

3-27-01

Daniel Kilbride
AT

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

ERIC AACH,

Petitioner,

v.

DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
(DISTRICT 7)

Respondent.

CASE NO. 00-4700

RENDITION NO. DCF-01-144-FO

(Denial of DD Services for Lack of Funding)

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ADMINISTRATIVE
HEARINGS

FILED

JUN 19 2001

DCF Department Clerk

FINAL ORDER ADOPTING RECOMMENDED ORDER DENYING SERVICES

THIS CAUSE is before me as the result of a Recommended Order that was issued by an Administrative Law Judge (ALJ) who had been assigned to hear the case by the Division of Administrative Hearings. The Administrative Law Judge agreed with the district's decision to deny Mr. Aach's request for services because the Department lacks sufficient funds with which to grant it.

At hearing, the burden of proof was on Mr. Aach to show that uncommitted funds existed in the general revenue categories of the Developmental Services budget. Florida Dept. of Transp. v. J.W.C. Co. Inc., 396 So.2d 778 (Fla. 1st DCA 1981). Mr. Aach failed to meet his burden of proof. Consequently, the Department was not legally obliged to defend. Nonetheless, the Department presented evidence to support its assertion that uncommitted funds in the general revenue category do not exist. Having proved it in this and other cases, the Department should not incur taxpayers' expense in proving it again in each case where denial is based on the same premise.


The Recommended Order is attached to and incorporated herein by reference. I adopt its findings of fact and conclusions of law. I specifically adopt the following conclusions of law to guide presiding officers in future cases involving the existence and use of general funds for developmental services.

As a conclusion of law, I agree that Chapter 393, Florida Statutes, provides a scheme for addressing the needs of developmentally disabled persons in Florida. I also agree in this case and in Monroe Lee Kelly v. Department of Children and Family Services, Case No. 00-4254, that Section 393.066(4), Florida Statutes, specifically provides that the Department's provision of developmental services is limited by the availability of funds. Indeed, Section 216.311, Florida Statutes, makes it illegal for any state agency to spend money in excess of its appropriation, and Florida's District Courts of Appeal have reversed circuit court decisions requiring an agency to provide services when funds were lacking. Department of Juvenile Justice v. C.M., 704 So.2d 1123 (Fla. 4th DCA 1998); Department of Health and Rehabilitative Services v. Brooke, 573 So.2d 363 (Fla. 1st DCA 1991).

Moreover, the Department's established priorities in the FY 1999-2000 Spending Plan are consistent with the Legislature's proviso language in the 1999 and 2000 General Appropriations Act, and this plan was reiterated for fiscal year 2000-2001 in a departmental memorandum dated May 22, 2000. As a conclusion of law, therefore, the spending plans set forth a lawful method of deciding priorities for the receipt of services by persons who are eligible for enrollment in the Department's Developmental Disabilities Program. Such reasonable prioritization decisions must be upheld. See Department of Health and Rehabilitative Services v. V.L., 583 So.2d 765, 767 (Fla. 5th DCA 991).

The propriety of the Department's plan for spending general revenue funds in the provision of developmental services has now been established as a matter of law. That conclusion of law, coupled with the statutory prohibition against spending funds in excess of an appropriation, means that the Department will henceforth accord Section 120.57(2) proceedings to petitioners who challenge these appropriation and spending decisions in the future. In addition, the challengers will be required to make a prima facie showing, before the Department will be required to defend, that the conclusion should be overturned. Florida Dept. of Transp. v. J.W.C. Co. Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

It is hereby ORDERED that developmental services are denied in Case No. 00-4700. DONE and ORDERED this 18th day of June, 2001, in Tallahassee, Leon County, Florida.


KATHLEEN A. KEARNEY, Secretary
Department of Children and Family Services

Copies of this Final Order are being furnished to:

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NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing FINAL ORDER has been sent by U.S. Mail or by hand delivery to each of the persons named above on this 19th day of

June, 2001.


Virginia Daire, Agency Clerk
Department of Children and Families
1317 Winewood Blvd. Bldg. 2 Room 204X
Tallahassee, FL 32399-0700

¹ The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.