

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELITE HEALTH CARE SERVICES, INC,            )  
  )  
          Petitioner,                                )  
  )  
vs.    )     Case No. 98-5214  
  )  
AGENCY FOR HEALTH CARE                        )  
ADMINISTRATION,                                )  
  )  
          Respondent.                             )  
\_\_\_\_\_)

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on April 6, 1999, in Arcadia, Florida.

APPEARANCES

For Petitioner: Edmund N. Jackson  
Qualified Representative  
Elite Health Care Services, Inc.  
Post Office Box 2444  
Arcadia, Florida 34265

For Respondent: Karel Baarslag, Esquire  
Agency for Health Care Administration  
State Regional Service Center  
2295 Victoria Avenue  
Fort Myers, Florida 33901

STATEMENT OF THE ISSUE

Should Petitioner be assessed a late fee for failure to timely file its renewal application for its Home Health license?

PRELIMINARY STATEMENT

By letter dated November 2, 1998, the Agency for Health Care Administration (Agency) advised Petitioner, among other things, that it was being assessed a late fee in the amount of \$2,700 for failure to timely file its application for renewal of its Home Care license. By letter dated November 11, 1998, Petitioner protested the assessment of the late fee and requested a formal hearing. By Notice dated November 24, 1998, the Agency referred this matter to the Division of Administrative Hearings (Division) for the assignment of an Administrative Law Judge and for the conduct of a hearing.

At the hearing, Petitioner presented the testimony of Edmund N. Jackson. Petitioner's Exhibits Numbered 1 and 2 were received as evidence. The Agency presented the testimony of Cynthia Karesh. The Agency's Exhibits Numbered 1-3 were received as evidence.

A Transcript of this proceeding was filed with the Division on April 14, 1999. The Agency filed its Proposed Recommended Order. Petitioner elected not to file a proposed recommended order.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. At times pertinent to this proceeding, Petitioner was licensed as a Non-Certified Home Health Agency, license no. HHA203220961, with an effective date of October 1, 1997, and an expiration date of September 30, 1998.

2. The Agency furnished Petitioner an application for renewal of its license in June 1998. The renewal application was due to be filed with the Agency 60 days before the expiration of Petitioner's then current license.

3. Petitioner's application for renewal of its then current license was received by the Agency on August 28, 1998. To avoid any late fees, Petitioner's renewal application should have been filed with the Agency no later than August 2, 1998. Petitioner's renewal application was filed 26 days late. Petitioner did not deny that its renewal application was filed late.

4. By letter dated November 2, 1998, the Agency notified Petitioner that its renewal application had been received on August 29, 1998, when in fact the renewal application was received on August 28, 1998. The letter further advised Petitioner that it was being assessed a late fee of \$2,700.00. This late fee was calculated by multiplying the number of days late (27) times \$100.00 per day. The date received set out in the letter of November 2, 1999, was incorrect and the number of days should have been 26. Therefore, the correct amount of the late fee should have been \$2,600.00.

5. The lateness of the renewal application was due to a financial hardship that Petitioner was suffering at that time because Petitioner had to purchase a Medicaid surety bond. There were not enough funds for both the surety bond and application renewal fee.

6. Petitioner has a waiver (Medicaid) for care of certain handicapped persons contracted with the Human Services Foundation which requires a surety bond.

7. Petitioner provides respite home health aid nurses and homemaker's services.

8. There was no evidence that Petitioner had ever been late before in filing its license renewal application.

#### CONCLUSIONS OF LAW

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

10. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 2d DCA 1981). To meet this burden, the Agency must establish facts upon which its allegations are based by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection vs. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

11. Section 400.471(5), Florida Statutes, requires a home health agency to submit its renewal application to the Agency 60 days before the license expiration date. Rule 59A-8.0086(4), Florida Administrative Code provides for late fees in the amount of \$100.00 per day for each day the renewal application is late, up to a maximum amount of \$5,000.00. It appears that the Agency does not have a specific rule which provides for reduction of late fees in the event of mitigating circumstances. However, the Agency's position, as established in Home Nursing Services, Inc. vs. State of Florida Agency for Health Care Administration, AHCA 98-396-FCI-OLC, has been to reduce late fees where there is showing of mitigating circumstances such as being a Medicaid provider or never being late in renewing a license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law and the mitigating circumstances, it is recommended that the Agency enter a final order imposing a late fee of \$500.00 to be paid by Petitioner within 60 days of the date of the final order, subject to any other condition the Agency may deem appropriate.

DONE AND ENTERED this 15th day of June, 1999, in  
Tallahassee, Leon County, Florida.

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WILLIAM R. CAVE  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of June, 1999.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit 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.