

1 S.4

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Human services; human services board; review process; appeals

6 Statement of purpose: This bill proposes to expand the power of the secretary
7 of the agency of human services to review and, when called for, modify or
8 reverse human services board decisions.

9 An act relating to expanding the review power of the secretary of human
10 services

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 3 V.S.A. § 3091 is amended to read:

13 § 3091. HEARINGS

14 * * *

15 (d) After the fair hearing and subject to subsection (g) of this section, the
16 board may affirm, modify₂ or reverse decisions of the agency; it may determine
17 whether an alleged delay was justified; and it may make orders consistent with
18 this title requiring the agency to provide appropriate relief including retroactive
19 and prospective benefits. The board shall consider, and shall have the
20 authority to reverse or modify, decisions of the agency based on rules which

1 the board determines to be in conflict with state or federal law. The board
2 shall not reverse or modify agency decisions which are determined to be in
3 compliance with applicable law, even though the board may disagree with the
4 results effected by those decisions. The board shall give deference to the
5 secretary's modification or reversal of a board decision and give precedential
6 value to the secretary's legal interpretations.

7 * * *

8 ~~(f) The agency or the appellant may appeal from decisions of the board to~~
9 ~~the supreme court under Rule 13 of the Vermont Rules of Appellate Procedure.~~
10 ~~Pending the final determination of any appeal the terms of the order involved~~
11 ~~shall be given effect by the agency except insofar as they relate to retroactive~~
12 ~~benefits.~~

13 ~~(g) A party to an order or decree of the board or the board itself, or both,~~
14 ~~may petition the supreme court for relief against any disobedience of or~~
15 ~~noncompliance with the order or decree. In the proceedings and upon such~~
16 ~~notice thereof to the parties as it shall direct, the supreme court shall hear and~~
17 ~~consider the petition and make such order and decree in the premises by way~~
18 ~~of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning~~
19 ~~the enforcement of the order and decree of the board as shall be appropriate.~~

1 ~~(h)(g)~~(1) ~~Notwithstanding subsections (d) and (f) of this section, the~~ The
2 secretary shall review all board decisions and orders ~~concerning TANF,~~
3 ~~TANF EA, office of child support cases, and Medicaid.~~ The secretary shall:

4 (A) adopt a board decision or order, except that the secretary may
5 reverse or modify a board decision or order if:

6 (i) the board's findings of fact lack any support in the record; or

7 (ii) the decision or order implicates the validity or applicability of
8 any agency policy or rule.

9 (B) issue a written decision setting forth the legal, factual, or policy
10 basis for reversing or modifying a board decision or order.

11 (2) ~~Notwithstanding subsections (d) and (f) of this section, a~~ A board
12 decision and order ~~concerning TANF, TANF EA, office of child support, or~~
13 ~~Medicaid~~ shall become the final and binding decision of the agency upon its
14 approval by the secretary. The secretary shall either approve, modify, or
15 reverse the board's decision and order within 15 days of the date of the board
16 decision and order. If the secretary fails to issue a written decision within 15
17 days as required by this subdivision, the board's decision and order shall be
18 deemed to have been approved by the secretary.

19 (3) ~~Notwithstanding subsection (f) of this section, only the~~ The claimant
20 may appeal a decision of the secretary to the supreme court. Such appeals
21 shall be pursuant to Rule 13 of the Vermont Rules of Appellate Procedure.

1 The supreme court may stay the secretary's decision upon the claimant's
2 showing of a fair ground for litigation on the merits. The supreme court shall
3 not stay the secretary's order insofar as it relates to a denial of retroactive
4 benefits.

5 (h) A party to an order or decree of the board or the board itself or both
6 may petition the supreme court for relief against any disobedience of or
7 noncompliance with the order or decree. In the proceedings and upon such
8 notice thereof to the parties as it shall direct, the supreme court shall hear and
9 consider the petition and make such order and decree in the premises by way
10 of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning
11 the enforcement of the order and decree of the board as shall be appropriate.

12 Sec. 2. 33 V.S.A. § 6906(g) is amended to read:

13 (g) If the human services board, the secretary of the agency of human
14 services, or a court reverses a substantiated finding, the commissioner shall
15 remove all information relating to that finding in accordance with subsection
16 (e) of this section.

17 Sec. 3. RULES

18 No later than January 1, 2012 and pursuant to chapter 25 of Title 3, the
19 agency of human services shall amend its rules to conform to this act.

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on passage and shall supersede any agency rules in
3 conflict with this act.