

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ALEJANDRO PENALOZA, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-1663  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on July 30, 2002, with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Alejandro A. Penaloza, Father  
o/b/o Alejandro Penaloza, Son  
12205 Northwest Sixth Street  
Miami, Florida 33182

For Respondent: Rosemarie Rinaldi, ADLC  
Hilda A. Fluriach, Esquire  
Department of Children And  
Family Services  
401 Northwest Second Avenue, N-1014  
Miami, Florida 33128

STATEMENT OF THE ISSUE

Whether the Petitioner should receive benefits for the services requested.

PRELIMINARY STATEMENT

On August 3, 2001, the Respondent, Department of Children and Family Services (Department), issued a letter notifying the Petitioner that his request for services could not be granted. The basis of the denial was the lack of monies available within the limits of the Department's appropriated general revenue funds and the prohibition against spending funds in excess of its appropriation. The Petitioner timely challenged the denial of services and the matter was referred to the Division of Administrative Hearings for formal proceedings.

At the hearing, the father testified on behalf of his son's interests. The Department presented testimony from Evelyn Alvarez and the Respondent's Exhibits 1-3 were received in evidence.

The Transcript of these proceedings was filed on October 2, 2002. The Department's Proposed Recommended Order was filed on October 15, 2002, and has been considered in the preparation of this Recommended Order. The Petitioner did not file a proposed order.

FINDINGS OF FACT

1. The Petitioner is a 20-year-old male who has been diagnosed with mental retardation. The Petitioner resides with his parents who provide for his care. Currently the

Petitioner receives medical benefits through the father's health insurance. He also receives some funding through social security benefits.

2. The Petitioner is a client of the Developmental Disabilities Program and his eligibility to receive benefits is not disputed by the Department. The Petitioner is eligible for benefits. The Petitioner applied for, and has been denied, dental, companion, personal care assistance, and respite benefits.

3. The Petitioner would have received the benefits requested but for the lack of funding in the appropriations for the Department.

4. Because of the lack of funding, the Department prioritizes those who will receive benefits. Unfortunately, the Petitioner is on a waiting list for the Medicaid Waiver Program, and the Individual and Family Support Program does not have sufficient funds appropriated to pay for the services requested by the Petitioner.

5. The Department may not use general revenue funds to fund services for persons awaiting enrollment in the Medicaid Waiver program.

6. The Petitioner's parents need assistance in providing for the care of their son. The Petitioner must be attended lest he be considered "at risk." The parents have incurred

debt to provide for their son, have pursued all avenues for assistance known to them, and have unselfishly tended to his needs. The only way the Petitioner may now receive additional benefits would be if the parents abandon their son so that he might be deemed "in crisis."

7. The Petitioner did not become a client of the Developmental Disabilities Program until after July 1, 1999.

#### CONCLUSIONS OF LAW

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

9. Section 216.311(1), Florida Statutes, provides:

(1) No agency or branch of state government shall contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch unless specifically authorized by law, and any contract or agreement in violation of this chapter shall be null and void.

10. The Department has demonstrated that there are insufficient funds in the general revenue appropriations to provide the services sought by the Petitioner. Since he is technically not "in crisis" the Petitioner must wait for the services for which he is entitled and eligible.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and

Family Services enter a Final Order denying the benefits sought by the Petitioner at this time.

DONE AND ENTERED this 1st day of November, 2002, in Tallahassee, Leon County, Florida.

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J. D. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of November, 2002.

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.