STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NOLA LITTLE et al,	)	
	)	
Petitioners,	)	
	)	
vs.	)	CASE NO. 89-4425RP
	)	
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

A hearing was held in this case on September 11, 1989 in Tallahassee, Florida, before Arnold H. Pollock, Hearing Officer with the Division of Administrative Services.

APPEARANCES

For the Petitioners: Paulette Ettachild, Esquire
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STATEMENT OF THE ISSUES

The issue for consideration is the validity of the Department of Health and Rehabilitative Services' Proposed Rules 10C-1.080, 10C-1.082, and 10C-1.107, Florida Administrative Code, as appropriate exercises of delegated legislative authority.

PRELIMINARY STATEMENT

By Notice published July 21, 1989, the Department of Health and Rehabilitative Services, (Department), proposed to implement three new rules, 10C-1.080, 10C-1.082, and 10C-1.107. By Petition to determine the invalidity of these rules, dated August 10, 1989, counsel for the Petitioner, Nola Little, and the former Petitioner, Marina Brasetch, requested that the proposed rules in question be declared invalid, and the Petition was forwarded to the Division of Administrative Hearings for the appointment of a Hearing Officer, received on August 10, 1989. By Order of Assignment dated August 18, 1989, the Director of the Division of Administrative Hearings appointed the undersigned to hear the matter and by Notice of Hearing dated August 21, 1989, the undersigned set the

case for hearing in Tallahassee on September 11, 1989, at which time it was held as scheduled.

On September 1, 1989, approximately 10 days prior to the convening of the hearing, Petitioner's counsel filed a Petition to Intervene on behalf of Neftali Perez, Genioveza Perez, and Raphael Vargas. By Order dated September 6, 1989, the undersigned granted the Petition to Intervene over objection by Respondent and at the hearing, indicated his intention to continue with the case regarding the Intervenors as well as Ms. Little.

At the hearing, Petitioner presented the testimony of Rosemary Gallagher, an associate with the Florida Catholic Conference; Dr. Frederick W. Bell, an economist with the Florida State University; and Jennifer Lange, a program administrator with the Department; and introduced Petitioner's Exhibits 2 through 6 and 12 through 17. Petitioner's Exhibits 1, and 7 through 11 were marked but not received. Petitioner's Exhibit 18 for identification was filed by mail after the hearing. Respondent presented the testimony of Harry Greenwood, an employee of the Department in its economic services division; and Edward Winstead, Assistant Secretary for Economic Services, and introduced Respondent's Exhibits A through I and K. Respondent's Exhibits J and L were marked but not received.

Subsequent to the hearing, a transcript was provided. On November 2, 1989, Respondent filed a Motion for Order to Show Cause, citing the decision of the Florida First District Court of Appeals in a petition for review filed by Petitioner Little challenging the validity of the rules in question, which opinion, Respondent contends, appears to be dispositive of the issues in the case. On November 14, 1989, Petitioner Little, filed her response to the motion and on November 21, 1989, submitted her Proposed Findings of Fact which have been ruled upon in the Appendix to this Final Order. Respondent's Counsel has not submitted any proposed Findings of Fact.

While the Petition in this case refers to Rules 10C-1.080, 10C-1.082, and 10C-1.107, the Court's opinion refers to Emergency Rules 10CER 89-3, 89-4, and 89-5. The Court determined the Department had complied with applicable legal requirements pertinent to the promulgation of emergency rules. In the instant case, though the rules may be the same in substance, the issue is the substance of the rules and their conformity with delegated legislative authority rather than the propriety of the emergency nature of promulgation. Therefore, the Motion For Order To Show Cause is denied and matter will be resolved on the basis of the testimony and exhibits presented at hearing and the submittals of counsel.

