

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ADULT FAMILY CARE HOME,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 96-4099
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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RECOMMENDED ORDER

A formal hearing was conducted in this proceeding on January 16, 1997, in DeLand, Florida, before Daniel Manry, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ms. Marvell Lawton, pro se
Post Office Box 4040
DeLand, Florida 32723

For Respondent: Michael O. Mathis, Senior Attorney
Agency for Health Care Administration
2727 Mahan Drive, Suite 200
Tallahassee, Florida 32308-5403

STATEMENT OF THE ISSUE

The issue for determination is whether the application for an initial license to operate an Adult Family Care Home ("AFCH") should be denied because the applicant submitted fraudulent or inaccurate information in the application.

PRELIMINARY STATEMENT

By letter dated July 11, 1996, Respondent denied Petitioner's application for an initial license to operate an AFCH. Petitioner timely requested a formal hearing.

At the formal hearing, Petitioner testified in her own behalf, called no other witnesses, and submitted no exhibits for admission in evidence. Respondent presented the testimony of three witnesses and submitted eight exhibits. The identity of the witnesses and exhibits and the rulings regarding each are set forth in the transcript of the formal hearing filed with the undersigned on January 27, 1997.

Respondent timely filed its proposed recommended order ("PRO") on February 11, 1997. Petitioner did not file a PRO.

FINDINGS OF FACT

1. Petitioner is owned by Ms. Marvell Lawton, R.N. (the "applicant"). On June 3, 1996, the applicant applied for a license to operate an AFCH at 550 East Division Street, Deland, Florida (the "facility").

2. Respondent is the state agency responsible for licensing AFCHs. Respondent requires several documents to be submitted with the application including: a Florida Department of Health and Rehabilitative Services ("HRS") Community Residential Homes Sponsor Certification Form (the "HRS Form"); a statement by the local zoning office that the facility is properly zoned (the "zoning approval"); and a fire inspection report.

3. The applicant altered the HRS Form, the zoning approval, and the fire inspection report to indicate that the facility was approved for a maximum capacity of five residents. Respondent initially denied the license application solely on the basis of the fire inspection report. However, the basis of denial was

amended to include the HRS Form and the zoning approval pursuant to an order entered by Judge Stephen F. Dean on October 16, 1996.

4. By letter dated July 11, 1996, Respondent notified the applicant that her application was denied. The letter stated, in relevant part, that the specific basis for denial was:

. . . Submission of fraudulent or inaccurate information to the agency. The fire safety inspection report submitted with the application package was altered to indicate approval for five residents when the fire marshal's office had only approved three residents. The local fire marshal's office has verified that the original approval was for three residents because Ms. Lawton did not want to install a manual alarm system which is required for four or five residents. Submission of fraudulent or inaccurate information to the agency is grounds for denial of the AFCH application, s. 400.619(11)(e), F.S.

5. On April 2, 1996, the applicant obtained a fire inspection report from the City of Deland Fire Department (the "Fire Department"). The fire inspection report limited the maximum capacity of the facility to three residents because the applicant did not have the manual alarm system required for four or five residents and did not wish to install such a system.

6. The applicant altered the fire inspection report that she submitted with her application. She changed the number "3" to a "5" so that the fire inspection report appeared to approve the facility for a maximum capacity of five residents.

7. As part of its review of the application, Respondent attempted to verify the fire inspection report included in the application by calling the Fire Department. When the Fire Department did not verify that the maximum capacity was five

residents, Respondent obtained a copy of the original fire inspection report from the Fire Department.

8. On March 22, 1996, the applicant obtained a zoning approval from the City of DeLand stating that the maximum capacity of the facility is three residents. The applicant added the phrase "to 5" after the number "3" in the zoning approval so that the zoning approval authorized a maximum capacity of "3 to 5" residents.

9. On June 3, 1996, the applicant submitted the HRS Form to Respondent. The applicant amended the portion of the HRS Form requiring a designation of capacity for facilities with six or fewer residents as well as that for facilities with 7-14 residents. The latter category does not apply to Petitioner.

10. The applicant did not submit fraudulent information to Respondent. The applicant did not intend to defraud Respondent. She misunderstood the application process.

11. The facility has space for only three residents. It is physically impossible to house more than three residents in the facility.

