

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PEACE RIVER CENTER FOR PERSONAL)
DEVELOPMENT, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 94-4048
)
DEPARTMENT OF LEGAL AFFAIRS,)
BUREAU OF ADVOCACY & GRANTS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, James E. Bradwell, held a formal hearing in this case on September 28, 1994, in Bartow, Florida.

APPEARANCES

For Petitioner: Dennis Eshman, Esquire
Peace River Center for Personal
Development, Inc.
1745 Highway 17, South
Bartow, Florida 33830

For Respondent: M. Katherine Lannon, Esquire
Senior Assistant Attorney General
Chief, Administrative Law Section
PL-01, The Capitol
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

Whether Respondent, in exercising discretion to decline to renew the Victim of Crimes Act (VOCA) funding request of the Petitioner during the 1994/95 fiscal year, acted in an arbitrary and/or capricious manner.

PRELIMINARY STATEMENT

Petitioner was a recipient of VOCA funding for the 1993/94 fiscal year. Petitioner applied for, but was denied, funding for the 1994/95 fiscal year. Based on that denial, Petitioner requested a formal hearing to contest that denial. Following that request, this matter was referred to the Division of Administrative Hearings by Respondent for the assignment of a hearing officer to conduct a formal hearing.

At the hearing, Petitioner presented the testimony of Melissa Songer, Judith Flanagan, Donna Placenza, Donna Rininger, Deborah A. Burke, and Kelly

Butz. Respondent presented the testimony of Karen Weaver and Marcie Davis. The parties stipulated to the late filed deposition of Shirley Hardey as hearing testimony.

The parties filed proposed recommended orders on December 9, 1994 which were considered in preparation of this recommended order. Respondent's proposed findings of fact are substantially adopted. Proposed findings of fact which are not incorporated herein are the subject of specific rulings in an appendix.

Based upon my observation of the witnesses and their demeanor while testifying, and the entire record compiled herein, I hereby make the following relevant:

FINDINGS OF FACT

1. Peace River Center for Personal Development (herein Petitioner) is a community service center that offer services to clients who are victims of crimes.

2. Petitioner has been awarded VOCA funds in the past by Respondent. Pursuant to the contract with Respondent, Petitioner was advised that VOCA funds were awarded specifically and that renewal was not automatic but would be considered each funding year. The contract and the VOCA guidelines grant Respondent the discretion to renew or not renew funding requests

3. By letter dated March 23, 1994, Respondent advised Petitioner that its VOCA contract was expiring on June 30, 1994. Petitioner was also advised that its contract may or may not be renewed for an additional year depending on the outcome of a program evaluation and the availability of VOCA funds.

4. In the March 23, 1994 letter to Petitioner, Respondent advised Petitioner that federal VOCA funding to Florida for the 1994/95 fiscal year had been reduced and the reduction would be passed on to applicants.

5. The issuance of renewal funds for the 1994/95 VOCA contracts were based on three criteria, (1) the grant renewal requests, goals and objectives, and budget; (2) an evaluation of the VOCA program's effectiveness in serving victims of crime; and (3) the availability of funds.

6. For fiscal year 1993/94, Petitioner received \$55,000 in VOCA funds. Those funds were to assist with the provision of services to adult sexual abuse and domestic violence victims.

7. Petitioner submitted documentation in support of its initial VOCA funding request and indicated that part of its funding would be used to hire a coordinator therapist and a child care advocate. However, during the course of the 1993/94 fiscal year, Petitioner did not fill those positions until the second half of the year based on delays that it experienced in building a new facility. As a result, a portion of the VOCA funds lapsed. Because of those delays, a contract amendment was executed by the parties allowing the lapsed money, which would have been spent for those professional positions, to be used for furniture and supplies. Based on the modification, revised goals were established. Thus, Petitioner set out to serve only 20 children in the child care unit instead of the 60 as noted in the funding request and to provide only 300 hours of child care to children of domestic violence victims instead of the 1000 hours as requested. The modification was an effort to maximize funding in the interest of the community for the 1993/94 fiscal year.

8. Respondent established a procedure for evaluating all applicants for VOCA funding grants in 1994/95. This procedure included forwarding a packet of information which was sent to all applicants. The packet included a cover letter, instructions, a check list and various forms to be completed.

9. As noted, the federal VOCA grant to Respondent was reduced by 5 percent for fiscal year 1994/95. Although Respondent's staff initially recommended to the Attorney General that all VOCA grants be reduced by 5 percent, Respondent reconsidered and decided that it would be more appropriate to evaluate each program to determine which programs were more efficient and were providing the most needed services to the communities. Respondent also reviewed those programs which provided services that were offered by VOCA monies and were achieving the goals and objectives that were originally stated in the funding request. The Respondent implemented this procedure and in doing so, set up a competitive process to rate each of the 48 existing VOCA grantees.

10. To be awarded VOCA funds, the applicants were initially requested to submit renewal applications. Secondly, Respondent solicited comments from community representatives concerning the performance of the grantee over the preceding fiscal year and evaluated those comments. Next, Respondent reviewed and analyzed the funding by the internal monitoring system that was in place at the time. Utilizing this procedure, the grant managers within Respondent's office reviewed their internal reviews, evaluated the monitoring report of the agency that they had prepared including monthly reimbursement requests and any communication or correspondence that had been entered into between the agencies.