At the beginning of the hearing, Counsel for the Department "moved to strike" both Petitioners for lack of standing in that Petitioner Little had removed herself from the State of Florida on a permanent basis and is no longer eligible for the service in issue here. She may, however remain eligible for one final payment. Ms. Brasetch, on the other hand, has failed to respond to any discovery prior to the commencement of the hearing though given adequate opportunity to do so. After argument by both counsel, and the introduction of testimony relevant to the motion, Petitioner Brasetch was stricken as a Petitioner and the undersigned ordered that the hearing proceed regarding the Ms. Little and Intervenors. At the same time, counsel were given 10 days from the conclusion of the hearing to submit argument on the question of standing as regard to Ms. Little. Neither side has done so, though counsel for Ms. Little addressed the subject in her Proposed Findings of Fact and Conclusions of Law. Issue as to standing was not raised as to Intervenors.

FINDINGS OF FACT

1. The Respondent, Department of Health and Rehabilitative Services is the state agency charged with the responsibility of monitoring the Aid For Families with Dependent Children, (AFDC), program in Florida. Petitioner Nola Little and the Intervenors, are recipients of services under that program and subject to the terms of the existing and proposed rules.

2. The Department published notice of Proposed Rules 10C-1.080, 10C-1.082, and 10C-1.107 in Volume 15, Florida Administrative Weekly, at pages 3082-3083, on July 21, 1989. The rules in question deal with the issue of entitlement to payment to eligible applicants for AFDC. Rule 10C-1.080(10)(b) has been amended to change the definition of the date of entitlement to the date of authorization or the 30th day from the date of application, whichever is earlier. Rule 10C-1.080(11) has been amended to provide that the first payment to an eligible applicant must be made for the date of authorization or the 30th day from the date of application, whichever is earlier, and provides for a prorated payment based on the date of entitlement. Rule 10C-1.082 has been amended to provide that grants of applicants will be prorated for the initial month of entitlement. The increase in grant for the needs of persons added to the grant will be prorated for the initial month of grant increase. Rule 10C-1.107 has been amended to provide that the initial month's grant will be prorated from the date of entitlement. The initial month of grant increase for adding the needs of individuals to the grants will be prorated from the add date.

3. Thereafter, on August 10, 1989, Petitioner Little filed a petition to determine the invalidity of the proposed rules alleging that:

> a. They violate Section 409.235, Florida Statutes, which requires the Department to furnish monthly financial assistance, and
> b. They provide an inadequate statement of economic impact.

4. At the time she filed her Petition, Nola Little was a pregnant AFDC applicant residing in Pensacola, Florida. Intervenor Perez and his wife reside in Miami, Florida with Mrs. Perez' son by a former marriage. Mrs. Perez and her son were found to be eligible for AFDC. Mr. Perez and his natural children have not been approved due to pending consideration of Mr. Perez' determination of incapacity as a result of a back injury. He is, otherwise, eligible for AFDC. All Petitioners will receive prorated benefits under the proposed rule.

5. Prior to the 1988 legislative session, the Department had been requested by the President of the Florida Senate to identify programs for a possible 5% reduction. The date of entitlement for new applicants for AFDC, the subject matter of one rule in question, was identified as one of those programs. Though the Governor agreed with the Department's proposal and recommended it, the Legislature did not adopt that program for cuts in the 1988 session.

6. Again, prior to the 1989 legislative session, the Governor directed each department to identify programs for possible cuts up to 10% for a total of $23.9 million. As a part of his directive, he hypothetically identified cuts in programs to reach that figure. One item so identified was a change in the date of entitlement to AFDC.

7. After considering various ways to implement the cuts, (4 different program alternatives), all of which had an unpleasant effect, Mr. Don Winstead, Assistant Secretary of DHRS for Economic Services, chose the current method of reduction and recommended it to the Department's Deputy Secretary for Administration who incorporated it as a part of the entire Department submittal to the Governor. A 5% cut list was ultimately forwarded to the Governor in December 1988, which included two of those alternatives on the 10% list. The instant program cuts were not recommended by the Governor.

