



MEMORANDUM

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TO: Rep. Theresa Wood, Chair, House Committee on Human Services
FROM: Joseph Reinert, Chief Hearing Officer, HSB
DATE: March 27, 2025
RE: Human Services Board (HSB) summary

This is submitted in advance of my testimony to the Committee on March 27, 2025.

Overview

The Human Services Board is a 7-member Board appointed by the Governor to hear and decide appeals from a variety of programs and Departments within the Vermont Agency of Human Services (AHS). The Board has jurisdiction over a broad number of programs or areas administered by the various AHS Departments, such as:

- 3SquaresVT
- Reach Up
- Fuel Assistance,
- Essential Person
- General Assistance/Emergency Housing
- Medicaid for Children and Adults
- Medicaid for the Aged, Blind and Disabled
- Long-Term Care Medicaid (financial eligibility and patient share)

- Disabled Children Home Care (“Katie Beckett”) Medicaid
- Medicaid Covered Services
- The Vermont Health Insurance Exchange (Vermont Health Connect) (special enrollment periods, tax credit eligibility, retroactive termination requests)
- VPharm
- Medicare Savings Program
- Health Vermonters
- Choices for Care (eligibility and services)
- Development Services (eligibility and services)
- HireAbility (Voc Rehab)
- Child abuse/neglect substantiations
- Vulnerable Adult abuse substantiations
- Child care licensing denials/terminations/violations
- Foster licensing denials/terminations/violations
- Child abuse/neglect expungement denials
- Involuntary Discharges from Long-Term Care Facilities
- Adoption Assistance
- Community Rehabilitation and Treatment Services
- Women, Infants and Children (WIC) Program

The Board’s hearing officers also hear and decide 3SquaresVT “Intentional Program Violation” cases under an arrangement with the Department for Children and Families. These cases do not fall under the Board’s jurisdiction and therefore the final decision in these cases is issued by the hearing officer.

The list of topics that are subject to the jurisdiction of the HSB is non-exhaustive, as the Board’s general grant of jurisdiction covers all appeals from an applicant for, or a recipient of, “assistance, benefits or social services” from the Department for Children and Families, the Department of Vermont Health Access, the Department of Disabilities, Aging and Independent Living or the Department of Mental Health, or “an applicant for a license” or “licensee” from one of those Departments. The only exception to the breadth

of this grant of jurisdiction is the Vermont Department of Health, as to which the Board only has jurisdiction to hear WIC appeals—which the Board rarely receives.

The frequency and complexity of each type of appeal varies greatly. The basic mandate of the Board is to decide whether the decision being appealed is consistent with the rules or laws that apply to that decision. By way of example, if someone is appealing a denial of Medicaid for being over income, the issue is whether their income was correctly calculated under the rules and if the correct income threshold for their household size was applied. A Katie Beckett Medicaid or Developmental Services appeal might involve several hundreds of pages of medical documentation and expert medical testimony in order for a decision to be made. Child or vulnerable adult abuse substantiations commonly involve fact-intensive determinations often requiring credibility determinations of witnesses and legal issues concerning the testimony of minors.

Many of the programs falling under the Board's jurisdiction are covered by both federal state statutes and rules which must be considered, sometimes creating additional complexity to the legal issues involved in an appeal. The Board is empowered to consider constitutional issues as well as the applicability of other state and federal laws (e.g., the Americans with Disabilities Act) as appropriate and relevant to an appeal.

The Board has three (3) appointed hearing officers statewide to conduct fair hearings, make proposed factual findings, and to recommend whether a Departmental decision should be affirmed, reversed, modified, or remanded. The Board has two (2) administrative staff who are based in Montpelier. As such, the Board has a total of five (5) staff members. As I outlined in my annual report submitted to this committee in January 2025, in 2024 the Board received 1112 appeals. As noted in the report, appeal numbers in 2023 and 2024 were significantly higher than in previous years.

Fair Hearing Process

Fair hearing requests or appeals are submitted to the Board in a variety of ways: from the applicable Department on behalf of a petitioner, by letter, by email, through a form on the Board's website, and verbally to Board staff. Once an appeal is submitted, it will be scheduled for an initial phone hearing or telephone status conference. Upon request, a matter may be scheduled in-person or by video. Initial hearings or telephone status conferences are typically scheduled within two (2) weeks to 35 days of when an appeal is received. If an appeal involves an expedited matter, such as a General Assistance Emergency Housing case, it is typically scheduled no more than five (5) business days after the appeal is received. Decisions by the hearing officer on expedited appeals must also be made quickly.

Notices are sent to the petitioner by mail and email (if known); notices are sent to the applicable Department's attorney and other designated representatives by email. The initial notice to petitioners includes a summary of the fair hearing process and a copy of the Board's Fair Hearing Rules. The fair hearing summary includes information about the person's rights in the hearing, process how to get assistance from an

attorney, and how to file a complaint against the hearing officer. Interpreters are generally provided upon request. Requests for a Communication Support Specialist are referred to the Vermont Communication Support Project, and such requests are typically granted.

