STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARRIE JOHNSON, AS LAWFUL CUSTODIAN AND NEXT FRIEND OF MINOR CHILD, JEVON EVENS,	)	
Petitioners,	)	
vs.	)	Case Nos. 08-1577RP
DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	)	
Respondent.	)	

SUMMARY FINAL ORDER

A formal administrative hearing was unnecessary in this case before the Division of Administrative Hearings, by Daniel M. Kilbride, Administrative Law Judge, and this matter is decided on Cross Motions for Summary Final Order.

APPEARANCES

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STATEMENT OF THE ISSUES

Whether proposed rule 65A-1.900(2)(a) of Respondent is an invalid exercise of delegated legislative authority because the proposed rule is arbitrary and capricious and/or it enlarges, modifies, or contravenes Section 414.41, Florida Statutes, the specific provision of law implemented.

PRELIMINARY STATEMENT

There are several interrelated cases which commenced when Petitioner challenged an unpromulgated policy of Respondent's as an unadopted agency statement meeting the definition of a rule. This policy prohibited payment of pre-October 1, 2007, cash assistance withheld from Petitioner Carrie Johnson and her grandson Jevon Evens. The Petition to Determine Invalidity of Unadopted Rule, dated November 2, 2007 [hereafter "First Petition], was assigned DOAH Case No. 07-5066RU. After undertaking discovery, Petitioner moved for summary final order on February 1, 2008, asking this tribunal to find the unadopted policy invalid. Respondent then proposed a rule which "address[ed] the agency statement Petitioner contends constitutes an unpromulgated rule" and moved, inter alia, to

abate the case. See Respondent's Motion to Dismiss or Alternative Stay/Abate Administrative Proceedings [hereafter "Motion to Abate"]. Petitioner did not object to abatement, and the unpromulgated rule challenge, Case No. 07-5066RU, was placed in abeyance. An Order placing the case in abeyance was entered on March 13, 2008.

After entry of the abatement of Petitioner's First Petition, Respondent published a Proposed Rule amending Florida Administrative Code Rule 65A-1.900(2)(a) to incorporate the agency statement challenged as unpromulgated. Petitioner challenged the validity of the substance of the proposed rule as being beyond delegated legislative authority. Petition to Determine Invalidity of Proposed Rule, filed March 28, 2008 (hereafter "Second Petition), was assigned DOAH Case No. 08-1577RU. The unpromulgated rule challenge, First Petition, and the proposed rule challenge, Second Petition, were consolidated by Order dated April 9, 2008.

Petitioner thereafter moved for summary final order on her Second Petition, the proposed rule challenge. Respondent responded by stating it would delete the contested sentence that allegedly makes the proposed rule an invalid exercise of delegated legislative authority. Thereafter, Respondent's Notice of Change was published in the Florida Administrative Weekly demonstrating that the challenged language providing

". . . [c]ash assistance benefits will not be paid to offset recovery prior to October 1, 2007, from individuals who were children in the overpaid assistance group . . ." is deleted from proposed rule 65A-1.900(2)(a). Based on this chain of events, Petitioner moved to set aside its March 13, 2008, Order Placing Case 07-5066RU in Abeyance.

Timely following Respondent's publication of its Notice of Change, Petitioner challenged the validity of the Notice of Change as being beyond delegated legislative authority. Petitioner charges that Respondent materially failed to follow rulemaking procedures/requirements and acted arbitrarily and capriciously. Petition to Determine Invalidity of Notice of Change to Proposed Rule 65A-1.900(2)(a) was filed June 25, 2008 (hereafter "Third Petition"), and assigned DOAH Case No. 08-3106RP. Petitioner further filed a motion to consolidate the Third Petition with the first two challenges.