8. Mr. Winstead and his staff generated substantial input to the Legislature, its committees, and its staffers about the subject. Ultimately, the Legislature, in conference, agreed to certain cuts. Economic Services was reduced by some $17,476,531.00, including the programs covered by the proposed rules in question. It was clear to Mr. Winstead that the Legislature mandated the reduction as proposed. In July 1988, the Department's District Directors were told to implement the change.

9. In Mr. Winstead's opinion, if the Department had "its druthers," it would not have made the change. The Department's policies are driven by the Governor's direction. Since the Governor did not recommend the cut, the official position of the Department is, and was, against it. In fact, Mr. Winstead felt it was not a good idea and testified against cuts in committee hearing. He indicated there that neither he nor the Department supported this cut or recommended it. Though he did not agree, the lawmakers possessed the authority to make the change and the cuts were passed by the Legislature and signed by the Governor. He is, therefore, obliged to implement them.

10. Since the passage of the act which mandates the cuts, Mr. Winstead has not considered alternatives to direct budget deficit reduction, nor has the Department applied to the Governor to transfer social and economic program funds to address budgeting problems with the AFDC budget.

11. Mr. Winstead's position is that the Appropriations Act mandates him to modify the AFDC grant date and the specific basis therefor is Appropriation Number 864 which gives general revenue and trust fund amounts which, when considered with the Legislature's statement of intent, indicates what has to be done. Admittedly, there is no specific mandate from the Legislature or the Governor to cut this specific program. However, when the list of possible program reductions was prepared in an in-house memorandum, the cut in AFDC funds was identified as #3.

12. Mr. Winstead's position with regard to this cut is supported by Jennifer Lange, a program administrator with the Department whose unit wrote the proposed rule. She felt the Department had no option but to promulgate the rule due to the Legislative mandate. Considering the evidence as a whole, it is found that a logical conclusion to be drawn from the pronouncements, documents, and directives coming from the Legislature through the entire appropriations process, is that drawn by the Department here, to wit: cuts were mandated by the Legislature in this and other programs and action must be taken to implement them. The drafting and promulgation of the rule in question is but an appropriate extension of that conclusion.

13. Assuming the rule is ultimately promulgated and funds are saved thereby, it is the intention of the Department to continue with the mandate of the Legislature until that body affirmatively changes its direction, even if more money is found somewhere else. Under the proposed rule, an applicant would be issued a check for the first period 30 days after application or after

approval of the application, whichever came first. Since the Department routinely runs three payrolls a month, it would probably be one third of a month after the cutoff date that an applicant would receive his or her first check.

14. Ms. Lange also was instrumental in drafting the Economic Impact Statement (EIS) to accompany the rules, utilizing in doing so, information garnered from a number of sources. Some figures utilized therein are a generalized estimate only. The majority of applications are accomplished within the 30 day period. Ms. Lange is satisfied that in the preparation of the EIS, all pertinent information required to be considered was considered and nothing that would materially effect the probity of the EIS was eliminated.

15. The actual EIS was drafted by Mr. Greenwood and his team in late May or early June 1989. In doing so, Mr. Greenwood did not consider population additives. While the drafters of the EIS considered the entire subject matter, including legislative policy, no impacts, other than those ultimately addressed therein, were considered. The 6,000 case per month figure was used because it was the information provided by the Department's data unit and as a figure that was being used elsewhere in the Department. This was not the latest figure available, however. Current figures available reflected a potential for slightly in excess of 8,000 cases per month. The difference of over 2,000 cases per month is substantial. Mr. Greenwood concludes that the maximum which can be lost to any applicant is 30 days benefit, and the Department presumed, for the EIS, that all would lose that amount. In reality, that is unlikely.

