

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ERIC AACH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-4700  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held by Daniel M. Kilbride,  
Administrative Law Judge, Division of Administrative Hearings,  
in the above-styled case on February 2, 2001, by video  
conference between Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Lori Aach, parent of Petitioner  
5777 Craindale Drive  
Orlando, Florida 32819

For Respondent: Eric Dunlap, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street  
Suite S-1106  
Orlando, Florida 32801-1782

STATEMENT OF THE ISSUES

Whether Petitioner is entitled to services from the  
Developmental Disabilities Program.

Whether adequate funds are available to provide these services given Respondent's existing appropriations.

PRELIMINARY STATEMENT

Petitioner applied for developmental services in July 2000. By letter dated September 29, 2000, Petitioner's application for services was denied. Petitioner filed a request for a hearing to challenge the denial of services on October 20, 2000. This matter was referred to the Division of Administrative Hearings for adjudication on November 17, 2000, and was set for hearing. Following a continuance granted at the request of Respondent, a formal hearing was held on February 2, 2001.

At the hearing, Petitioner's mother, Lori Aach, testified on behalf of Petitioner. Rene Johnson, Senior Human Services Counselor, was also called as a witness, and two exhibits were admitted into evidence. One exhibit was admitted in evidence on behalf of Respondent. At the behest of the Administrative Law Judge (ALJ), three additional exhibits were admitted.

The hearing was recorded but not transcribed. Petitioner has not filed post-hearing submittals as of the date of this Order. Respondent filed its Proposed Recommended Order on February 6, 2001.

## FINDINGS OF FACT

1. The Petitioner is a seven-year-old boy who has a diagnosis of autism. In addition, he has been diagnosed with mild mental retardation and severe intractable seizure disorder.

2. Approximately on July 7, 2000, Petitioner's parents requested services for toilet training, incontinent supplies, behavioral training, respite services, speech therapy, and occupation and physical assessments. Upon receipt of the application and review of relevant documentation, Petitioner was determined to be eligible for developmental services under the provisions of Chapter 393, Florida Statutes (2000).

3. By letter dated September 29, 2000, Respondent advised Petitioner that his request for services had been denied. The reason identified for the denial was as follows: "There are not adequate funds available for the service(s), given the Department's existing appropriations." Petitioner requested a hearing to challenge Respondent's denial of services.

4. At the hearing, it was established that, although Petitioner is eligible for services, the Florida Legislature appropriated additional funding only to be used to provide needed services for individuals who were clients of Respondent and were waiting for services on July 1, 1999.

5. In order to comply with the mandate of the Legislature, Respondent issued Policy Directive PD number 00-07, dated

August 30, 2000, which authorizes services be provided only to individuals who were clients on July 1, 1999, and were awaiting services. Respondent will not provide services to individuals who become clients after July 1, 1999, until approximately June 30, 2001, unless the new clients are determined to be in immediate crisis or danger.

6. No evidence was presented to demonstrate that Petitioner was in immediate crisis or danger. However, the need for these services is urgent.

7. Petitioner's mother made a telephone call to the Respondent approximately three years ago inquiring about services available for her son. Following that phone call, Petitioner did not submit an application for services and was never denied services or eligibility. The only application for services submitted by Petitioner was in July of 2000 and eligibility was approved. Petitioner cannot be considered as a client of Respondent until after July 1, 1999.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction of the parties and the subject matter pursuant to Sections 120.569, 120.57(1), and 393.065, Florida Statutes.

9. Respondent is the agency of state government charged with providing services for the developmentally disabled who qualify. Section 393.065, Florida Statutes.

10. Petitioner has the burden of proof to demonstrate that he is eligible for services under the Developmental Disabilities Program of Respondent and that there were adequate funds available and appropriated by the legislature to provide the requested services. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

11. Petitioner has demonstrated that he is eligible for services under the program. However, he was not able to demonstrate that adequate funds for the services were available, given the Respondent's existing appropriations.

12. Respondent may not expend funds from its budget unless there has been the requisite appropriation. Funding is only available for individuals who were clients prior to July 1, 1999. To date, the Legislature has not funded services for those individuals, like Petitioner, that became clients after July 1, 1999, even though those services are urgently needed.

#### RECOMMENDATION

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

RECOMMENDED that Petitioner's application for services be approved and Petitioner be placed on the waiting list for services when new funding becomes available.

DONE AND ENTERED this 27th day of March, 2001, in  
Tallahassee, Leon County, Florida.

---

DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of March, 2001.

COPIES FURNISHED:

Eric Aach  
c/o Lori Aach  
5777 Craindale Drive  
Orlando, Florida 32819

Eric Dunlap, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street  
Suite S-1106  
Orlando, Florida 32801-1782

Virginia A. Daire, Agency Clerk  
Department of Children and  
Family Services  
Building 2, Room 204B  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel  
Department of Children and  
Family Services  
Building 2, Room 204  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

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.