

3-19-04

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RENDITION NO.: AHCA-04

FILED
04 MAY 17 PM 2:15

AGENCY CLERK

2004 MAY 14 P 1:15

AGENCY CLERK

FILED

MORTON PLANT HOSPITAL
ASSOCIATION, INC., d/b/a
NORTH BAY HOSPITAL,

Petitioner,

vs.

DOAH CASE NO. 02-3232CON
AHCA NO. CON 9539
FRAES NO. 2002045591

AT

AGENCY FOR HEALTH CARE
ADMINISTRATION and NEW PORT
RICHEY HOSPITAL, INC., d/b/a
COMMUNITY HOSPITAL OF NEW
PORT RICHEY,

Respondents.

NEW PORT RICHEY HOSPITAL, INC., d/b/a
COMMUNITY HOSPITAL OF NEW
PORT RICHEY,

Petitioner,

vs.

DOAH CASE NO. 02-3233CON
AHCA NO. CON 9538
FRAES NO. 2002045590

WRP-CLOS

AGENCY FOR HEALTH CARE
ADMINISTRATION and MORTON PLANT
HOSPITAL ASSOCIATION, INC., d/b/a
NORTH BAY HOSPITAL,

Respondents.

TARPON SPRINGS HOSPITAL
FOUNDATION, INC., d/b/a HELEN
ELLIS MEMORIAL HOSPITAL,

Petitioner,

vs.

DOAH CASE NO. 02-3234CON
AHCA NO. CON 9539
FRAES NO. 2002045595

AGENCY FOR HEALTH CARE
ADMINISTRATION and NEW PORT
RICHEY HOSPITAL, INC., d/b/a
COMMUNITY HOSPITAL OF NEW
PORT RICHEY,

Respondents.

TARPON SPRINGS HOSPITAL
FOUNDATION, INC., d/b/a HELEN
ELLIS MEMORIAL HOSPITAL,

Petitioner,

vs.

DOAH CASE NO. 02-3235CON
AHCA NO. 9538
FRAES NO. 2002045594

AGENCY FOR HEALTH CARE
ADMINISTRATION and MORTON PLANT
HOSPITAL ASSOCIATION, INC., d/b/a
NORTH BAY HOSPITAL,

Respondents.

TRUSTEES OF MEASE HOSPITAL,
INC.,

Petitioner,

DOAH CASE NO. 02-3236CON
AHCA NO. CON 9539
FRAES NO. 2002045592

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION and NEW PORT
RICHEY HOSPITAL, INC., d/b/a
COMMUNITY HOSPITAL OF NEW
PORT RICHEY,

Respondents.

TRUSTEES OF MEASE HOSPITAL,
INC.,

Petitioner,

DOAH CASE NO. 02-3237CON
AHCA NO. CON 9538
FRAES NO. 2002045593

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION and MORTON PLANT
HOSPITAL ASSOCIATION, INC., d/b/a
NORTH BAY HOSPITAL,

Respondents.

FILED
04 MAY 17 PM 2:15
ADMINISTRATIVE
HEARINGS
DIVISION

MORTON PLANT HOSPITAL
ASSOCIATION, INC., d/b/a
NORTH BAY HOSPITAL,

Petitioner,

DOAH CASE NO. 02-3515CON
AHCA NO. CON 9539
2002046754

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION and NEW PORT
RICHEY HOSPITAL, INC., d/b/a
COMMUNITY HOSPITAL OF NEW
PORT RICHEY,

Respondents.

_____ /

FINAL ORDER

These various causes were referred to the Division of Administrative Hearings, assigned to an Administrative Law Judge (ALJ), and consolidated for a formal administrative hearing and the entry of a Recommended Order. The Recommended Order of March 19, 2004, is attached to this Final Order, and incorporated herein by reference.

PRELIMINARY STATEMENT

These cases concern two applicants for Certificates of Need to build new hospitals in District 5. Morton Plant Hospital Association, Inc., d/b/a North Bay Hospital ("North Bay") submitted application CON No. 9538. New Port Richey Hospital, Inc., d/b/a Community Hospital of New Port Richey ("Community") submitted application

CON No. 9539. The Agency preliminarily approved both applications. North Bay timely filed a petition challenging Community's approval. Community timely filed a petition requesting that its application be approved if the two applications were considered mutually exclusive. Tarpon Springs Hospital Foundation, Inc., d/b/a Helen Ellis Memorial Hospital ("Helen Ellis") timely filed a petition challenging both North Bay's and Community's approvals. Trustees of Mease Hospital, Inc. ("Mease") timely filed a petition challenging both North Bay's and Community's approvals.

RULING ON EXCEPTIONS

An Unopposed Motion for Extension of Time to File Exceptions to Recommended Order in which all counsel concurred was filed on April 2, 2004. An order granting this motion was issued on April 8, 2004.

