

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SUNRISE OPPORTUNITIES, INC., )  
SUNRISE COMMUNITIES, INC., AND )  
THE HAVEN CENTER, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 02-0085  
 )  
DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 18-19, 2002, in Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steven M. Weinger, Esquire  
Helena Tetzeli, Esquire  
Kurzban, Kurzban, Weinger  
and Tetzeli, P.A.  
2650 Southwest 27th Avenue  
Second Floor  
Miami, Florida 33133

For Respondent: Veronica E. Donnelly, Esquire  
Stephanie A. Daniel, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether the Respondent, Department of Children and Families (DCF), may impose a moratorium for new residents at The Haven Center, Inc., for those who are enrolled in the Developmental Services Home and Community-Based Services Waiver Program (DS Waiver).

PRELIMINARY STATEMENT

On November 7, 2001, DCF issued a letter that declared a temporary moratorium on placements at Sunrise at The Haven Center. The basis for the moratorium was stated to be a Settlement Agreement entered in Prado-Steiman v. Bush, Case Number 98-6496-CIV-Ferguson. More specifically, the Respondent determined that the:

effect of the Court approval was to enjoin the Department (and the Agency for Health Care Administration) from filling any vacancies at places like the Haven Center with individuals who receive funding for services through the Developmental Services Home and Community-Based Services Waiver (DS Waiver).

The term length for the moratorium was indefinite. Notice of the moratorium was provided to Pat Wear, who was described as the Deputy Director for the Advocacy Center for Persons with Disabilities, Inc. (Advocacy). The notice further identified Advocacy as the Prado-Steiman class counsel.

Upon receipt of the notice, the Petitioners, Sunrise Opportunities, Inc., Sunrise Communities, Inc., and The Haven Center, Inc., timely filed a Petition challenging the moratorium. The Petitioners dispute the Respondent's authority to impose a moratorium and to enforce its interpretation of the Prado-Steiman settlement against The Haven Center. The Petition was forwarded to the Division of Administrative Hearings for formal proceedings on January 9, 2002.

At the hearing, the Petitioners presented testimony from Sarah H. Blum, Carmen Gomez, Leslie W. Leech, David Raymond, and Charles Auslander. The Petitioners' Exhibits 1-7 were received in evidence.

The Respondent presented testimony from Danel Cebent. The Respondent's Exhibits 2-22 were admitted into evidence.

By stipulation the parties agreed that, had Susan Dickerson been called to testify in the cause, she would have stated that at the time Prado-Steiman settlement was executed the Petitioner was on a list of residential habilitation centers to be governed by the agreement. Further, Ms. Dickerson would have testified that she is unaware of any requirement for residential habilitation centers to be separately licensed. Additionally, the parties agreed that the Petitioners operate at Naranja five licensed group homes with a capacity of up to six individuals each, together with a single building which is licensed as a

residential habilitation center, and that such was true both before and after the Prado-Steiman case was filed and settled. Further, that the Naranja group homes continue to receive placements of residents under the DS Waiver program and have not been affected by the moratorium imposed against The Haven Center.

The transcript of these proceedings was filed on April 11, 2002. Thereafter the Petitioners requested and were granted an extension of time within which to file a proposed recommended order. Based upon the extension, the parties timely filed proposed orders on May 1, 2002. The proposed orders have been fully considered in the preparation of this order.

#### FINDINGS OF FACT

1. The Respondent is the state agency charged with the responsibility of regulating residential facilities that provide DS waiver services.

2. Sunrise Opportunities, Inc., Sunrise Communities, Inc., and The Haven Center, Inc., are members of the Sunrise group of providers that serve individuals with developmental disabilities.

3. Sunrise Opportunities, Inc., is a charitable, tax-exempt entity that provides residential and day treatment services to individuals under the DS Waiver program.

4. The Haven Center, Inc., owns seven homes located on 23+/- acres in Miami-Dade County, Florida. The homes located at The Haven Center, Inc., are operated by Sunrise Opportunities, Inc. Such homes have been monitored and reviewed by the DCF on numerous occasions. The reviews or inspections have never revealed a significant deficiency. Moreover, historically the DCF has determined that residents at The Haven Center, Inc., have received a high quality of care.

5. For some unknown time the parties were aware of a need to move individuals residing at The Haven Center into community homes in the greater South Miami-Dade County area. Concurrently, it was planned that individuals in substandard housing would then be moved into The Haven Center. This "transition plan" as it is called in the record would be accomplished as improvements were completed to the Sunrise properties. That the parties anticipated the transition plan would be implemented as stated is undisputed.

