

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THREASA L. GARRETT, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-2462  
 )  
 DEPARTMENT OF CHILDREN )  
 AND FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held pursuant to notice, on August 23, 2001, and September 26, 2001, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings, in Panama City, Florida.

APPEARANCES

For Petitioner: Sharon Earl George  
518 Everitt Avenue, Lot 25  
Panama City, Florida 32401

For Respondent: John R. Perry, Esquire  
Department of Children  
and Family Services  
2639 North Monroe Street  
Suite 252A  
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

Whether the Department of Children and Family Services should approve a plan submitted by Sharon George, the mother,

primary caregiver, and representative of Petitioner, under the Choice and Control Pilot Project.

PRELIMINARY STATEMENT

Mrs. Sharon George, mother and representative of Petitioner, submitted a plan to the Department of Children and Family Services (DCFS) under the Choice and Control Pilot Project (Pilot Project) whereby Mrs. George would be paid by the State of Florida to provide caregiver services to Petitioner.

On May 2, 2001, DCFS notified Mrs. George that her request to receive services through the Pilot Project was being denied as her request did not meet certain purchasing guidelines.

Mrs. George requested an administrative hearing and the case was forwarded to the Division of Administrative Hearings on or about June 22, 2001. A formal hearing was scheduled for August 23, 2001. The case required more than one day and a continuation of the hearing was scheduled for September 26, 2001.

At hearing, Petitioner presented the testimony of Eddie Sims, Robert J. Earl, Celeste Earl, Dawn E. Phillips, and Donna Garrett, and offered Exhibits 1-12, which were admitted into evidence with the exception of Exhibit 6. Mrs. George left the hearing room prior to the conclusion of the hearing

on September 26, 2001. Respondent presented the testimony of Warren Oliver, Mary Helen Barnes, Shayne Betts, and Hilary Brazzell, and offered Exhibits 1 through 5, which were admitted into evidence.

The hearing was not transcribed. Respondent timely filed a Proposed Recommended Order which has been considered in the preparation of this Recommended Order. Petitioner did not file a post-hearing submission.<sup>1</sup>

#### FINDINGS OF FACT

1. Threasa Garrett is a 29 year-old woman with brain damage and severe mental retardation. She is petite and appears to be much younger than her actual age.

2. Ms. Garrett cannot articulate her needs and cannot perform most of the activities of daily living such as feeding, bathing and other hygiene, and dressing. She must be closely supervised at all times, as she is unable to recognize danger. She attempts to eat nonfood items if not prevented from so doing. She has the propensity to wander about.

3. Ms. Garrett has been severely retarded most of her life. Her mother, Mrs. George, has been her primary caregiver. The caregiving for Ms. Garrett has been long term and extremely demanding.

4. One of the means employed by Mrs. George to deal with Ms. Garrett's propensity to wander is by using a harness and

tether. The harness fits around Ms. Garrett's upper torso and is attached to a tether in the back.

5. Ms. Garrett is a client of the Developmental Disabilities Program of DCFS. The Developmental Disabilities Program provides and coordinates the provision of goods and services to developmentally disabled clients such as Petitioner.

6. The Choice and Control Pilot Project is an experimental program operated by the Developmental Disabilities Program. The purpose of the Pilot Project is to allow families of developmentally disabled clients greater flexibility and a greater role in procuring and providing services for their developmentally disabled family members.

7. A feature of the Pilot Program which is material to this case is that, with the approval of DCFS, the family members of the DCFS client can provide services to the client, and be paid to do so with state moneys.

8. In order to participate in the Pilot Project, the family member must sign and agree to abide by the terms of the Pilot Project Agreement. This agreement requires that the participant must comply with project guidelines including purchasing guidelines. Two purchasing guidelines which are material to this case are guideline number four, "[the] provider must be capable and qualified" and guideline number

5, "[h]ealth and safety needs must be met." DCFS based its denial letter on its determination that Petitioner's request does not meet these two purchasing guidelines.

