

STATE OF FLORIDA
DEPARTMENT OF HEALTH

RECEIVED
DEPARTMENT OF HEALTH

14 DEC -9 AM 8:26

OFFICE OF THE CLERK

MARY JANE WILLIAMS,

Petitioner,

v.

FLORIDA DEPARTMENT OF HEALTH,

Respondent.

Rendition No.: DOH-14-1678-FOI-HO

DOH Case No.: 2014-0171

DOAH Case Nos.: 14-3895

DIVISION OF
ADMINISTRATIVE HEARINGS

2014 DEC 10 AM 10:34

FILED

FINAL ORDER

THIS MATTER came before the Department of Health ("Department") for consideration of a Recommended Order and entry of a Final Order. On November 14, 2014, Administrative Law Judge June C. McKinney issued a Recommended Order following an administrative hearing conducted at the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes. The Recommended Order is attached as Exhibit A. On November 24, 2014, Respondent timely filed an exception to the recommendation entered by the Administrative Law Judge. The Agency Exception to Recommended Order is attached as Exhibit B. Petitioner did not file a response to Respondent's exception. Upon review of the Recommended Order, the entire record, and the exception filed by Respondent, the Department makes the following findings and conclusions.

STANDARD OF REVIEW FOR RULING ON
EXCEPTIONS TO A RECOMMENDED ORDER

1. Section 120.57(k), Florida Statutes, directs the Department to include in its Final Order an explicit ruling on each exception. An agency may not reject or modify

findings of fact in a Recommended Order unless the agency first determines that the findings of fact were not based upon competent substantial evidence or that the proceedings did not comply with essential requirements of law. An agency may reject or modify the conclusions of law over which the agency has substantive jurisdiction if the agency states with particularity its reasons for rejecting or modifying such conclusion of law and makes a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. See section 120.57(1), Florida Statutes.

RULING ON EXCEPTIONS

2. In the Respondent's exception, Respondent does not assert an exception to a finding of fact or to the conclusion of law that Petitioner owes \$1,022.45 in salary overpayments to the Department. Respondent is asserting an exception to the Administrative Law Judge's recommendation that allows Petitioner to repay the Department in \$10.00 monthly payments, resulting in the debt being paid over a period that exceeds eight years. Respondent argues that section 110.1165, Florida Statutes, does not provide any authority for the relief that the Administrative Law Judge has recommended.

3. In paragraph 22 of the Recommended Order, the Administrative Law Judge made the legal conclusion that Petitioner failed to qualify for relief under section 110.1165, Florida Statutes. Despite making that finding, the Administrative Law Judge provided relief to Petitioner by recommending that Petitioner repay the money owed to the Department in \$10.00 increments over a period that exceeds eight years. The Department agrees with the legal conclusion that there is no relief available to the Petitioner under the law. Since the Petitioner does not qualify for relief under the law,

the only other basis for granting relief would be under the principles of equity. The Administrative Law Judge and the Department of Health do not have the authority to provide an equitable remedy in an administrative proceeding. *See Biltmore Const. Co. v. Florida Dep't of General Services*, 363 So.2d 851, 854 (Fla. 1st DCA 1978). Respondent's exception to the Administrative Law Judge's recommendation is granted.

FINDINGS OF FACT

4. The Findings of Fact contained in the Recommended Order are based on competent substantial evidence in the record and the proceedings on which the findings were based complied with the essential requirements of law.

5. The Findings of Fact set forth in the Recommended Order, attached as Exhibit A, are adopted and incorporated by reference in this Final Order.

CONCLUSIONS OF LAW

6. The Conclusions of Law set forth in the Recommended Order in paragraphs 18 through 22, are adopted and incorporated by reference in this Final Order.

7. The recommendation in paragraph 23 and in the Recommendation section of the Recommended Order stating that the Petitioner may repay the money owed to the Department in \$10.00 monthly payments over a period exceeding eight years is rejected for the reasons set forth above.

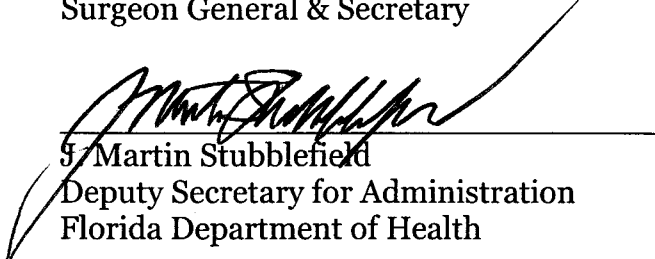
ORDER

Based on the foregoing, the Recommendation of the Administrative Law Judge that Petitioner owes the Department \$1,022.45 is accepted. The recommendation that the Petitioner be permitted to repay that amount in \$10.00 monthly payments over a period of eight and one half years is rejected. Petitioner is ordered to pay the

Department \$1,022.45 within sixty (60) days of the date of this Final Order. Payment shall be made payable to the Department of Health and submitted to the Department of Health, Bureau of Personnel and Human Resource Management, 4052 Bald Cypress Way, Bin # B03, Tallahassee, Florida 32399-1731. This proceeding is closed.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 8th day of December 2014.

John H. Armstrong, MD, FACS
Surgeon General & Secretary



Martin Stubblefield
Deputy Secretary for Administration
Florida Department of Health

Copies furnished to:

June C. McKinney
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060


Mark John Henderson, Esquire
Florida Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399

Mary Jane Williams, pro se
1922 Northwest 113th Drive
Gainesville, Florida 32606

Jennifer A Tschetter, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1701

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been sent by regular U.S. mail and/or by inter-office mail to each of the above-named persons this 9th day of December 2014.



Agency Clerk
Department of Health
4052 Bald Cypress Way, BIN A-02
Tallahassee, Florida 32399-1703

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.