Following the filing of the Third Petition, Respondent moved for summary disposition of same. After responding to same, Petitioner cross-moved for summary final order on her Third Petition. On September 9, 2008, Respondent published with Florida Administrative Weekly, a Notice of Proposed Rule 65A-4.220, which sets out inter alia, Respondent's proposal for limiting the application of policy changes in the Temporary Cash Assistance (TCA) program, and if, and when, it will notify TCA

recipients about policy changes that may affect them. A public hearing was held on the proposed rule on October 8, 2008.

Petitioner filed a Petition to Determine Invalidity of Proposed Rule 65A-4.220 on October 20, 2008 (hereafter Fourth Petition), which was assigned DOAH Case No. 08-5227RP. That matter remains pending.

FINDINGS OF FACT

The undisputed material facts are as follows:

1. Carrie Johnson is the maternal grandmother and caretaker of Jevon Kyshan Evens, aged 17, and Willard Cody Sanders, aged 15. Ms. Johnson and her grandchildren live at 806 E. James Street, Tampa, Florida 33603. Ms. Johnson has court-ordered custody of both of her grandchildren. During all times relevant to these proceedings, Jevon Kyshan Evens was a minor child.

2. Ms. Johnson currently receives a maximum of $637 in Supplemental Security Income (hereafter "SSI") subsistence disability benefits. She gets governmental housing assistance. She also gets TCA for both grandsons to help her care for them. For her two grandsons, the most Ms. Johnson is eligible to receive in TCA is a grant of $241 each month.

3. Respondent's records show that, at least as early as 1992, Jevon lived with Ms. Johnson.

4. At one time, Jevon went to live with his natural mother. However, Jevon moved back in with his grandmother, Carrie Johnson.

5. Respondent charged Jevon's natural mother with an overpayment of $2,562 in TCA benefits.

6. Respondent reduced Petitioner's cash assistance benefits as a means to recover the outstanding cash assistance overpayment claim established against the mother. The authority cited for Respondent's action was Florida Administrative Code Rule 65A-1.900, which implements Section 414.41, Florida Statutes.

7. Prior to October 1, 2007, Respondent began to collect Jevon's mother's overpayment by reducing the amount of TCA it gave to Carrie Johnson for Jevon. Respondent recouped at least $369 of Jevon's mother's overpayment from Jevon's temporary assistance between 2005 and the end of 2007. Respondent continued to reduce Ms. Johnson's TCA benefits to recoup Jevon's mother's overpayment until the end of December 2007.

8. Effective October 1, 2007, however, Respondent changed its cash assistance program's benefit recovery policy based on a different interpretation of Subsection 414.41(1), Florida Statutes. Prior to October 1, 2007, all participants in the cash assistance program at the time an overpayment occurred were identified as a "responsible person" for purposes of repayment

of a cash assistance overpayment claim. However, as of October 1, 2007, the meaning of "responsible person" was changed by making "adults" the only group of people who could be responsible for repaying cash assistance overpayment claims. Therefore, it excluded recovery of cash assistance overpayments from minors.

9. Consistent with the new policy concerning "adults" and "responsible persons," Respondent voluntarily restored cash assistance benefits to currently active cash assistance households that contained a minor child in the assistance group if the household's cash assistance benefits had been reduced to recover repayment of an outstanding overpayment cash assistance claim. The restoration period covered October 1, 2007, through December 31, 2007. Petitioner's household was a benefactor of Respondent's decisions to restore the cash assistance benefits for the months of October and November, 2007.

10. Although Respondent paid Ms. Johnson supplemental TCA to offset the benefits it recovered in October and November 2007, Respondent did not return to Jevon or Carrie Johnson any of the money that it kept from Jevon's cash assistance prior to October 1, 2007, in order to recoup his mother's overpayment.

11. Carrie Johnson is substantially affected by the proposed rule and, thus, has standing in this challenge.

12. On December 14, 2007, Respondent published Notice of Development of Rulemaking with the stated purpose of "align[ing] . . . policies for recovery of overpayment in the public assistance programs."

13. On March 7, 2008, Respondent published Notice of Proposed Rule stating that "the proposed rule aligns policies for recovery of overpayment in the public assistance programs. . . . The proposed rule amends language about who is responsible for repayment of overpayment of public assistance benefits."