9. Petitioner will be able to continue to be a client of and to receive services from the Developmental Disabilities Program despite DCFS' denial of Mrs. George's request to receive funding from the Pilot Project.

10. On July 14, 2000, Mrs. George decided to go to northern Alabama. The reason for her trip is not clear in the record. The weather was hot and Mrs. George feared that Threasa would not do well in the heat of her vehicle. She based this fear on past experiences in which Threasa experienced health problems when overheated. Mrs. George left Threasa at the home of Donna Garrett, Threasa's sister.

11. Mrs. George was aware that her daughter, Donna, had a job which would require her to leave the home at 6:30 a.m. the morning of July 14, 2000, and was not expected to return until approximately 1:00 p.m. that day. Mrs. George planned to be gone on her trip the whole day.

12. Around noon, law enforcement personnel were summoned to Donna Garrett's home by someone who came to the home to perform pest control there. The officer gained entry to the home and saw Threasa alone wearing the harness and tethered to a couch. Petitioner was soaked with urine. DCFS sent a child

protective investigator to the scene because the officer thought she was a child. When Threasa's actual age was established, an adult protective investigator was summoned.

13. The adult protective investigator was concerned about the harness and tether, and that Threasa had been left alone in the home. Additionally, he was concerned that she had no food or water, and no access to a telephone to call for help. He arranged to send Threasa to a location where she would be supervised. After discussing this with family members who did not want her sent to an institutional setting, Ms. Garrett was sent to her grandfather's house with a family member.

14. The Department's decision to deny Mrs. George's application was based primarily on the incident of July 14, 2000. That is, that Threasa had been left alone unsupervised for a number of hours with no means of escape in the event of an emergency. Additionally, as Mrs. George had indicated to DCFS that she would make the same choice again, DCFS was concerned that such an incident would happen again.

15. Mrs. George's explanation for her actions were that Threasa had been tethered for her safety (so she would not roam and hurt herself), that food had not been left for her as she is unable to feed herself safely, that no telephone was needed because Threasa cannot communicate meaningfully, is

unable to use a telephone, and a telephone wire could endanger Threasa. Mrs. George was confident that Threasa would be safe if left alone for a number of hours under these conditions and based this confidence on her years of caring for Threasa and on Mrs. George's religious beliefs.

#### CONCLUSIONS OF LAW

16 The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case, Sections 120.569, 120.57(1), and 120.60(5), Florida Statutes.

17. The burden of proof is on the party asserting the affirmative of an issue. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988) The standard of proof is a preponderance of the evidence. Section 120.57(1)(j), Florida Statutes. In this case, Petitioner has the burden of proof. Petitioner has not met this burden.

18. The Department's decision was based primarily on its concern over the July 14, 2000, incident during which Threasa Garrett was left unattended by Mrs. George for a number of hours. While Mrs. George is entitled to her religious beliefs regarding her daughter's safety, the Department of Children and Family Services cannot be expected to ignore the fact that Threasa Garrett was placed in danger on July 14, 2000, by being left unattended for a number of hours with no means of escape in the event of an emergency. Thus, DCFS'

determination to deny the request for Pilot Project funding was justified.

RECOMMENDATION

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

RECOMMENDED:

That the Respondent enter a final order rejecting Petitioner's request to be paid for services under the Pilot Project.

DONE AND ENTERED this 30th day of October, 2001, in Tallahassee, Leon County, Florida.

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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of October, 2001.

ENDNOTE

1/ Prior to Mrs. George's abrupt departure from the hearing, she left documents entitled, "Motion for the Expunction of FAHIS Report Number 2000-110385 and Order for Children and Family Services to pay Sharon Earl George a Fair and Decent Wage for the 24/7 She Does Indeed Earn!" and "Reason for Motion to Find in Favor of Petitioner." The Expunction of FAHIS Report 2000-110385 is outside the scope of this proceeding. As



to Petitioner's Motion to Find in Favor of Petitioner, it restated assertions made by Mrs. George at the hearing and was reviewed in the preparation of the 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.