16. There is no doubt that the implementation of the proposed rule will have an impact on the economic welfare of those currently receiving AFDC and those who may receive it in the future. Rosemary Gallagher, an associate with the Florida Catholic Conference and a lobbyist in the area of social services, is very familiar with the social service agencies available to the poor in this state. In her opinion, having studied the proposed rules, almost all agencies will be adversely affected by their implementation. Clients will require more agency help as a result of the rule implementation and homeless shelters will be hit the hardest. The homeless population in Florida is composed of approximately 1/3 single women with children who need financial assistance to be self-sufficient. Reduction in AFDC benefits will require the client to stay in the shelter longer to accumulate rent money and funds for other required expenditures. By the same token, other organizations will similarly be affected.

17. In addition, less money will have a devastating effect on the agencies , and the delay in receipt of payments, occasioned by the proposed change, will, in her opinion, hurt hundreds of thousands who are affected. This cutback is, she believes, the worst thing to happen in a long time, and she lobbied against the basic legislation calling for cutbacks.

18. Ms. Gallagher has never been a case worker and has no degree or course work in either economics or social work. It is her opinion, however, that the legislative statement relied on by the Department calls for modification to AFDC, not necessarily a cut. As a matter of history, she relates, the Department has been asked for the last several years to list items for cut and historically has always identified those items it felt certain the Legislature would never cut. When, in this current year, it listed the currently considered program, in her opinion, this was done with the belief the Legislature would not approve any cuts, a position consistent with that indicated by Mr. Winstead, but cuts were nonetheless made by that body without, she believes, a proper public hearing.

19. Dr. Frederick Bell, an economist on the faculty of Florida State University and an expert in economics, micro-economics, and the techniques of economic impact statement preparation, reviewed the instant EIS along with depositions and the transcript of public hearing on the matter. He has done some rudimentary research into the effect of the proposed rules and considered therewith the spending patterns of low income people in the areas of housing, clothing, and transportation. He has also looked at small businesses in Florida and feels that the EIS as drafted does not accurately reflect the situation and its method of preparation is poor. In his opinion, it is inadequate to show the effect on the economy since it failed to consider all factors pertinent thereto.

20. He objects to the use of the term "negative cost" as used in the document, which he does not considers to be a proper economic concept. He assumes it is another term for savings.

21. He assumes the EIS reference to 6,000 applications which are those approved per month. Other pertinent documentation, however, refers to a substantially larger number of applications (8,042) yet neither figure is sourced, and Dr. Bell is unable to verify their accuracy. The parties stipulated that in formulating the EIS, the Department utilized figures provided by the Legislature, but Dr. Bell's complaint regarding his inability to check their accuracy is still valid.

22. Dr. Bell also questions the average grant amounts and notes that the Department assumes that the determination of eligibility is always going to be accomplished within 30 days. In his opinion, this is neither reasonable nor substantiated. He believes it is a "monumental" error to put into the EIS entirely different numbers than are actually expected. In the instant case, this resulted in a difference of $6.4 million which is substantial.

23. With regard to that section of the EIS that starts, "Changing the effective date of grant increases," on the one hand, it indicates a cost of increased benefits as a result of adding individuals to the household, and on the other hand claims a reduced cost resulting from the loss of benefits to newborns. Dr. Bell professes to be "flabbergasted" by the conclusion drawn in the EIS that the additional costs to the agency will be balanced out by the benefits saved. In his opinion, there is absolutely no justification for that conclusion.

24. He also disputes agency figure of $17.5 million in resultant cuts, concluding it would actually be more in the area of $23.9 million. As a result, he believes the impact will be substantially greater to individuals than that indicated. He also contends the state should have considered the cumulative effect on the economy of governmental program cuts, otherwise known as the "multiplier effect." A reduction in amounts spent will have a resultant double effect on the businesses where this money would normally be spent. There is nothing shown in the EIS to indicate this factor was considered.

25. Dr. Bell also believes the agency should have considered the effects of its cutback on the counties and their support agencies as well as the nongovernmental charities involved in providing assistance to the underprivileged who will have to pick up the slack resulting from the cut in public money.