14. The operative date of October 1, 2007, was set forth in the second sentence of proposed rule 65A-1.900(2)(a) ("Cash assistance benefits will not be paid to offset recovery prior to October 1, 2007, from individuals who were children in the overpaid assistance group").

15. Petitioner alleges that the operative date of October 1, 2007, is arbitrary and capricious.

16. Proposed rule 65A-1.900(2)(a), as published on March 7, 2008, reads, in its pertinent parts, as follows:

* * *

> (2) Persons Responsible for Repayment of Overpayment.
> (a) Persons who received AFDC and cash assistance overpayments as an adult shall be responsible for repayment of the overpayment. . . . Cash assistance benefits will not be paid to offset recovery prior to

> October 1, 2007 from individuals who were children in the overpaid assistance group.
>
> * * *
>
> (e) For the purpose of this rule, an adult is defined as:
> 1. Eighteen (18) years of age or older,
> 2. A teen parent receiving assistance for themselves as an adult,
> 3. An emancipated minor, or
> 4. An individual who has become married even if the marriage ended in divorce.
> (Underlining in original)

17. The summary section of the proposed rule states that it ". . . amends language about who is responsible for repayment of overpayment of public assistance benefits. . . ." The purpose and effect of the proposed rulemaking is the alignment of policies for recovery of overpayment in the public assistance program.

18. Subsection 414.41(1), Florida Statutes, reads, in its pertinent parts, as follows:

> **414.41. Recovery of payments made due to mistake or fraud.** --
> (1) Whenever it becomes apparent that any person . . . has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment. Recovery may include Federal Income Tax Refund Offset Program collections activities in conjunction with Food and Consumer Service and the Internal Revenue Service to intercept income tax refunds due to clients who owe food stamp or WAGES debt

> to the state. The department will follow the guidelines in accordance with federal rules and regulations and consistent with the Food Stamp Program. The department may make appropriate settlements and shall establish a policy and cost-effective rules to be used in the computation and recovery of such overpayments.
> (Emphasis added.)

19. Following the filing of Petitioner's Motion for Summary Final Order on the Second Petition, Respondent moved to delete the contested sentence Petitioner objected to. Thereafter, Respondent's Notice of Change was published in the Florida Administrative Weekly striking the sentence which read: ". . . [c]ash assistance benefits will not be paid to offset recovery prior to October 1, 2007, from individuals who were children in the overpaid assistance group. . . ."

20. Following publication of the Notice of Change, the Third Petition was filed, in which Petitioner seeks a determination that the Notice of Change, the scheduled public hearing, and Respondent's intent to change the language of proposed rule 65A-1.900(2)(a), Florida Administrative Code, as originally published in the Florida Administrative Weekly, by deleting a sentence constitute an invalid exercise of delegated legislative authority. See § 120.52(8)(a), Fla. Stat. (2007).

21. When Respondent submitted documents to the Joint Administrative Procedures Committee (JAPC) concerning a Notice of Change to Proposed Rule 65A-1.900, no reason for the change

was included in these documents. JAPC wrote to Respondent and asked the agency to explain the reason for the Notice of Change. Respondent has not responded to JAPC's request for an explanation of the reason for the Notice of Change.

22. There is no written record of JAPC instructing Respondent to hold a public hearing to discuss the Notice of Change.

23. Respondent published a Notice of Rule Development to amend Florida Administrative Code Rule 65A-4.220. The draft text of the proposed rule was published and a public hearing was held on October 8, 2008. A Petition to Determine the Invalidity of Proposed Rule 65A-4.220 was filed October 20, 2008, [hereafter "Fourth Petition"], and assigned DOAH Case No. 08-5227RP.

CONCLUSIONS OF LAW

Jurisdiction

24. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 120.56, Florida Statutes (2007).