11. Respondent's input from the community centered around the performance of the grantees. In measuring their performance, Respondent attempted to get at least three certifiers from persons in the community who worked with, or were familiar with, the grantees. Respondent selected three of the certifiers that had originally certified the grantee program prior to the award of the first VOCA grant and sent forms to those entities. In addition, Respondent attempted to get two additional certifiers, the state attorney's office or local law enforcement, to participate in the certification process. This second group of certifiers was contacted by telephone. In Petitioner's case, only three certifications were submitted. Respondent reviewed those written certifications and rated Petitioner.

12. One certifier observed that Petitioner had insufficient staffing, that waiting periods were too long for victims to get in and that rape crisis volunteers needed to be matched in age with rape victims. That certifier did not intend for her review to impact adversely upon Petitioner's VOCA grant request although she stood by the representations made in the certification. The next certifier related that Petitioner displayed a program weakness in that victims of domestic violence were required to attend the same domestic violence treatment program class as the abuser or pay an additional \$200 to attend a different treatment program. She also noted that certain child care victims were not assisted during court appearances, which was an area that Petitioner specifically noted that it would provide services under the VOCA grant.

13. The next certifier related that Petitioner had a number of weaknesses in its program, albeit unspecific, and that she was familiar with the quality of services that Petitioner rendered with VOCA funds since February of 1994.

14. Upon receiving all of the certification information, Respondent compiled a report and ranked each applicant by assigning a numerical value to each applicant. The ranking was based on the totality of the responses received by Respondent.

15. All of the applicants were rated and based on those ratings, their VOCA grant applications were either renewed or not renewed. Of the 48 applicants evaluated, 45 were funded in whole or in part based on their numerical ranking and 3 requests were not funded, including Petitioner's request. Of all the applicants, Petitioner was ranked 48th or last.

16. Specifically, Petitioner was advised of the non-renewal by Respondent in a June 10, 1994 letter that:

This decision was based on an internal performance evaluation and upon performance evaluations of your program by agencies and organizations within your community.

A major factor in the non-renewal determination was the administration of the VOCA funds, resulting in hiring delays, causing a de-obligation of funds and unnecessary waiting lists for crime victims. The effectiveness of services to your community was also a major factor in not offering your agency a renewal contract.

17. Finally, Respondent's chief of advocacy and grants management of the Attorney General's office, Marcie Davis, was formerly employed in a position where she answered a toll-free information line to assist victims of crimes. Ms. Davis recalled an attempt, by her, to get counselling for a child who was a victim of domestic violence in Petitioner's service area (his mother was murdered by her boyfriend) during the 1993/94 fiscal year. Ms. Davis was unable to get services from Petitioner for that child due to its waiting list - a period of eight to thirteen weeks.

18. Respondent's denial of Petitioner's application for VOCA funds was a non-renewal and was not a termination for cause.

19. Respondent utilized sound discretion in awarding the VOCA funding to the various grantees. There was no evidence that the ranking of any grantee, including Petitioner, was either arbitrary or capricious.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Section 120.57(1), Florida Statutes.

21. The parties were duly noticed pursuant to Chapter 120, Florida Statutes.

22. Petitioner has the burden of proof in this proceeding as it is the party asserting the affirmative of the issue. See, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

23. The decision to award or not to award VOCA grant funds is a discretionary one to be made by Respondent, as evidenced by the contract and the VOCA grants program final program guidelines. To overturn the Respondent's exercise of discretion, Petitioner must establish that the Respondent acted in a manner that was either arbitrary and/or capricious. See, Okaloosa Asphalt Enterprises v. Okaloosa County Gas District, 524 So.2d 1095 (Fla. 1st DCA 1988).

24. A capricious action is one that is taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts, logics or is despotic. Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978). See also, Dravo Basic Materials Company, Inc. v. State Department of Transportation, 602 So.2d 632 (Fla. 2d DCA 1992).

25. Petitioner failed to establish that Respondent's denial of its request for VOCA grant fundings for the 1994/95 fiscal year, was based on arbitrary, capricious or irrational actions. There was substantial evidence that Respondent relied on a specific and evaluative process which was supported factually and logically. Faced with decreased funding, Respondent made a discretionary judgement that some programs would get less than they requested and some would receive no funding. Petitioner was one of those programs that received nothing based on the evaluation of the program and services which it provided to the community that it served.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that:

Respondent enter a final order denying Petitioner's request to reverse the discretionary decision made to deny Petitioner's request for VOCA funding for the 1994/95 fiscal year.

DONE AND ENTERED this 26th day of January, 1995, in Tallahassee, Florida.

JAMES E. BRADWELL
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of January, 1995.

APPENDIX TO RECOMMENDED ORDER

Rulings on Petitioner's proposed findings of fact:

Paragraph 4, rejected, not probative, paragraph 5 rejected, contrary to the greater weight of evidence, paragraphs 11-13, Recommended Order.

Paragraph 7, rejected, speculative and not probative.

Paragraph 9, rejected, contrary to the greater weight of evidence,
Paragraphs 9 and 10, rejected contrary to the greater weight of evidence,
paragraphs 12 and 17, Recommended Order.

Rulings on Respondent's proposed findings of fact

Paragraph 11, rejected, irrelevant and not probative.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.