VRCP) for guidance:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

In Fair Hearing No. 9,403, the Board reopened a Medicaid disability case when subsequent medical evidence was submitted showing that a previously undiagnosed medical condition supported a claim of disability that had been rejected by the

Board on the basis of the petitioner's testimony. In Fair Hearing No. 11,281 an appeal that had been dismissed because the petitioner had failed to respond to a request for a showing of good cause for failure to attend a scheduled hearing was reopened when subsequent evidence showed that the petitioner did, in fact, contact the Board and the Department on the day of her hearing to report that she was ill, and that she then failed to receive the notice asking her to offer good cause within ten days or face dismissal. In Fair Hearing No. 14,882 the Board found no good cause where the petitioner filed an appeal and then, based solely on unwarranted assumptions regarding his prospects for success at the hearing, essentially ignored the subsequent notices of hearing and request for a showing of good cause.

In interpreting subdivision (6) of VRCP 60, above, courts have held that it should only be applied to prevent "hardship or injustice", but beyond such instances, it should only be applied in "extraordinary circumstances". Olde & Co. v. Boudreau, 150 Vt. 321 (1988). In this case there is no plausible explanation to support the petitioner's contentions that he did not receive the Board's notice in this matter, or that he called the Board after receiving his 7-day letter. A full year has now past since the decision in question. It appears that the petitioner is now receiving all the benefits to which he is entitled. Therefore, as a matter of the basic integrity of the appeal process, it cannot be concluded that

the petitioner has demonstrated a "reason justifying relief" within the contemplation of VCRP 60, above.

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