25. Petitioner is an individual whose substantial interests will be affected by the proposed rule, and has standing to bring this rule challenge.

Burden of Proof

26. Initially, Petitioner "shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority." § 120.56(2)(a), Fla. Stat (2007). Then, the Respondent "has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised." Id.; see also Southwest Florida Water Management District v. Charlotte County, 774 So. 2d 903, 908 (Fla. 2nd DCA 2001). ("Nothing in Subsection 120.56(2) requires the agency to carry the burden of presenting evidence to disprove an objection alleged in a petition challenging a proposed rule. Instead a party challenging a proposed rule has the burden of establishing a factual basis for the objections to the rule, and then the agency has the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority."), citing St. Johns River Water Management District v. Consolidated-Tomoka Land Co., 717 So. 2d 72, 76 (Fla. 1st DCA 1998). The court in Consolidated-Tomoka Land Co., declined to require the agency to go forward with evidence to disprove every objection made in the petition. Consolidated-Tomoka Land Co., 717 So. 2d at 76. Instead, the court adopted a practical approach that requires the party challenging the

proposed rule to establish a factual basis for the objections put forth in the petition. Id. at 77.

27. A rule may not be declared invalid on any ground other than whether the rule is an invalid exercise of delegated legislative authority without impermissibly extending the authority of the Administrative Law Judge (ALJ). See Schiffman v. Department of Professional Regulation, Board of Pharmacy, 581 So. 2d 1375, 1379 (Fla. 1st DCA 1991)("An administrative agency has only the authority that the legislature has conferred it by statute."). Thus, a proposed rule may not be invalidated simply because the ALJ believes it is not the wisest or best choice. See Bd. of Trustees of Internal Improvement Fund v. Levy, 656 So. 2d 1359, 1364 (Fla. 1st DCA 1995)("The issue before the [ALJ] in this [rule challenge] case was not whether the Trustees made the best choice . . . or whether their choice is one that the appellee finds desirable . . . ."); Dravo Basic Materials Co., Inc. v. Department of Transportation, 602 So. 2d 632, 634 (Fla. 2nd DCA 1992)("It is not our task, however, to write the best rule for DOT. That was not the task of the [ALJ].").

28. Petitioner contends that when the Legislature amended Subsection 414.41(1), Florida Statutes, it intended to prohibit or preclude Respondent from reducing her cash assistance benefits to repay the overpayment claim established against

Jevon Evens' mother. Petitioner contends that when the Legislature amended Subsection 414.41(1), Florida Statutes, it also intended to incorporate by reference Title 7 Code of Federal Regulations subpart 273.17, Restoration of lost benefits. Subpart 273.17 is the basis for Petitioner's claim of entitlement to restored cash assistance benefits prior to October 1, 2007.

Statutory Construction

29. Legislative intent is the polestar that guides a court's statutory construction analysis. Reynolds v. State, 842 So. 2d 46, 49 (Fla. 2002). In determining the Legislature's intent in using a particular word in a statute, the courts may examine other uses of the word in similar contexts. Hankey v. Yarian, 755 So. 2d 93, 96 (Fla. 2000).

30. Statutory phrases are not to be read in isolation, but rather within the context of the entire section. Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 915 (Fla. 2001). The legislative use of different terms in different sections is strong evidence that different meanings were intended. Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So. 2d 515, 518 (Fla. 1st DCA 1984).

31. When the Legislature enacts a statute, it is presumed to know existing statutes and the case law construing them. Williams v. Christian, 335 So. 2d 358, 360 (Fla. 1st DCA 1976).

32. The statutory construction principle in pari materia requires two statutes relating to the same thing or subject to be construed together "so as to harmonize both statutes and give effect to the Legislature's intent." Maggio v. Florida Department of Labor and Employment, 899 So. 2d 1074, 1078 (Fla. 2005).