6. Because it believed the transition plan had been agreed upon and would be followed, Sunrise Opportunities, Inc., incurred a considerable debt and expended significant expenses to purchase and improve homes in the South Miami-Dade County area.

7. Additionally, DS Waiver participants were moved from The Haven Center to the six-person homes in South Miami-Dade

County. In fact, over fifty percent of The Haven Center residents have made the move. In contrast with the transition plan, only 12 individuals were allowed to move into The Haven Center.

8. Instead, DCF notified the Petitioners of a moratorium prohibiting the placement of DS Waiver residents into The Haven Center. This moratorium, represented to be "temporary," is on-going and was unabated through the time of hearing. The moratorium prompted the instant administrative action. Upon notice of DCF's intention to impose a moratorium on The Haven Center, the Petitioners timely challenged such agency action.

9. DCF based the moratorium upon an Order Approving Settlement Agreement entered in the case of Prado-Steiman v. Bush, Case No. 98-6496-CIV-FERGUSON, by United States District Judge Wilkie D. Ferguson, Jr. on August 8, 2001.

10. The Petitioners had objected to the approval of the Settlement Agreement in Prado-Steiman but the court overruled the objectors finding they, as providers of services to the DS Waiver residents, did not have standing in the litigation.

11. The Prado-Steiman case was initiated by a group of disabled individuals on behalf of the class of similarly situated persons who claimed the State of Florida had failed to meet its responsibility to such individuals under Federal law. Without detailing the case in its totality, it is sufficient for

purposes of this case to find that the Prado-Steiman Settlement Agreement imposed specific criteria on the State of Florida which were to be met according to the prospective plan approved and adopted by the court.

11. At the time the Prado-Steiman case was filed, The Haven Center was licensed as a residential habilitation center. After the Settlement Agreement was executed by the parties in Prado-Steiman, but before the court entered its Order Approving Settlement Agreement, the licensure status of The Haven Center changed. Effective June 1, 2001, The Haven Center became licensed as seven group homes together with a habilitation center.

12. Pertinent to this case are specific provisions of the Prado-Steiman Settlement Agreement (Agreement). These provisions are set forth below. First, regarding group home placements, the Agreement provides that:

The parties agree that they prefer that individuals who are enrolled in the Waiver [DS Waiver] live and receive services in smaller facilities. Consistent with this preference, the parties agree to the following:

1. The Department [DCF] will target choice counseling to those individuals, [sic] enrolled on the Waiver who presently reside in residential habilitation centers (where more than 15 persons reside and receive services). The focus of this choice counseling will be to provide information about alternative residential placement

options. The Department will begin this targeted choice counseling by December 1, 2000, and will substantially complete the choice counseling by December 1, 2001.

\* \* \*

4. The Department and the Agency [Agency for Health Care Administration] agree that, in the residential habilitation centers, if a vacancy occurs on or after the date this agreement is approved by the Court, the Department will not fill that vacancy with an individual enrolled on the Waiver. (Emphasis added)

13. None of the individually licensed group homes at The Haven Center is authorized to house more than 15 persons. All of the group home licenses at The Haven Center were approved before the Prado-Steiman Court approved the Agreement.

14. The Agreement also provides that the parties:

. . . have agreed that the Court may retain jurisdiction of this litigation until December 31, 2001, at which time this case will be dismissed with prejudice. The Plaintiffs may seek to continue the jurisdiction of the Court and to pursue any of the relief requested in this lawsuit only if they can show material breach as evidenced by systemic deficiencies in the Defendants' implementation of the Plan of Compliance. In any motion to continue the jurisdiction of the Court, Plaintiffs must demonstrate that alleged breaches and any proposed cure were fully disclosed to the state defendants consistent with the "Notice and Cure" provisions set forth below in paragraphs 7-10 below, that the action requested by the plaintiffs is required by existing law, and the State Defendants have refused to take action required by law.



Such relief may not be sought after the scheduled dismissal of the litigation. Absent the allegation of material breach in a pending motion, the Court will dismiss this lawsuit with prejudice on December 31, 2001. (Emphasis added)

15. Also pertinent to this case, the Agreement provides:

19. The parties' breach, or alleged breach, of this Agreement (or of the terms contained herein) will not be used by any party as a basis for any further litigation.

16. "Systemic problems or deficiencies" is defined by the Agreement to mean:

problems or deficiencies which are common in the administration of the Waiver, inconsistent with the terms of this Stipulated Agreement, and in violation of federal law. Isolated instances of deficiencies or violations of federal law, without evidence of more pervasive conduct, are not "systemic" in nature.