Helen Ellis filed exceptions to findings of fact 109 and 110, and to conclusion of law 119 on April 12, 2004. Helen Ellis also filed an exception relating to a CON condition for Community on April 12, 2004. These exceptions do not seek to alter the ultimate recommendation of the ALJ.

North Bay filed exceptions to findings of fact 68, 83, 85, and 87 on April 12, 2004. North Bay also filed an exception relating to imposing a CON condition for Community on April 12, 2004. These exceptions do not seek to alter the ultimate recommendation of the ALJ.

Community filed a response to North Bay's and Helen Ellis' exceptions on April 21, 2004.

A Joint Motion for Extension of Time to File Response to Exceptions to Recommended Order was filed on April 21, 2004 by North Bay and the Agency.

Community filed a response in opposition to the Joint Motion on April 22, 2004.

An order was issued denying the Joint Motion on April 23, 2004.

Helen Ellis filed a reply to the exceptions of North Bay and Community on April 22, 2004.

Community filed a motion to strike a portion of Helen Ellis' reply to the exceptions of North Bay and Community on April 26, 2004.

Helen Ellis filed a motion to strike a portion of Community's response to the exceptions of North Bay and Helen Ellis on April 29, 2004.

Helen Ellis filed a response to Community's motion to strike on April 29, 2004.

Community filed a response to Helen Ellis' Motion to Strike on May 4, 2004.

All of the post Recommended Order pleadings have been carefully reviewed and will be addressed below.

Helen Ellis' exceptions to findings of fact 109 and 110 are denied because they are a rearguing of the arguments presented at hearing. The ALJ weighed all the evidence presented on these issues and found that Helen Ellis presented insufficient evidence to show that it would suffer a "material financial adverse impact." The record shows that competent, substantial evidence was presented that supports the ALJ's findings. The Agency does not have the authority to reweigh the evidence and cannot alter a finding of fact that is supported by competent, substantial evidence. See generally Section 120.57(1)(J), Fla. Stat. (providing 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"); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 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.”).

Helen Ellis’ exception to conclusion of law 119 is rejected because it flows directly from findings of fact, notably 109 and 110, which have been upheld. This conclusion of law cannot be altered without altering these findings of fact. Therefore, the Agency is unable to come to a different conclusion of law that is as or more reasonable than that of the ALJ. See generally Section 120.57(1)(I), Fla. Stat.

Helen Ellis’ “exception” to impose a condition on the CON granted to Community, that Community be required to demolish its current location once the new hospital is opened, would require additional findings of fact by the Agency because the ALJ did not address this issue. See Florida Power and Light v. State, 693 So. 2d 1025 (Fla. 1st DCA 1997). The Agency does not have the authority to make such additional findings and the “exception” is denied. The Agency would also point out that this argument by Helen Ellis is not actually an exception. An exception, pursuant to Rule 28-106.217, Fla. Admin. Code, must address a finding of fact or conclusion of law in the Recommended Order. The ALJ did not make any findings of fact or conclusions of law concerning this issue. This alone would be sufficient grounds for the Agency to deny this “exception”.

North Bay’s first “exception” is also to impose a requirement on Community to demolish its current location once the new hospital is opened. It is denied for the same reasons set out above.

Findings of fact 68 and 85 address the question of provision of medical services to the medically indigent or a commitment to do so. The ALJ found that Community meets

this preference better than North Bay. North Bay's exceptions to finding of fact 68 and 85 are a reargument of its position at hearing. The record shows that the ALJ had competent, substantial evidence before him on this issue. Changing these findings of fact would require that the Agency reweigh the evidence. The Agency cannot do this. See generally Section 120.57(1)(I), Fla. Stat. (providing 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"); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 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.").

Findings of fact 83 and 87 concern North Bay's financing for the proposed new hospital. The ALJ states that Mease would have the power to derail the financing because it is the parent company of two of the hospitals in the group that would provide financing and that oppose North Bay's application. In this exception, North Bay presents evidence that was presented at hearing. This evidence has already been considered and weighed by the ALJ. The Agency is not free to reweigh this evidence. See generally Section 120.57(1)(I), Fla. Stat. (providing 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"); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 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.”). Further, whether Mease could forcibly “derail” the financing for North Bay, its potential refusal does make North Bay’s financing less certain than that of Community. The Agency would point out again that North Bay is not seeking to alter the ultimate recommendation of the ALJ that Community be approved and North Bay be denied. Therefore, this exception is denied.

Because the exceptions themselves would not be granted, all other post Recommended Order motions, unless already ruled on, are denied. All post Recommended Order pleadings were carefully reviewed and considered.

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:

Community’s CON Application No. 9539 is granted.

North Bay’s CON Application No. 9538 is denied.

DONE and ORDERED this 14th day of May, 2004, in Tallahassee, Florida.



MARY PAT MOORE, INTERIM 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 19 day of May, 2004.



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