

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RENDITION NO.: AHCA-08-1004 -FOF-CON

CON NO. 9896

HOSPICE OF THE PALM COAST,
INC.,

Petitioner,

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent,

and

HOSPICE OF MARION COUNTY, INC.,

Intervenor.

DOAH CASE NO. 06-1273CON
AHCA NO. 2006002773

FILED
AHCA
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2008 OCT 22 1:04
2008 OCT 23 11:31
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Suzanne F. Hood, conducted a formal administrative hearing. At issue in this proceeding is whether the Agency for Health Care Administration ("Agency" or "AHCA") should approve the Certificate of Need (CON) application filed by Hospice of the Palm Coast, Inc. ("Palm Coast") for a new hospice program in Marion County, Hospice Service Area 3B. The Recommended Order dated August 21, 2008 is attached to this final order and incorporated herein by reference.

RULINGS ON EXCEPTIONS

Palm Coast filed exceptions to the recommended order to which Hospice of Marion County, Inc. ("HMC") filed a response.

In Exception 1, Palm Coast took exception to the findings of fact in Paragraph 53 of the Recommended Order, arguing that the ALJ's finding that "the record is not so clear as to the point in the admission process that Palm Coast intends to start the clock running" was not supported by competent, substantial evidence. Palm Coast's reading of that finding of fact is different than what the ALJ intended. It is obvious from reading the entire finding of fact that the ALJ was referring to the fifth letter of support. In that context, the ALJ's finding of fact in Paragraph 53 of the Recommended Order was based on competent, substantial evidence. See Palm Coast's Exhibit 1. The Agency can only reject or modify findings of fact in a recommended order if those findings are not based on competent, substantial evidence. See § 120.57(1)(I), Fla. Stat.; 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"). Thus, the Agency cannot reject or modify it. Therefore Palm Coast's Exception 1 is denied.

In Exception 2, Palm Coast took exception to the ALJ's findings of fact in Paragraph 58 of the Recommended Order, arguing that the findings were not supported by competent, substantial evidence. However, contrary to Palm Coast's argument, the findings of fact in Paragraph 58 of the Recommended Order were based on competent, substantial evidence (see, e.g., Transcript, Volume 13, Pages 1381-1382), and thus cannot be disturbed by the Agency. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Palm Coast's Exception 2 is denied.

In Exception 3, Palm Coast took exception to the findings of fact in Paragraph 60 of the Recommended Order, arguing that the ALJ's finding that "[t]here is no evidence to show how many of the delays in admission were beyond the control of HMC" was not supported by competent, substantial evidence. In spite of Palm Coast's argument to the contrary, the ALJ's finding was based on competent, substantial evidence. See, e.g., Transcript, Volume 3, Pages 261-262; Palm Coast's Exhibits 26 and 33. Thus, Agency does not have any grounds to reject or modify the findings of fact. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Palm Coast's Exception 3 is denied.

In Exception 4, Palm Coast took exception to the findings of fact in Paragraph 61 of the Recommended Order, arguing that they were not supported by competent, substantial evidence. Contrary to Palm Coast's assertion, the findings of fact in Paragraph 61 of the Recommended Order were based on competent, substantial evidence (See, e.g., Transcript, Volume 13, Page 1446; and Palm Coast's Exhibits 33-34), and thus cannot be disturbed by the Agency. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Exception 4 is denied.

In Exception 5, Palm Coast took exception to the findings of fact in Paragraph 63 of the Recommended Order, arguing that the findings were not based on competent, substantial evidence. Palm Coast's argument is erroneous. The findings of fact in Paragraph 63 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 6, Pages 570-571; and Transcript, Volume 14, Page 1531. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Palm Coast's Exception 5 is denied.

In Exception 6, Palm Coast took exception to the conclusions of law in Paragraph 100 of the Recommended Order, arguing that the conclusion was not based on competent, substantial

evidence. Based on the reasoning set forth in the ruling on Palm Coast's Exception 5 supra, Exception 6 is denied.

In Exception 7, Palm Coast took exception to the conclusions of law in Paragraph 101 of the Recommended Order, arguing that the conclusions were not based on competent, substantial evidence. Based on the reasoning set forth in the ruling on Palm Coast's Exception 4 supra, Exception 7 is denied.

In Exception 8, Palm Coast took exception to the conclusions of law in Paragraph 102 of the Recommended Order, arguing that the conclusions were not based on competent, substantial evidence. Palm Coast is, in essence, asking the Agency to re-weigh the evidence in order to reach conclusions of law that are more favorable to its position, which the Agency cannot do.

If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding may reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Heifetz at 1281. The conclusions of law in Paragraph 102 of the Recommended Order were based on the findings of fact, which, in turn, were based on competent, substantial evidence. Therefore, Exception 8 is denied.

FINDINGS OF FACT

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

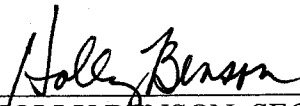
CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, Palm Coast's CON application No. 9896 is denied.

DONE and ORDERED this 22nd day of October, 2008, in Tallahassee, Florida.




HOLLY BENSON, 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 A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH THE FILING FEE AS 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 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 22nd day of October, 2008.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308-5403
(850) 922-5873

COPIES FURNISHED TO:

Honorable Suzanne F. Hood
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Mark A. Emanuele, Esquire
Panza, Maurer & Maynard, P.A.
3600 North Federal Highway, Third Floor
Fort Lauderdale, Florida 33308

Karin M. Byrne, Esquire
Assistant General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS# 3
Tallahassee, Florida 32308

John F. Gilroy, III, Esquire
John F. Gilroy, III, P.A.
1695 Metropolitan Circle, Suite 2
Tallahassee, Florida 32308

Elizabeth Dudek
Health Quality Assurance

Jan Mills
Facilities Intake Unit