12. The applicant would have gained nothing from an authorized capacity of more than three residents. The applicant's refusal to add the manual alarm system required for four or five residents is consistent with the facility's limit of three residents.

13. The applicant assumed that Respondent's minimum license category is for a license of 1-5 residents. The applicant

altered the HRS Form, the zoning approval, and the fire inspection report under the mistaken belief that the capacity designation in each document should conform to the maximum capacity in Respondent's license category. In the HRS Form, the applicant even altered the licensed capacity for facilities with 7-14 residents.

14. The applicant mistakenly submitted inaccurate information to Respondent within the meaning of Section 400.619(11)(e), Florida Statutes.¹ The maximum licensed capacity of the facility must be consistent with fire safety requirements for the welfare of the residents. The licensed capacity of the facility must also conform to applicable zoning laws.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto. The parties were duly noticed for the formal hearing.

16. The burden of proof is on Petitioner. Petitioner must show by a preponderance of the evidence that the applicant did not submit inaccurate information with the license application. Young v. State, Department of Community Affairs, 567 So.2d 2 (Fla. 3d DCA 1990); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977).

17. Petitioner did not satisfy its burden of proof. The HRS Form, zoning approval, and fire inspection report submitted with the application were inaccurate. They incorrectly indicated that the facility had been approved for a maximum capacity of five residents.

18. Section 400.619(11)(e) provides, in relevant part, that Respondent may deny a license for submitting inaccurate information to Respondent. Section 400.619(13) authorizes Respondent to adopt rules to implement Section 400.619(11)(e).

19. Section 400.621(1) requires Respondent to promulgate . rules that establish minimum standards and licensure procedures for adult family-care homes.

20. Section 400.621(2) further provides:

Minimum firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the department [the Department of Elderly Affairs] and the agency [the Agency For Health Care Administration]. Such standards must be included in the rules adopted by the department after consultation with the State Fire Marshal and the agency.

21. Fire safety standards are prescribed in Florida Administrative Code Rule 58A-14.0091.² The introductory paragraph in Rule 58A-14.0091 states:

Fire safety protection shall be governed by minimum fire safety standards established by the department in conjunction with the State Fire Marshal. The standards are included in Chapter 21 and sections 1.3, 7.1, 7.2, and 7.3 of Chapter 31 of the National Fire Protection Association (NFPA 101), Life Safety Code, 1994 edition, which is adopted herein and incorporated by reference, as modified by this rule.

Rule 58A-14.0091(7) requires an AFCH to have:

. . . manual activated continuously sounding pull stations. Any home without 110-volt AC electrical service shall have the pull stations installed by a licensed electrician.

22. Petitioner does not dispute the applicability of the foregoing statutes and rules. Nor does Petitioner dispute their interpretation by the Fire Department.

23. Section 400.619(11)(e) states that Respondent may deny a license application when inaccurate information is submitted. The statute does not require denial.

24. The purpose of a administrative hearing is to formulate final agency action. The purpose is not to review agency action taken previously. McDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977).

25. In formulating final agency action, the undersigned may consider evidence of relevant facts that exist at the time of the administrative hearing. Id. The facts show that the welfare and safety of the residents in the facility will be protected if the licensed capacity of the facility is limited to three residents. The facility complies with fire safety codes and zoning requirements for three residents.

26. The applicant testified at the administrative hearing that no more than three adults can reside in the facility. Her testimony was credible and persuasive and consistent with her refusal to add a fire alarm system required for more than three residents. Respondent offered no contrary evidence.

27. The changes made to the HRS Form do not increase the capacity of the facility. The facility can house no more than three residents.

28. Respondent has ample authority to inspect the facility to assure that its actual capacity does not exceed its licensed capacity. Such inspections by Respondent constitute a routine part of Respondent's responsibilities.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a Final Order and therein **GRANT** a license to operate an AFCH for three residents.

RECOMMENDED this 21st day of February, 1997, in Tallahassee, Florida.

DANIEL MANRY

Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of February, 1997.

ENDNOTES

1/ All chapter and section references are to Florida Statutes (1995) unless otherwise stated.

2/ All references to rules are to rules promulgated in the Florida Administrative Code in effect as of the date of this Recommended Order.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.