

8-26-02

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

AT

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

DOAH CASE NO. 02-1291 TKW-CLOS
AHCA CASE NO. 2001049521
RENDITION NO.: AHCA-03 0208-FOF-CLC

SHADY REST CARE PAVILION, INC.,
d/b/a SHADY REST CARE PAVILION,

Respondent.

_____ /

SHADY REST CARE PAVILION, INC.,
d/b/a SHADY REST CARE PAVILION,

Petitioner,

vs.

DOAH CASE NO. 02-1965
AHCA CASE NO. 2001074281

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

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 August 26, 2002, is attached to this Final Order, and incorporated herein by reference.

RULING ON EXCEPTIONS

This case concerns a nursing home (Shady Rest Care Pavilion) that was the subject of an administrative complaint and a notice of intent to assign conditional licensure status alleging that the nursing home had failed to maintain acceptable nutritional parameters for several residents and that one resident had been prevented from participating in an exercise program. At the final hearing, only the allegations concerning nutrition for one resident remained for consideration by the ALJ. The Agency filed one exception to the Recommended Order relating to finding of fact number 6. No response to the exception was filed. Upon a review of the complete record, the Agency rejects the exception to the finding of fact for the following reasons.

Section 120.57(1)(l), Fla. Stat., provides in pertinent part that “(t)he agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record...that the findings of fact were not based upon competent substantial evidence)”. See generally Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla.1st DCA 1985) (holding that an agency “may not reject the hearing officer’s finding (of fact) unless there is no competent, substantial evidence from which the finding could reasonably be inferred.”). (e.s.) Additionally, in this case the statement of the ALJ was that federal scope and severity level G corresponded to the Florida Class II deficiency. The finding of fact did not actually state that a Class II deficiency under Florida law required actual harm.

In this case, the finding of fact is supported by competent, substantial evidence. It is the duty and obligation of the ALJ to weigh the evidence presented. In situations where there is conflicting competent, substantial evidence, the ALJ must decide which is

more credible. Generally, this process is not subject to change by the Agency. The exception is, therefore, rejected.

FINDINGS OF FACT

The Agency adopts the findings set forth in the Recommended Order, which is attached hereto and incorporated by reference.


CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

The administrative complaint in case 02-1291 is dismissed and the notice of intent to assign conditional licensure status at issue in case 02-1965 is rescinded and the facility's licensure status for the relevant period is restored to standard.

DONE and ORDERED this 14 day of March, 2003, in Tallahassee, Florida.



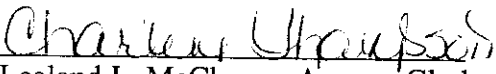
RHONDA M. MEDOWS, MD., SECRETARY
Agency for Health Care Administration

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 18 day of MARCH, 2003.


for Lealand L. McCharen, Agency Clerk
Agency for Health Care Administration
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Tallahassee, FL 32308-5403

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