State otherwise, a problem or deficiency is systemic if it requires restructuring of the Florida Developmental Services Home and Community-Based Services Waiver program itself in order to comply with the provisions of federal law regarding the Waiver; but that it is not "systemic" if it only involves a substantive claim having to do with limited components of the program, and if the administrative process is capable of correcting the problem.

17. After the Agreement was adopted the Respondent advised Petitioners to continue with the transition plan. On or about September 1, 2001, the Petitioners and the Respondent entered into contracts for the group homes operated at The Haven Center.

Each home is properly licensed, has honored its contracts to provide services to disabled individuals, and has complied with state licensure laws.

18. A licensed Residential Habilitation Center may not have a licensed capacity of less than nine.

19. Advocacy issued a letter dated March 8, 2002, that alleged systemic problems constituting material breaches of the Agreement. Among the cited alleged deficiencies is the failure of the state to ensure

. . . that locally-licensed providers receiving waiver funds for providing group-home services in fact are providing services in that setting rather than in institutional settings. Examples include:

a) A former residential habilitation center known as Haven is now licensed as a group home in District 11 (Miami/Dade) and receives HCBS waiver funds.

20. There is no evidence that The Haven Center is providing services in any setting other than as licensed by the Respondent. That is, there is no evidence it is not operating as individually licensed group homes.

21. Further, Advocacy had actual knowledge of the instant administrative action. In short, it did not attempt to participate in the Petitioners' challenge to the moratorium.

22. DCF has imposed a moratorium on no other licensed group home in the State of Florida. The group homes at The

Haven Center are the sole targets for this administrative decision.

#### CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57, Florida Statutes.

24. As the proponent of the affirmative of the issue, the Respondent bears the burden of proof in this cause to establish the legal basis for the moratorium it has imposed on the Petitioners. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); Florida Department of Transportation v. J.W.C. Co., 396 So.2d 778, 788 (Fla. 1st DCA 1981); McDonald v. Department of Professional Regulation, Board of Pilot Commissioners, 582 So. 2d 660,670 (Fla. 1st DCA 1991). It maintains it has met that burden by establishing the terms of the Agreement adopted by the Prado-Steiman Court. As is explained below, it has not.

25. First, the sole authority cited by Respondent for the moratorium is the federal case settlement. The Respondent does not argue that provisions of Florida law governing group homes would authorize the moratorium. Secondly, no rule or policy adopted by the Respondent in furtherance of Florida law authorizes the moratorium.

26. The implementation of the moratorium is DCF's interpretation of the Prado-Steiman Settlement Agreement. On its face, such interpretation is inconsistent with the terms of the Agreement. Once The Haven Center was licensed as individual group homes, the Agreement did not apply to them. If the Petitioners' lacked standing to challenge the proposed agreement (as suggested by the Order of the Prado-Steiman court), clearly as group homes they would not be able to challenge the enforcement of the Agreement as group homes are not within the context of the Agreement.

27. The Agreement contemplated that where administrative remedies were available, there would be no systemic deficiency. Further, the Agreement did not provide a remedy for further court intervention absent a material breach establishing systemic deficiencies. The Respondent does not allege facts to support such conclusion.

28. Finally, the Plaintiffs in the Prado-Steiman proceeding sought to promote small residential placements for DS Waiver participants. The concept of warehousing large groups in an institutional setting was opposed. Thus, larger residential habilitation centers were opposed. In this case, the Petitioners have established that The Haven Center is operating as individual group homes. As such there is no evidence to support a conclusion that the type of facility opposed by the

Prado-Steiman Plaintiffs is operating at the Petitioners' site. Accordingly, as a matter of law, having no basis to support the action taken, the moratorium on placements at The Haven Center should be lifted.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent, Department of Children and Family Services, enter a Final Order lifting the moratorium on placements of DS Waiver participants at The Haven Center's group homes.

DONE AND ENTERED this 3rd day of June, 2002, in Tallahassee, Leon County, Florida.

---

J. D. PARRISH  
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](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of June, 2002.

COPIES FURNISHED:

Paul Flounlacker, Agency Clerk  
Department of Children and Family Services  
1317 Winewood Boulevard  
Building 2, Room 204B  
Tallahassee, Florida 32399-0700

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

Veronica E. Donnelly, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Steven M. Weinger, Esquire  
Kurzban, Kurzban, Weinger & Tetzeli, P.A.  
2650 Southwest 27th Avenue, Second Floor  
Miami, Florida 33133

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.