

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA DEPARTMENT OF LAW)
ENFORCEMENT, CRIMINAL JUSTICE)
STANDARDS AND TRAINING)
COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 00-1353
)
GAYLE L. GRAHAM,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 27, 2000, in Quincy, Florida, before Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Gabrielle Taylor, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

For Respondent: Harold S. Richmond, Esquire
227 East Jefferson Street
Quincy, Florida 32353-0695

STATEMENT OF THE ISSUE

The issue is whether Respondent's Law Enforcement and Correctional Officer Certificates should be disciplined for the reasons set forth in the Administrative Complaint.

PRELIMINARY STATEMENT

This matter began on August 13, 1999, when Petitioner, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, issued an Administrative Complaint charging that beginning in November 1996, Respondent, Gayle L. Graham, a certified correctional and law enforcement officer, unlawfully obtained public assistance benefits by failing to disclose on her applications that she received monthly child support payments. In a paper filed on September 22, 1999, Respondent requested a formal hearing under Section 120.569, Florida Statutes, to contest the charges.

The matter was referred by Petitioner to the Division of Administrative Hearings on March 30, 2000, with a request that an Administrative Law Judge be assigned to conduct a formal hearing. By Notice of Hearing dated April 27, 2000, a final hearing was scheduled on June 27, 2000, in Quincy, Florida.

At the final hearing, Petitioner presented the testimony of Monica E. Reddick-Dukes, Johnnie Chavis, Rebecca Mitchell, and Sylvia Gardner, all present or former public assistance specialists with the Department of Children and Family Services; Mary Young, a deputy clerk supervisor of child support for Gadsden County, Florida; and Susan K. Harrison, a public assistance fraud investigator. Also, it offered Petitioner's Exhibits A-G and I, J, N, and O, which were were received in evidence. Respondent testified on her own behalf and presented

the testimony of Robert Nixon and Steve Sweet, both former police officers with the City of Midway, Florida.

The Transcript of the hearing (two volumes) was filed on July 13, 2000. By agreement of the parties, the time for filing proposed findings of fact and conclusions of law was extended to July 31, 2000. A filing was timely made by Petitioner, and it has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

1. In this disciplinary proceeding, Petitioner, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission (Commission), seeks to discipline Correctional Certificate No. 56629 and Law Enforcement Certificate No. 135685 held by Respondent, Gayle L. Graham (formerly known as Gayle Livings), on the grounds that she unlawfully obtained public assistance benefits in 1996, 1997, and 1998 by failing to disclose on her applications that she was receiving child support payments. In her request for a hearing, Respondent denied that she "knowingly [made] a false statement" when applying for such benefits.

2. During her tenure as a law enforcement officer, Respondent has been employed by both the Leon County and Gadsden County Sheriff's Office. Since November 1998, she has been a police officer with the City of Midway Police Department.

3. On September 4, 1990, Respondent's marriage with Brooks Jampole (Jampole) was dissolved. Beginning on September 15, 1990, Jampole was required to pay Respondent \$400.00 per month in child support payments for their minor child (Joseph). Although such payments were sporadic during the first few years, in 1994, the court directed that Jampole deposit the payments with the court registry each month; from that time until she applied for public assistance benefits in October 1996, and continuing through 1998, Respondent received regular child support payments through the Gadsden County Clerk's Office.

4. On an undisclosed date, Respondent married Michael Graham (Graham). Their union produced a child (Brianna) in March 1995. In October 1996, Respondent had just resigned her job with the Gadsden County Sheriff's Office and her husband had lost his job. The couple lived in a Tallahassee apartment with Joseph and Brianna. At that time, Respondent had become pregnant with her third child. Because of a difficult pregnancy, which rendered her unable to work and in desperate financial straits, Respondent applied for public assistance benefits from the State of Florida, including food stamps and cash assistance in the form of Aid to Families with Dependent Children (AFDC). Her application was processed by the Tallahassee office of the Department of Children and Family Services (DCFS). Shortly after her benefits were approved, her financial woes were further

exacerbated when Graham left the marriage and failed to contribute support for his two minor children.

5. In order to receive public assistance benefits, an applicant must meet all DCFS criteria, including those falling under the categories of income, assets, and technical requirements. Relevant to this controversy is the requirement that child support payments, which are considered a form of unearned income, be fully disclosed by the applicant. Any amount of child support received by an applicant has an effect on how much public assistance an applicant may receive. Further, by law, child support payments received by an applicant while the beneficiary of public aid must be reassigned to DCFS.

6. According to DCFS public assistance specialists who processed such applications in late 1996 and 1997, it was standard procedure to run through a computer check list with all applicants, which included an instruction that the applicants disclose any child support payments. Although none of the specialists could specifically recall their conversations with Respondent, it can be reasonably inferred from the evidence that Respondent was told that she must disclose all sources of income, including child support payments. In addition, the application itself contained a space for disclosing these amounts, and it warned the applicant about the Florida fraud law and the penalties for perjury.

