

FILED
2007 JUN 27 P 1:08
DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ORTHOPAEDIC MEDICAL
GROUP OF TAMPA BAY/STUART
A. GOLDSMITH, P.A.,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

Appellant,

CASE NO. 1D06-1658

v.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Appellee.

Opinion filed April 9, 2007.

An appeal from an order of the Agency for Health Care Administration.
Alan Levine, Secretary.

Katherine E. Giddings, William M. Furlow, and Todd D. Engelhardt of Akerman
Senterfitt, Tallahassee, for Appellant.

Garnett W. Chisenhall, Chief Appellate Counsel, and Christa Calamas, Agency for
Health Care Administration, Tallahassee, for Appellee.

PER CURIAM.

This is an appeal from a final order of the Agency for Health Care
Administration (AHCA). In that order, AHCA re-characterized numerous findings
of fact by the administrative law judge (ALJ) as conclusions of law and rejected them.

AHCA's purported rationale for doing so was its determination that the appellant's expert witness on Medicaid coding was not competent to give such testimony. The determination of a witness's qualifications to express an expert opinion is within the discretion of the ALJ and will not be reversed absent a showing of clear error. Cf. Dorta-Duque v. Dorta-Duque, 791 So. 2d 1148, 1150 (Fla. 3d DCA 2001) (quoting Ramirez v. State, 542 So. 2d 352, 355 (Fla. 1989)). AHCA failed to establish that the ALJ's determination constituted clear error. Therefore, we REVERSE and REMAND with instructions to AHCA to enter a final order in accordance with the ALJ's recommended order.

ALLEN, WEBSTER, and ROBERTS, JJ., CONCUR.