33. Legislative intent can be discerned by reading the statute as a whole. See, e.g., Young v. Progressive Southeastern Ins. Co., 753 So. 2d 80 (Fla. 2000); Acosta v. Richter, 671
So. 2d 149 (Fla. 1996); and Klonis v. Department of Revenue, 766 So. 2d 1186 (Fla. 1st DCA 2000). Legislative history concerning Subsection 414.41(1), Florida Statutes, can also be used to discern legislative intent. See Department of Insurance v. Insurance Services Offices, 434 So. 2d 908, 911 (Fla. 1st DCA 1983).

34. It is widely recognized that "[a]gencies are to be accorded wide discretion in the exercise of their lawful rulemaking-authority, clearly conferred or fairly implied and consistent with the agency's general statutory duties." Department of Natural Resources v. Wingfield Development Company, 581 So. 2d 193, 197 (Fla. 1st DCA 1991).

35. Respondent is to be "accord[ed] great deference to administrative interpretations of statutes which the . . .

agency is required to enforce." Department of Environmental Regulation v. Goldring, 477 So. 2d 532, 534 (Fla. 1985).

36. "[T]he agency's interpretation of a statute need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations." Department of Professional Regulation, Board of Medicine Examiners v. Durrani, 455 So. 2d 515, 517 (Fla. 1st DCA 1984). See Board of Podiatric Medicine v. Florida Medical Association, 779 So. 2d 658, 660 (Fla. 1st DCA 2001) (upholding agency's definition "[i]n light of the broad discretion and deference which is accorded an agency in the interpretation of a statute which it administers, and because such an interpretation should be upheld when it is within the range of permissible interpretations[.]").

37. The ALJ has the discretion to declare the proposed rule wholly or partly invalid. § 120.56(2)(b), Fla. Stat. (2007).

38. Respondent's interpretation is reasonable in that by amending Subsection 414.41(1), Florida Statutes, the Legislature intended only to: (1) give Respondent the authority to use the collection activities of the Federal Income Tax Refund Offset Program, and (2) if Respondent used the Federal Income Tax Refund Offset Program, Respondent must follow the guidelines in

Title 7 Code of Federal Regulations subpart 273.18(n) governing the Treasury's Offset Program.

39. There is no evidence tending to show Petitioner's interpretation of the language amending Subsection 414.41(1), Florida Statutes, is what the Legislature intended. More importantly, interpreting the language in the amendment as including or incorporating federal Food Stamp Program's guidelines on restoring cost benefits and/or as stopping recovery of cash assistance overpayment debts by reducing Petitioner's cash assistance benefit award makes the Legislature's specific and express use of "Federal Income Tax Refund Offset Program collection activities" and the Legislature's specific and express use of "intercept income tax refunds due to clients who owe food stamp or wages debt to the state," completely meaningless.

40. Therefore, Petitioner's reading and interpretation of the language amending Subsection 414.41(1), Florida Statutes, is rejected. See Times Publishing Co. v. Williams, 222 So. 2d 470 (Fla. 2nd DCA 1969) (a court cannot presume that the Legislature employed useless language in enacting a statute). See also City of St. Petersburg v. Nasworthy, 751 So. 2d 772, 774 (Fla. 1st DCA 2000) (the "doctrine of the last antecedent," provides that relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are

not to be construed as extending to, or including, others more remote.). Clearly, Petitioner's interpretation of Subsection 414.41(1), Florida Statutes, violates the doctrine of the last antecedent.

41. In conclusion, proposed rule 65A-1.900(2)(a) changes Respondent's policy about who is liable for repayment of cash assistance overpayment debts owed to the state. The change is made by saying, in a clear and straightforward manner, "adults" are the "responsible persons." The term "adults" is defined in proposed rule 65A-1.900(2)(e). As defined, persons who were minor children in the cash assistance group when the overpayment occurred will no longer be responsible for repayment of the cash assistance overpayment debt.

42. The ultimate question in a proposed rule challenge is whether the rule is "an invalid exercise of delegated legislative authority." § 120.56(1), Fla. Stat. (2007). Subsection 120.52(8), Florida Statutes (2007), defines the term as an "action which goes beyond the powers, functions, and duties delegated by the Legislature."

