

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
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2015 JUN 23 A 10:56

HERNANDO-PASCO HOSPICE, INC.,

Petitioner,

CASE NO. 14-1367CON

AHCA NO. 2014002492

v.

RENDITION NO.: AHCA-15-0378 -FOF-OLC

HOSPICE OF CITRUS COUNTY,
INC. d/b/a HOSPICE OF CITRUS
AND THE NATURE COAST and
STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondents.

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), John D.C. Newton II, conducted a formal administrative hearing. On December 24, 2015, the ALJ entered a Recommended Order in this case. On January 16, 2015, Hospice of Citrus County, Inc. d/b/a Hospice of Citrus and the Nature Coast ("HOCC") filed exceptions to the Recommended Order that included a Motion for Remand. On January 28, 2015, the Agency Clerk for the Agency for Health Care Administration ("Agency" or "AHCA") entered an Order on Motion for Remand that granted the Motion for Remand and referred the case back to the ALJ so that the ALJ would make additional findings of fact on the issue of whether Hernando-Pasco Hospice, Inc. ("Hernando-Pasco") had standing to contest HOCC's Certificate of Need ("CON") application. On May 8, 2015, the ALJ entered a Supplemental Recommended Order on Standing Issue ("SRO"). At issue in this proceeding are whether the CON application filed by HOCC to establish a new hospice program in Hernando County, Agency for Health Care Administration Service Area 3D, should be approved or denied,

and whether Hernando-Pasco has standing to challenge HOCC's CON application. Both the Recommended Order and the SRO are attached to this final order and incorporated herein by reference.

RULINGS ON EXCEPTIONS

HOCC filed exceptions to the Recommended Order, and Hernando-Pasco Hospice filed a response to HOCC's exceptions. HOCC also filed exceptions to the SRO, and Hernando-Pasco filed a response to HOCC's exceptions to the SRO.

In determining how to rule upon HOCC's exceptions and whether to adopt the ALJ's Recommended Order and SRO in whole or in part, the Agency for Health Care Administration ("Agency" or "AHCA") must follow Section 120.57(1)(I), Florida Statutes, which 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. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

§ 120.57(1)(I), Fla. Stat. Additionally, "[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on HOCC's exceptions:

Exceptions to Recommended Order

In Exception 1, HOCC takes exception to the conclusions of law in Paragraph 109 of the Recommended Order, arguing that they should be modified because the need for Partners-in-Care:Together-for-Kids ("PIC:TFK") services outweigh any concerns about long-term financial feasibility. The conclusions of law in Paragraph 109 of the Recommended Order are based on the findings of fact in Paragraphs 96-99 of the Recommended Order, which, in turn, are based on competent, substantial evidence. See Transcript, Volume 4, Page 425; Transcript Volume 6, Pages 745-751; Petitioner's Exhibit 37. Furthermore, in Paragraph 74 of the Recommended Order, to which HOCC did not take exception, the ALJ found that "[t]he data and theories presented as evidence are simply inconclusive about whether the absence of reported hospice utilization by young patients in Hernando County is because the patients are not being served or because there have not been any patients in recent years." This finding demonstrates that HOCC failed to prove that there are special circumstances that warrant the approval of its CON. The Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 109 of the Recommended Order, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Exception 1.

In Exception 2, HOCC takes exception to Paragraph 101 of the Recommended Order, arguing that the findings of fact and conclusions of law contained in that paragraph are based on the ALJ's misreading of the parties' Pre-Hearing Stipulation and should thus be rejected. Exception 2 has been rendered moot by the January 28, 2015 Order on Motion for Remand and

subsequent Supplemental Recommended Order on Standing Issue that was entered by the ALJ on May 8, 2015. Therefore, the Agency denies Exception 2 on the basis of mootness.

Exceptions to SRO

In Exception 1 to the SRO, HOCC takes exception to the findings of fact in Paragraph 2 of the SRO, based on the reasoning set forth in its Exception 1 to the Recommended Order. Based on the reasoning set forth in the ruling on Exception 1 to the Recommended Order supra, which is hereby incorporated by reference, the Agency denies Exception 1 to the SRO.