26. He feels the EIS estimate of the cut's minimal effect on small minority businesses is not supported. It appears to him that the agency failed

to utilize the services of the small and minority business advocate attached to the Florida Department of Commerce who could have provided input on whether a cutback in spending would have had a major effect on minority business enterprises. Dr. Bell is convinced that it will and his opinion is diametrically opposed to that of the Department. In substance, Dr. Bell was convinced that the EIS was "completely inadequate."

27. In his cross examination of Dr. Bell, Respondent's counsel indicated there would be no impact on small and minority business and urges that Dr. Bell was stretching when he claims there would be. Such argument is ingenuous however. Regardless of which of the two impact figures cited is used, such a sum cannot help but have some impact on an economy which includes small businesses. The degree thereof and whether or not that impact constitutes grounds to invalidate the rule is another question altogether.

28. Nothing in the statute or the rules relating to the sufficiency of an EIS requires that there be unanimity of opinion as to the conclusions drawn therein. Taken as a whole, the evidence appears to show, and it is so found, that while the EIS may well be subject to some disagreement as to a number of the provisions therein, and while some provisions may well be contra to the weight of the best evidence available, it is, nonetheless, basically adequate in content and form to constitute an acceptable economic impact statement in support of the proposed rules here.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.56, Florida Statutes. The Petitioners have the burden in this proceeding since they are challenging the validity of the Department's proposed rules. Agrico Chemical Company v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978), cert. den. 376 So.2d 777 (Fla. 1st DCA 1986).

30. The Department is charged with conducting, supervising and administering all social and economic services within the state to be carried on by the use of federal or state funds or funds from any other source. The Department shall determine the benefits each applicant or recipient of assistance is entitled to receive under the statute. Section 409.026(1), Florida Statutes.

31. Under the provisions of Section 409.235(1), Florida Statutes, it is the intent of the Legislature to furnish financial assistance and rehabilitative and other services to dependent children and to their families who are of a degree of relationship as specified by the Department. Monthly assistance, in such amount as determined by the Department, shall be paid to an individual who is eligible under Section 409.185, Florida Statutes.

32. Section 409.185(4) provides that the Legislature shall set the standard of need and the payment levels with respect to payments for AFDC in the General Appropriations Act. Under the provisions of subsection (5) of this statute, the departmental biennial budget submitted to the Governor shall include a report on current and projected needs with recommendations regarding the standard of need. A copy of this report shall be provided to pertinent committee chairmen in each house of the Legislature, and the statute also provides, at Section 409.185(5)(c):

> [to) the chairman of the appropriations subcommittee of each house that has jurisdiction over the budget of the Department of Health and Rehabilitative Services for consideration of setting the standard of need and the payment levels for aid to families with dependent children in the appropriations act.

33. Petitioners claim that the proposed rules in question here, promulgated under the Department's authority to do so, are invalid in that they violate Section 409.235, Florida Statutes, which requires the Department to furnish monthly financial assistance, and they provide an inadequate statement of economic impact.

34. It is recognized that Section 120.54(15), Florida Statutes, provides that, "No agency has inherent rulemaking authority...." However, "rulemaking authority may be implied to the extent necessary to properly implement a statute governing the agency's statutory duties and responsibilities." Fairfield Communities v. Florida Land and Water Adjudicatory Commission, 522 So.2d 1012, 1014 (Fla. 1st DCA 1988). Here, the Department promulgated its rules in an effort to comply with what it considered to be a mandate of the Legislature, contained in the General Appropriations Act for the current year, to reduce the amounts spent in certain areas. Admittedly the legislative mandate did not particularize the instant action of the Department. Instead, the Legislature, in its appropriation, reduced the amounts available to the Department for disbursement under the AFDC program and, within the authority of the Department to promulgate rules for the administration of programs consistent with the availability of funds provided by the Legislature, chose to promulgate the instant rules in such a manner that eligible recipients would still receive the required aid while the Department had an appropriate and not unlimited time in which to process applications.

35. The intent of the new rules, and the basic thrust of Petitioners' complaint, is that the eligible applicant now will receive payment upon approval, but in no case, more than 30 days after application.

