

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2007

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

MAE VOLEN SENIOR CENTER, INC.,
Appellant,

v.

**AREA AGENCY ON AGING PALM BEACH/TREASURE COAST, INC.,
STATE OF FLORIDA, DEPARTMENT OF ELDER AFFAIRS, and RUTH
RALES JEWISH FAMILY SERVICE OF SOUTH PALM BEACH COUNTY,**
Appellees.

No. 4D06-2992

[August 8, 2007]

WARNER, J.

This case involves a challenge by Mae Volen Senior Center, Inc. to the Area Agency on Aging Palm Beach/Treasure Coast, Inc.'s ("AAA") notice of intent to award to another provider a contract for designation as lead agency pursuant to a request for proposals issued by the AAA. An appeal was filed with the Department of Administrative Hearings ("DOAH"), and the assigned administrative law judge dismissed the appeal for lack of subject matter jurisdiction. We conclude that the DOAH has subject matter jurisdiction and reverse solely as to this issue.

Area agencies on aging are organizations designated by the Department of Elder Affairs ("DOEA") to coordinate and administer DOEA programs and to provide, through contracting agencies, services within a planning and service area. § 430.203(1), Fla. Stat. Florida has eleven area agencies on aging. Appellee AAA is responsible for a planning service area which encompasses Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie counties.

In establishing DOEA, the legislature provided:

- (2) The department shall plan and administer its programs and services through planning and service areas as designated by the department.

.....

(6) In accordance with the federal Older Americans Act of 1965, as amended, the department shall designate and contract with area agencies on aging in each of the department's planning and service areas. Area agencies on aging shall ensure a coordinated and integrated provision of long-term care services to the elderly and shall ensure the provision of prevention and early intervention services. . . .

(7) The department shall contract with the governing body, hereafter referred to as the "board," of an area agency on aging to fulfill programmatic and funding requirements. The board shall be responsible for the overall direction of the agency's programs and services and *shall ensure that the agency is administered in accordance with the terms of its contract with the department, legal requirements, established agency policy, and effective management principles.* The board shall also ensure the accountability of the agency to the local communities included in the planning and service area of the agency.

§ 20.41, Fla. Stat. (2006) (emphasis supplied).

State law requires area agencies on aging to contract with a "lead agency" for provision of services at least once every three years through a request for proposal process. See § 430.203(9), Fla. Stat. A lead agency is given authority and responsibility to coordinate some or all of the services, either directly or through subcontracts, for functionally impaired elderly persons.

AAA submitted a request for bids for its area and obtained two proposals, one from Mae Volen and one from another agency which was awarded the bid. Mae Volen filed a formal bid protest which was transferred to the DOAH.

In considering its jurisdiction to hear the proceeding, the ALJ found that the AAA is a private entity that is designated by, and is under contract with, the DOEA to provide services to the elderly pursuant to section 20.41, Florida Statutes. As such, it did not fit within the definition of "agency" contained in section 120.52 for which the DOAH has jurisdiction to determine disputes.

The ALJ overlooked section 20.41(7) which designates the AAA as a "board." Section 120.52(1)(b) includes "boards" in its definition of

agencies subject to the provisions of the Administrative Procedure Act. See § 120.52(1)(b)3., Fla. Stat. The AAA in this case also exercises authority in a multi-county area. Because the legislature designated the area agencies on aging as "boards," we conclude that the DOAH has authority to hear this bid protest. We do not decide what statutes or rules apply to the bid protest, merely that it is within the jurisdiction of the DOAH to determine those issues.

Reversed for further proceedings.

HAZOURI, J., concurs.

POLEN, J., dissents without opinion.

* * *

Appeal from the State of Florida Division of Administrative Hearings; Patricia M. Hart, Administrative Law Judge; L.T. Case No. 06-2291 BID.

Donna E. Blanton and Elizabeth McArthur of Radey Thomas Yon & Clark, P.A., Tallahassee, for appellant.

Cynthia S. Tunnickliff, Brian A. Newman and Brandice D. Dickson of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., Tallahassee, for appellee Area Agency on Aging Palm Beach/Treasure Coast, Inc.

Barbara M. Crosier, Robert N. Clarke, Jr. and Jason B. Gonzalez, Tallahassee, for appellee State of Florida Department of Elder Affairs.

Matthew Triggs and Gary W. Kovacs of Proskauer Rose LLP, Boca Raton, for appellee Ruth Rales Jewish Family Service.

Not final until disposition of timely filed motion for rehearing.