Initial hearings or status conferences are typically scheduled for 30 to 60 minutes. At the start of the fair hearing, it is the practice of the hearing officers to summarize the Board's processes and answer any questions from the petitioner. The hearing officer is not permitted to give legal advice to the parties in any fashion. Petitioners are strongly encouraged to contact Vermont Legal Aid (including the Health Care Advocate) and/or the Vermont Bar Association Lawyer Referral Line for legal advice. The petitioner is also entitled to receive the Department's records related to their appeal. A hearing may include a discussion of the issues from the view of both parties, any facts in dispute, and the taking of testimony from witnesses for both parties.

Hearings are sometimes continued because a petitioner wishes to have more time to seek or consult with an attorney, or there is an issue with transmission of the Department's records to the petitioner, or there is not enough time to complete the taking of evidence. Some matters will require several status conferences before an appeal is scheduled for an evidentiary hearing, for any number of reasons—including the need for further preparation, the need to obtain further information (such as additional records) from the Department or the petitioner, the unavailability of parties or witnesses, or pending discussions between the parties which could resolve the appeal.

More complex appeals may require several days of hearing and for the hearing officer to rule on preliminary motions, evidentiary issues, and other legal issues raised by the parties. Some matters will not require an evidentiary hearing because they concern a legal issue without any factual disputes.

If a petitioner fails to appear for a hearing or status conference, a letter is sent to them asking them to contact the Board's administrative office to provide an explanation, so that the hearing officer can decide whether to reschedule the proceeding or direct the Board's Clerk to dismiss the appeal.

The hearing officer is solely responsible for managing the fair hearing process so that the parties have an opportunity to be heard, the record is adequately developed, and appropriate issues are identified and addressed, while at the same time the hearing officer must efficiently and effectively managing a docket of many other cases. The great majority of petitioners do not have an attorney. The applicable Department always has legal representation. Although the fair hearing process is less formal than a court proceeding, the Board's decisions must be based in legal rules and principles. Once the evidentiary record is closed there is sometimes a need for the parties to submit legal memoranda or other information to the hearing officer.

Following the completion of the record, the hearing officer issues a recommended decision that is sent to the petitioner (and/or their representative), the attorney representing the applicable Department, and all the members of the Human Services Board. The Board's review of the hearing officer's recommendation is

scheduled for one of the Board's semi-monthly meetings. The parties are given information about how to participate in the Board meeting, if they wish (they are not required to for the Board to take action). Either party is permitted to submit objections to the hearing officer's recommendation in writing in advance of the Board meeting. Oral arguments are also heard by the Board from each party, if they choose to appear. Parties are generally not allowed under the Board's rules to submit new evidence at a Board meeting, although they may request that the fair hearing record be reopened for "good cause." The Board deliberates on each recommendation on the agenda for any given meeting and decides whether or not to adopt the recommendation of the hearing officer, or enter a different outcome. At this stage the order issued by the Board following the Board meeting is a final order of the Board, subject to appeal to the Vermont Supreme Court, and in some cases review by the Secretary of the Agency of Human Services.

Final Board orders are published in redacted form on the Board's website. Fair hearings, status conferences, Board meetings, and Board files are generally closed and confidential.¹

A substantial number of appeals submitted to the Board do not result in a hearing officer recommendation and corresponding Board order. Some are dismissed for failure by a petitioner to appear. Some are resolved and settled prior to the initial fair hearing and withdrawn by the petitioner. Some are resolved during the fair hearing process after one or more hearings or status conferences. Some are resolved through issuance of a preliminary ruling by the hearing officer, or when the recommendation of the hearing officer is voluntarily implemented by the applicable Department, resulting in a withdrawal of the appeal by the petitioner. All resolutions are documented in writing, whether through a final Board order or by written communications sent to the parties.²

Data/Information Collection

The Board has a case management system developed in 2020. Only Board staff—hearing officers and administrative staff—have access to this system. The system contains contact information for the petitioner and any representative(s), the Department and program they are appealing from, the name of the Department's attorney and any other person involved in the appeal, the nature of the decision that they are appealing, whether the appeal is expedited, and whether there are continuing benefits in place. Notices for hearings or status conference, memoranda by the hearing officer, all written communications to the parties and all filings and other submissions by the parties are contained in this system. Case notes may be entered directly into the system by the hearing officer or the Board's administrative staff. Each proceeding scheduled, the outcome of that proceeding, filings (typically memoranda) by the hearing

¹ There is a very narrow exception to the confidentiality of Board proceedings which rarely comes into play. Most of the appeals at issue often involve protected health, financial and other information which is also confidential per state and federal law.

² If a case is withdrawn by a petitioner, the specific reason for the withdrawal, or terms of any settlement agreement between the parties, is not always known.

officer, the hearing officer recommendation, and the Board's order are documented within the system.

Certain reports may be generated from this information. Some of this data is reflected in the HSB annual report submitted to this committee each January.

Attachments:

- A. HSB enabling and jurisdictional statutes
- B. Fair Hearing Information provided to petitioners (including the Fair Hearing Rules)
- C. The HSB's January 16, 2025, Annual Report

The Board's website is <https://humanservices.vermont.gov/human-services-board> and includes links to the list of current Board members, the Fair Hearing Rules, a fair hearing submission form, a way to search prior Board orders, amongst other information.