36. Petitioners assert this is violative of their rights as outlined under Section 409.235. Petitioners also claim that since the Legislature did not specifically direct the cuts to be implemented in that manner chosen by the Department, and since, they claim, the Department was erroneously relying on what it considered to be legislative direction to do so, its action was, thereby arbitrary and capricious and, therefore, invalid. This is simply not so.

37. Section 120.52(8), Florida Statutes, defines and specifies that an "invalid exercise of delegated legislative authority means action which goes beyond the powers, functions, and duties delegated (to an agency) by the Legislature." It further provides that if any one or more of the following applies, an agency's proposed or existing rule is invalid:

> (e) The rule is arbitrary or capricious.

38. In considering any challenge to an agency's rules, it is recognized that the party asserting the invalidity of such rule has a heavy burden. In Austin v. Department of Health and Rehabilitative Services, 495 So.2d 777 (Fla. 1st DCA 1986), the Court stated:

> ...agencies are given wide discretion in the exercise of their lawful rulemaking authority. "An agency's construction of a statute is entitled to great weight and is not to be overturned unless clearly erroneous." Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515, 517 (Fla. 1st DCA 1984).

39. Further, in Askew v. Agrico Chemical Co., 376 So.2d 74 (Fla. 1979), the Court stated that:

> ...a court must uphold the validity of a proposed rule if the rule is reasonably related to the purpose of the enabling legislation, and is not arbitrary and capricious. The burden is on one who attacks a rule to show that the rule exceeds its statutorily delegated authority. The person attacking the rule must show also that the rule is arbitrary and capricious by a preponderance of the evidence.

40. Where an agency construes the statute in its charge in a permissible way, that interpretation must be sustained though another may be possible or even, in the view of some, preferable. State, Department of Health and Rehabilitative Services v. Framat Realty, Inc., 407 So.2d 238, 249 (Fla. 1st DCA 1981); Pan American World Airways, Inc. v. Florida Public Service Commission and Florida Power and Light Company, 427 So.2d 716, 719 (Fla. 1983). The Petitioners must show that the agency's rule interpreting the statute is clearly erroneous or unauthorized. ABC Liquors, Inc. v. Department of Business Regulation, 397 So.2d 696, 697 (Fla. 1st DCA 1981). Administrative Rules should not be invalidated if they are reasonably related to the purposes of the enabling statutes, and are not arbitrary or capricious. Grove Isle Ltd. v. Department of Environmental Regulation, 454 So.2d 571 (Fla. 1st DCA 1984).

41. Clearly, the Florida Legislature, by reducing the appropriation to the Department, intended that less funds be expended on various programs within the Department's supervision. By its specific reduction of the area in which AFDC is contained, the Legislature indicated its intention that changes be made in the implementation of the program and its application even if specific directions were not given to the Department as to how to implement these changes and savings.

42. In Agrico Chemical Co. v Department of Environmental Regulation, 365 So.2d 759, 763 (Fla. 1st DCA 1978), the terms, "arbitrary" and "capricious" were defined as follows:

> A capricious action is one which is taken without thought or reason or irrationally. An arbitrary action is one not supported by facts or logic, or despotic.

43. Here, the proposed rules at issue are neither arbitrary nor capricious. The record establishes that the rule was the well reasoned response of the agency to the basic guidelines and directives given by the Legislature and contra to the claim of the Petitioners, the Department's analysis of the thrust of those directions was not erroneous.

44. The second thrust of Petitioners' attack on the rule making process here is its claim that the economic impact statement accompanying the proposed rules is deficient.

45. Review of the EIS in this case resulted in a finding herein that while the EIS may be subject to different opinion and while different conclusions might be drawn as to its sufficiency, it was, nonetheless, considered to be adequate to support the proposed action herein.