7. On seven applications executed by Respondent between October 22, 1996, and July 28, 1998, she failed to disclose the fact that she was receiving monthly child support payments for Joseph. This resulted in her benefits increasing, and it deprived the State of her monthly child support payments, which should have been reassigned to DCFS. In all, Respondent was overissued \$5,080.00 in cash assistance and \$2,361.00 in food stamps from November 1996 through November 1998. However, as part of a pre-trial intervention program with the Leon County State Attorney's Office, and with the assistance of a family loan, Respondent promptly repaid all overpayments, and the associated criminal charges were dismissed.

8. In fairness to Respondent, during the first interview with a public assistance specialist in October 1996, Respondent told the specialist that the payments had sometimes been sporadic in the past and that she could not rely on her ex-husband, who had taken her to court five times and had threatened to stop paying support. Respondent says the specialist replied that she didn't need to report the funds if "you absolutely can't count on it." While each of the specialists who testified at hearing denied that they would ever make such a remark, and perhaps these exact words were not spoken, it is fair to infer that Respondent left the interview with the understanding that she would not have to report the income in the event the future support payments were not assured. However, as the regularity of the payments

continued during the ensuing months, Respondent should have known that she was under an obligation to report the income. To her credit, though, she advised DCFS when Graham left the household, which resulted in her receiving lower monthly payments.

9. In mitigation, Respondent has been certified as a correctional officer since 1991 and a law enforcement officer since 1992. She is presently employed in good standing as a police officer with a municipality in Gadsden County, a job which requires continued certification. When the illicit conduct occurred, Respondent was facing extraordinary financial and personal problems, including an inability to work due to a difficult pregnancy with her third child, and two small children to support. In addition, her husband had just lost his job, and within a short period of time, he left the marriage without providing financial assistance to his former wife and children. Moreover, at the beginning of the application process, Respondent was under the misimpression that if child support payments were not absolutely assured, then their disclosure was not necessary. Importantly, she has made restitution for all overpayments. Finally, revocation or suspension of the certificates would cause a severe financial hardship on Respondent, who needs certification to continue in her present job, and who must support her family.

10. Only one aggravating factor is applicable, and it is clearly outweighed by the mitigating circumstances. Although

Respondent received pecuniary gain from her misconduct, she did not use her position to commit the misconduct nor was she performing other law enforcement duties at the time; there are no prior disciplinary actions taken against her; there was no danger to the public; the severity of the conduct was minimal; the actual "damage" to the public (overpayments) was promptly repaid; and the misconduct was not motivated by discrimination and did not involve domestic violence.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (1999).

12. As the party seeking to take disciplinary action against Respondent's professional license, Petitioner has the burden of proving by clear and convincing evidence that the charges in the Administrative Complaint are true. Newberry v. Fla. Dep't of Law Enforcement, 585 So. 2d 500, 501 (Fla. 3d DCA 1991).

13. According to the complaint, the actions of Respondent, if true, "violate[d] Section 943.1395(6) and/or (7), Florida Statutes, and/or Rule 11B-27.0011(4)(a), Florida Administrative Code, in that Respondent has failed to maintain the qualifications in Section 943.13(7), Florida Statutes, which require that a Correctional and Law Enforcement officer in the

State of Florida have good moral character." At the same time, Rule 11B-27.0011(4)(a), Florida Administrative Code, defines a certified officer's failure to maintain good moral character as "[t]he perpetration by the officer of an act which would constitute any felony offense, whether criminally prosecuted or not." In this case, the cited misconduct would constitute a violation of Section 414.39(5)(a), Florida Statutes, a felony of the third degree, since the aggregate value of the overpayments exceeded \$200.00 during "any 12 consecutive months."

14. By clear and convincing evidence, Petitioner has established that the charges in the complaint are true. This being so, Respondent is subject to sanctions against her standards.

15. Rule 11B-27.005(5)(a), Florida Administrative Code, provides that in the absence of any mitigating circumstances, the penalty for committing a felony offense shall range "from suspension of certification to revocation." Except for the single aggravating factor identified in Finding of Fact 10, there are no others present. In contrast, a number of mitigating factors are described in Finding of Fact 9, which outweigh the single aggravating factor. Accordingly, a lesser penalty is appropriate under the facts of this case.

16. Although Petitioner has suggested revocation of Respondent's certificates, a period of two years' probation is

more appropriate, subject to such terms and conditions, if any, as the Commission deems necessary.

RECOMMENDATION

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

RECOMMENDED that the Criminal Justice Standards and Training Commission enter a final order determining that Respondent has failed to maintain good moral character, as charged in the Administrative Complaint, and that her correctional and law enforcement certificates be placed on probation for a period of two years, subject to such terms and conditions, if any, as the Commission may deem appropriate.

DONE AND ENTERED this 11th day of August, 2000, in Tallahassee, Leon County, Florida.

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of August, 2000.

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.