

11-7-02

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

AT

BIG BEND HOSPICE, INC.,

Petitioner,

vs.

DOAH CASE NO. 01-4415CON
AHCA CASE NO. 9250

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HEALTH CARE
SERVICES

RENDITION NO.: AHCA-03-0250-CON

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent,

and

COVENANT HOSPICE, INC.,

Intervenor.

_____ /

FINAL ORDER

This cause was referred to the Division of Administrative Hearings and assigned to an Administrative Law Judge (ALJ) for a formal administrative hearing and the entry of a Recommended Order. The Recommended Order of November 7, 2002, is attached to this Final Order and incorporated herein by reference.

PRELIMINARY STATEMENT

This case is closely related to DOAH cases 02-0455CON and 02-0880CON. This case concerns the revision to the fixed need pool in Service Area 2B (SA 2B) made by AHCA for the January 2003 planning horizon. The issue is whether AHCA properly determined that there is a numeric need for one additional hospice program in SA 2B.

The two related DOAH cases concern the preliminary approval by AHCA of a hospice program CON application from Covenant Hospice, Inc. (Covenant), with Big Bend Hospice, Inc. (Big Bend) challenging the approval and Covenant intervening. All the cases were heard together, but the ALJ issued two recommended orders addressing the different issues involved. Consequently, the Agency will issue two final orders, one for each recommended order.

RULING ON EXCEPTIONS

Big Bend filed one set of exceptions that stated they were directed at both recommended orders as set out in the exceptions. However, almost all references in the exceptions are to findings of fact and conclusions of law in the recommended order concerning the Agency's preliminary approval of Covenant's CON application. There is a reference to conclusions of law 54-71 of the instant case in paragraph 19 of the exceptions. However, these relate to the ALJ's interpretation of AHCA's own cases. The Agency finds that these conclusions of law are ones over which it has substantive jurisdiction and that the ALJ's reading of the case mentioned is correct. These exceptions are rejected. Even if Big Bend intended for some of its other exceptions to apply to the instant case, the exceptions are rearguments of Big Bend's position at the final hearing and pertain to findings of fact supported by competent, substantial evidence in the record.

As a result, except as noted above, there appear to be no exceptions in the instant case. To the extent that some of the exceptions filed could be argued to apply to the instant case, they are rejected. As to findings of fact, the exceptions would require the Agency to reweigh the evidence and make different factual findings, which the Agency is

not free to do. The conclusions of law in the instant case are valid and flow directly and logically from the findings of fact.

FINDINGS OF FACT

The Agency adopts the Findings of Fact set forth in the Recommended Order.

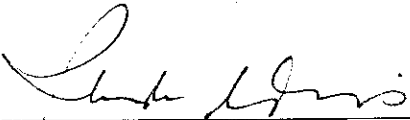
CONCLUSIONS OF LAW

The Agency adopts the Conclusions of Law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

The fixed need pool for SA 2B for the January 2003 planning horizon is one.

DONE and ORDERED this 8 day of April, 2003, in Tallahassee, Florida.



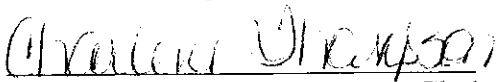
RHONDA M. MEDOWS, MD., SECRETARY
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail, or by the method indicated, to the persons named below on this 10 day of April, 2003.


cc. Lealand L. McCharen, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308-5403

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