

7-3-02

Robert
Medall

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

VERONICA ROKER,

Petitioner,

Case No. 02-1244

Rendition No. DCF-02- 273 FO

02 OCT 22 AM 9:25
ADMINISTRATIVE
HEARINGS

AL

vs.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES

Respondent.

rem-clos

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ORDER OF REMAND

THIS CAUSE is before me as the result of a Recommended Order (RO) that was issued by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings, (DOAH) to hear this case. Transcript of the hearing was not filed. Neither party filed Proposed Recommended Orders. The Respondent filed Exceptions to paragraphs 12, 13 and 17 of the ALJ's RO.

I accept, adopt and incorporate herein by reference the findings of fact in paragraphs one through eleven.

The finding of fact in paragraph 12 of the RO concludes that the Developmental Disabilities Home and Community Based Services Waiver Fiscal Year 2001-2002 Spending Plan Instructions, Respondent's Exhibit one, only applies to persons seeking Medicaid Waiver services, and not to services paid for by General Revenue funds. This is an incorrect interpretation of the requirements of the Department's spending plan and is also more of a

conclusion of law then a finding of fact, and is hereby rejected on both of these grounds.

Normally, an Administrative Law Judge's factual findings should not be rejected unless they lack adequate evidentiary support; however, such findings are entitled to less deference when they address issues which are dependent upon matters of opinion infused by policy considerations within the ambit of the agency's expertise. See Holden v. Florida Department of Corrections, 400 So.2d 142 (Fla. 1st DCA 1981); McDonald v. Department of Banking & Finance, 346 So.2d 569 (Fla. 1st DCA 1977). By recommending the Department pay for the requested services with General Revenue funds, the ALJ is recommending that the Department spend money not in accordance with its Spending Plan. This would be a violation of section 216.311(1), F.S. and also an invalid exercise of delegated Legislative authority.

I accept, adopt and incorporate herein by reference the ALJ's conclusions of law in paragraphs 14, 15, 16.

I reject the ALJ's conclusion of law in paragraph 17 that section 393.13(2)(d)5., F.S., does not apply to the petitioner for the reasons stated in Respondent's Exception number-four. These reasons are as or more reasonable than the ALJ's conclusion of law. Accordingly, I accept, adopt and incorporate herein Respondent's Exception number-four.

I concur with the ALJ's finding of fact in paragraph 13 that the "Respondent's evidence of insufficiency of funds is itself insufficient." Further, I do not believe the ALJ's findings of fact clearly resolve the issues in dispute

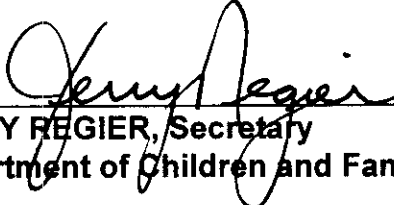
since I cannot, on this record, draw a final conclusion as to Petitioner's eligibility for these services.

For these reasons, a remand for further findings of fact is appropriate, on the issue of whether the Department's Spending Plan governs the Petitioner's request for services. See, e.g., Department of Environmental Protection v. Dept. of Management Services, Div. of Adm. Hearings, 667 So.2d 369 (Fla. 1st DCA 1995)(state agency has inherent authority to remand case back to DOAH where findings of fact need to be further developed).

And the undersigned being fully advised, it is therefore **ORDERED** that this matter is to be remanded to DOAH for further findings of fact to be made.

DONE and ORDERED this 16th day of October, 2002, in

Tallahassee, Leon County, Florida.



JERRY REGIER, Secretary
Department of Children and Family Services

Copies of this Final Order are being furnished to:

ROBERT E. MEALE
Administrative Law Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing **ORDER OF REMAND** has been sent by U.S. Mail or by hand delivery to each of the persons named above on this 18th day of October, 2002.



PAUL FLOUNLACKER, Acting Agency Clerk
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1317 Winewood Blvd. Bldg. 2 Room 204Z
Tallahassee, FL 32399-0700