46. The preparation of an EIS, "is a procedural aspect of an agency's rulemaking authority." Florida-Texas Freight, Inc. v. Hawkins, 379 So.2d 944, 946 (Fla. 1979). As such, it is subject to the "statutory harmless error rule" of Section 120.68(8), Florida Statutes. Department of Health and Rehabilitative Services v. Wright, and Department of Health and Rehabilitative Services v. Mitchell, 439 So.2d 937 (Fla. 1st DCA 1983).

47. In the instant case, even assuming, arguendo, that the EIS contained some inaccuracies, there has been no showing that these inaccuracies either harmed the Department's decision making process or adversely affected its decision. In fact, the alleged economic impact described by both Dr. Bell and Ms. Gallagher was not supported by any hard figures but was more their opinion of the types of activities which would be adversely affected.

48. The requirements of Section 120.54(2), Florida Statutes, do not oblige the Hearing Officer to reverse a Department decision solely on the basis that the attendant EIS appears to be facially deficient. To do so would tend to exalt form over substance. See Florida-Texas Freight v. Hawkins, supra. Here, it is arguable that the Department's EIS was less than thorough. However, if the proceedings are not rendered unfair thereby, or if the action is not found to be incorrect, then minimal deficiencies in an EIS will not constitute reversible error. Plantation Residents' Association v. School Board, 424 So.2d 879 (Fla. 1st DCA 1982), rehearing denied January 26, 1983.

49. There is no evidence in the record of this proceeding which would indicate that the EIS was fatally flawed and resulted in an improper promulgation of unnecessary rules. The Department is subject to the funding directives of the Legislature and, as a branch of the Executive Department, is subject also to the guidance of the Governor. Here, Petitioners have failed to satisfy their burden to show that the proposed regulation is an invalid exercise of delegated legislative authority and the proposed rules are neither arbitrary or capricious, nor do they violate Petitioners' rights under Section 490.235, Florida Statutes.

Based upon the foregoing, it is, therefore

ORDERED THAT the Petition filed herein seeking a determination of the invalidity of Proposed Rules 10C-1.080, 10C- 1.082, and 10C-1.107 is DISMISSED and the relief sought therein, DENIED.

DONE and ORDERED in Tallahassee, Florida this 13th day of December, 1989.

ARNOLD H. POLLOCK, Hearing Officer
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(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of December, 1989.

APPENDIX TO FINAL ORDER
IN CASE NO. 89-4425R

The following constitutes my specific rulings pursuant to Section 120.59(2), Florida Statutes, on all of the Findings of Fact submitted by the parties to this case.

FOR THE PETITIONER:

1-3. Accepted and incorporated herein.
4-9. Accepted and incorporated in part herein.
10-14. Accepted and incorporated in part herein.
15-17. Accepted and incorporated herein.
18. Accepted as interpreted to mean a recommendation for specific action.
19-21. Accepted and incorporated herein.
22-25. Accepted in so far as representing that the Legislature did not mandate the specific cut.
26-28. Accepted.
29-31. Accepted and incorporated herein.
32. Accepted but not proven.
33-35. Alleged by Petitioners but not proven. However, it is assumed that the implementation of the rules will have some undefined, temporary impact on recipients.
36-38. Accepted and incorporated herein.
39-42. Accepted and incorporated herein, but recognizing that the dollar value in question is spread over in excess of 8,000 people.
43. The drafter used information provided which was not the most current information available.
44-46. Accepted.
47. Accepted as to error; rejected as to gross nature thereof.
48. Accepted and incorporated herein.
49. Rejected if interpreted to indicate a loss of total benefits. Partial benefits may be lost.
50-53. Accepted.
54 & 55. Accepted.
56. Accepted.
57 & 58. Accepted in that neither is mentioned therein.
59. Accepted except for the term, "enormous."
60 & 61. Accepted as reported.
62. Accepted except for the term, "devastating."
63 & 64. Accepted.

65-69. Accepted.
70. Not proven.
71. Accepted.
72-75. Accepted.
76-83. Not present.
84-86. Accepted.

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