43. In 1999, the Legislature revised the closing paragraph of Subsection 120.52(8), Florida Statutes, after the decision in Consolidated-Tomoka Land Co., which held that "[a] rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and

duties identified in the statute to be implemented."

Consolidated-Tomoka Land Co., 717 So. 2d at 80.

44. The language of Subsection 120.52(8), Florida Statutes, was amended to read:

> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute. (Emphasis supplied.)

§ 120.52(8), Fla. Stat. (2005). See Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So. 2d 696 (Fla. 1st DCA 2001); See also Southwest Florida Water Management District v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. 1st DCA 2000).

45. The test for invalid delegation of legislative authority is whether a rule gives effect to a "specific law to

be implemented" and whether the rule implements or interprets "specific powers and duties." Day Cruise, 794 So. 2d at 704.

46. The court in Day Cruise discussed the importance of the 1999 Administrative Procedure Act (the "Act") amendments as follows:

> Under the 1996 and 1999 amendments to the APA, it is now clear, agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement it, and then only if the (proposed) rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency.

Day Cruise, 794 So. 2d at 700. See generally Save the Manatee Club, Inc., 773 So. 2d at 598-599 (interpreting Subsection 120.52(8), Florida Statutes (1999), as removing an agency of the authority to adopt a rule merely because it is with the agency's class of powers and duties).

47. Petitioner contends proposed rule 65A-1.900(2)(a) enlarges, modifies, or contravenes Subsection 414.41(1), Florida Statutes. However, nothing in Subsection 414.41(1), Florida Statutes, forbids or prohibits Respondent from limiting the composition of the group of persons responsible for repayment of cash assistance overpayment debts to adults. There is also nothing in Subsection 414.41(1), Florida Statutes, that forbids or prohibits Respondent from removing minor children of the cash

assistance group from the group of persons who will continue to be responsible for repayment of cash assistance overpayment debts. Therefore, changing the definition of "persons responsible" by limiting liability for repayment of cash assistance overpayment debts to "adults" does not contravene Subsection 414.41(1), Florida Statutes.

48. Changing the composition of the group of persons who will remain liable and responsible for repayment of cash assistance overpayment debts was the result of a closer examination of Subsection 414.41(1), Florida Statutes. Specifically, Subsection 414.41(1), Florida Statutes, clearly makes any person who "received" public assistance under chapter 414 to which they are not entitled liable for repayment of cash assistance overpayment debts.

49. However, prior to September 2007, Subsection 414.41(1), Florida Statutes, was interpreted to mean that minor children could and would also be made responsible for repayment of cash assistance overpayment debts because they were considered to be the recipient of the cash assistance benefit. This interpretation was unduly harsh and punished children for acts of their parent(s) and/or caregivers. Under this interpretation, minor children are included as "persons responsible" for repayment based on what could appear to be

their having directly benefited from the cash assistance payment.

50. Removing minor children of cash assistance groups from the group of "persons responsible" for repayment of cash assistance overpayment debts does not enlarge or modify Subsection 414.41(1), Florida Statutes. On its face, Subsection 414.41.(1), Florida Statutes, only makes liable those persons who "received" cash assistance benefits they are not entitled to receive. Minor children do not apply for cash assistance benefits. Minor children do not receive cash assistance benefits in the same sense as a payee receives cash assistance grants. Cash assistance benefits are not given in-hand to minor children. Rather, cash assistance benefits are issued to and received by adults. Therefore, minor children, literally, do not meet the definition of "participant" set forth in Subsection 414.0252(9), Florida Statutes. Accordingly, the removal of minor children from the group of "persons responsible" for repayment of cash assistance overpayment debts does not constitute an unlawful enlargement or modification of Subsection 414.41(1), Florida Statutes.