In Exception 2 to the SRO, HOCC takes exception to the findings of fact in Paragraph 5 of the SRO, arguing Hernando-Pasco's baseline admissions numbers were incorrect, which, in turn, caused its projected losses in admissions to be inflated. The findings of fact in Paragraph 5 of the Recommended Order are based on competent, substantial evidence. See Transcript, Volume 6, Pages 747-748; Hernando-Pasco Exhibit 37. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(I), Fla. Stat.; Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 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"). In addition, the ALJ's findings were reached by his weighing of competent, substantial evidence. The Agency is not permitted to re-weigh that same evidence in order to reach findings of fact that are more favorable to HOCC. Heifetz 475 So. 2d at 1281; Smith v. Department of Health and Rehabilitative Services, 555 So. 2d 1254, 1255-1256 (Fla. 3d DCA 1989). Therefore, the Agency must deny Exception 2 to the SRO.

In Exception 3 to the SRO, HOCC takes exception to the findings of fact in Paragraph 6 of the SRO, arguing the ALJ erred in finding that HOCC's use of the penetration rates in Service Area 3C as a comparison to what its projected utilization rates will be in Service Area 3D was

not persuasive. The findings of fact in Paragraph 6 of the SRO are based on competent, substantial evidence. See Transcript, Volume 3, Pages 303-305; Transcript, Volume 4, Pages 419-420; HOCC Exhibit 48. Thus, the Agency cannot reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception 3 to the SRO.

In Exception 4 to the SRO, HOCC takes exception to Paragraphs 10 through 13 of the SRO, arguing that Hernando-Pasco's impact analysis is overstated. HOCC's argument does not constitute a valid basis for the Agency to reject or modify the findings of fact in Paragraphs 10 through 13 of the SRO. Since the findings of fact in these paragraphs are based on competent, substantial evidence (See Transcript, Volume 6, Pages 787-799; Hernando-Pasco Exhibit 45), the Agency is not free to reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Exception 4 to the SRO.

Lastly, HOCC (in an unnumbered exception) takes exception to the conclusions of law in Paragraphs 18 and 19 of the SRO, arguing that the ALJ incorrectly concluded Hernando-Pasco had standing in this issue. HOCC is, in essence, asking the Agency to make conclusions of law that differ from those of the ALJ by re-weighing the evidence in this matter. As the ALJ found in the findings of fact in Paragraphs 10 through 13 of the SRO, Hernando-Pasco will be substantially affected by the approval of HOCC's CON application. Thus, it has standing to participate in this proceeding based on the law and case law cited to by the ALJ in Paragraphs 15-17 of the SRO, which HOCC did not take exception to. Therefore, the Agency denies HOCC's unnumbered exception to Paragraphs 18 and 19 of the SRO.

FINDINGS OF FACT

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

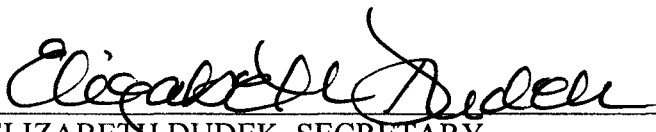
CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, HOCC's CON application no. 10204 is hereby denied. The parties shall govern themselves accordingly.

DONE and ORDERED this 22 day of June, 2015, in Tallahassee, Florida.



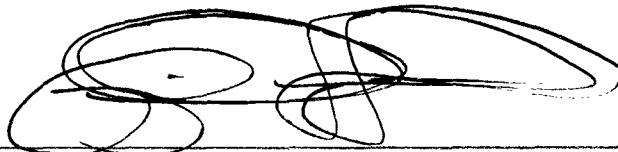
ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 the method indicated to the persons named below on this 23rd day of June, 2015.



RICHARD J. SHOOP, Agency Clerk
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2727 Mahan Drive, MS #3
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