

6-15-04

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2004 NOV -4 A 9:45

THE BISCAIYNE INSTITUTE,

Petitioner,

AT

DOAH CASE Nos.: 03-1837
03-1838
03-3890.

vs.

RENDITION NO. AHCA-04-0420-FOF-OLC

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION.

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Respondent,

and

CITY OF HOLLYWOOD AND FLORIDA
LEAGUE OF CITIES,

Intervenors.

CORRECTED FINAL ORDER

This Corrected Final Order is issued to correct mistakes in the certificate of service that was included in the original Final Order issued September 2, 2004. The September 2, 2004 Final Order is otherwise unchanged.

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 June 15, 2004, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

The petitioner filed exceptions to findings of fact 3, 4, 6, 7, 8, 9, 10, 28-31 collectively, and 32-33 collectively. The petitioner also filed one collective exception to conclusions of law 36-38. The exceptions are denied for the reasons set forth below.

Each specific exception to each of the above-listed finding of fact simply restates evidence already presented at the hearing, and does nothing more than dispute the ALJ's evidentiary findings; they do not establish an absence of competent substantial evidence. See generally Section 120.57(1)(l), 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."). The record shows that the ALJ's findings of fact are supported by competent substantial evidence. Therefore the petitioner's exceptions to the findings of fact are denied.

Section 120.57(1)(l) provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

The conclusions of law to which petitioner excepts, numbers 36 through 38, are verbatim quotes of Sections 440.13(7), 440.13(1)(u), and 440.13(1)(l), Florida Statutes. The Agency cannot modify or reject these conclusions; that would amount to amendment of a statute, authority for which lies with the Legislature. Petitioner's exception does not

implicate the reasonableness of the conclusions of law. Therefore the petitioner's exceptions to the conclusions of law are denied.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

The disallowances at issue in these consolidated proceedings are sustained.

DONE and ORDERED in DOAH Case Nos. 03-1837, 03-1838 and 03-3890
this 1 day of November, 2004, in Tallahassee, Florida.



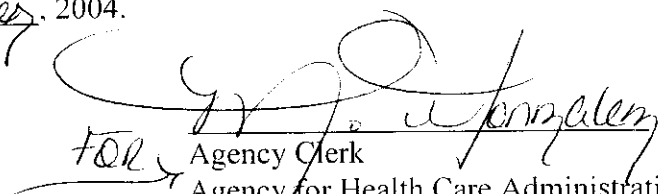
ALAN LEVINE, SECRETARY
Agency for Health Care Administration

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. or interoffice mail to the persons named below on this 4 day of November, 2004.

FOR

Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

COPIES FURNISHED TO:

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