51. Offsetting cash assistance benefits to collect outstanding cash assistance overpayment debts is not an unlawful enlargement, modification, or contravention of Subsection 414.41(1), Florida Statutes, as set forth in Florida

Administrative Code Rule 65A-1.900 and proposed rule 65A-1.900(2)(a). In fact, offsetting cash assistance benefits as a means of collecting cash assistance overpayment debts is fully consistent with Subsection 414.41(1), Florida Statutes.

52. Specifically, Subsection 414.41(1), Florida Statutes, clearly establishes that the Legislature intended for cash assistance overpayment debts to be recovered by the offsetting of benefits. Subsection 414.41(1), Florida Statutes, reads, in its pertinent part, ". . . the department shall take all necessary steps to recover the overpayment . . . ," and further, ". . . [t]he department . . . shall establish a policy and cost-effective rules to be used in the computation and recovery of such overpayments."

53. The use of a policy of offsetting current cash assistance benefits by the amount of an outstanding cash assistance overpayment debt is a cost-effective method of collecting cash assistance overpayment debts. The cost-effectiveness of offsetting benefits as a collections tool is apparent from the Legislature's enactment of Subsection 414.41(1), Florida Statutes, which clearly gives Respondent the authority to use the Federal Income Tax Refund Offset Program to collect cash assistance overpayment debts. Therefore, Rule 65A-1.900 and proposed rule 65A-1.900(2)(a) are not only within the scope of and consistent with what the Legislature intended

by enacting Sections 414.41 and 414.45, Florida Statutes, but Rule 65A-1.900 and proposed rule 65A-1.900 are also not arbitrary or capricious, or otherwise an invalid exercise of delegated legislative authority by Respondent.

54. Petitioner contends that offsetting and keeping cash assistance benefits collected from her to repay the outstanding cash assistance overpayment debt owed by and established against Jevon Evens' mother is wrong. Petitioner's contention is based on her erroneous interpretation of Subsection 414.41(1), Florida Statutes. Garrison Corporation v. Department of Health and Rehabilitative Services, 662, So. 2d 1374 (Fla. 1st DCA 1995); Debose v. Department of Health and Rehabilitative Services, 598 So. 2d 195 (Fla. 3rd DCA 1992); Gonzalez v. Department of Health and Rehabilitative Services, 558 So. 2d 32 (Fla. 1st DCA 1989).

55. In addition, Respondent has stated it will change proposed rule 65A-1.900(2)(a) by removing the passage, ". . . [c]ash assistance benefits will not be paid to offset recovery prior to October 1, 2007, from individuals who were children in the overpaid assistance group. . . ." Therefore, it is not necessary for this tribunal to determine at this time whether keeping cash assistance benefits collected to repay cash assistance overpayment debts pursuant to existing Rule 65A-1.900(2)(a) is correct or not. See, e.g., Osceola Fish

Farmers Association v. Division of Administrative Hearings, 830 So. 2d 932 (Fla. 4th DCA 2002).

56. Moreover, deciding if it is, or would be, wrong for Respondent to keep the monitary value of all collections from Petitioner's cash assistance benefits from June 2005 through September 2008, is not properly before this tribunal. Specifically, jurisdiction of this proceeding was invoked pursuant to Subsection 120.56(2)(a), Florida Statutes. This statute does not empower DOAH to determine or adjudicate whether Respondent's offsetting and keeping cash assistance benefit to repay the outstanding cash assistance overpayment debt owed by and established against Jevon Evans' mother is wrong. Therefore, this aspect of the claim or contention is not properly before this tribunal. Claims of this nature can and must be adjudicated before the Department of Children and Families pursuant to Florida Administrative Code Rule 65-1.056.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED that (1) Petitioner's Motion for Summary Final Order is Denied, (2) Respondent's Motion for Final Summary Order is Granted, and (3) the Petition to Determine Invalidity of Proposed Rule 65A-1.900(2)(a) is dismissed.

DONE AND ORDERED this 4th day of November, 2008, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
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NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.