

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FALESIA RAWLS,

Petitioner,

vs.

Case No. 14-5549

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

A duly-noticed final hearing in this case was held on January 30, 2015, in Ocala, Florida, before Suzanne Van Wyk, an Administrative Law Judge appointed by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Falesia Rawls, pro se
1629 Northwest 3rd Street
Ocala, Florida 34475

For Respondent: Michael Suave, Esquire
Agency for Persons with Disabilities
400 West Robinson Street, Suite S-430
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether the Agency's intended action to deny Petitioner's application for exemption from disqualification from employment

is an abuse of discretion, pursuant to section 435.07, Florida Statutes (2014).^{1/}

PRELIMINARY STATEMENT

By letter dated October 20, 2014, the Agency for Persons with Disabilities (Agency or Respondent) issued its notice of agency action, by which it informed Petitioner that her request for exemption from disqualification was denied. As a result, Petitioner was determined to be "not eligible to be employed, licensed, or registered in positions having direct contact with children or developmentally disabled people served in programs regulated by the Agency for Persons with Disabilities."

On November 12, 2014, Petitioner filed a request for administrative hearing to contest the Agency's intended action. The Agency referred the case to the Division of Administrative Hearings on November 24, 2014. A final hearing was scheduled for January 30, 2015, in Ocala, Florida, and the hearing commenced as scheduled.

At the final hearing, Petitioner testified on her own behalf and offered the testimony of Steven Westgate, Kathleen Bellamy, Tamara Gunsby, Shaquila Green, and Jena Woodyard. Petitioner also introduced into evidence a letter from Fronessia Wilson, who was unable to attend the hearing in person. Respondent offered the testimony of Clarence Lewis, Respondent's

Central Region Operations Manager. Respondent's exhibits A through F were admitted in evidence.

The proceedings were recorded, but the parties did not order a transcript thereof. The parties timely filed Proposed Recommended Orders, which have been considered by the undersigned in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner desires to return to work as Human Resources Director for Eagle Medical Services (Eagle Medical), a direct-service provider to clients in Florida's Medicaid Waiver Program for the Developmentally Disabled.

2. Petitioner was hired by Eagle Medical in 2007 as an office assistant performing secretarial duties, but was promoted to Human Resources Director in 2009. Petitioner left Eagle Medical in 2011.

3. Petitioner has a lengthy criminal history.

4. In 1991, Petitioner pled guilty to prostitution, and was sentenced to 60 days in the Marion County jail. Petitioner was 29 years old at the time of the conviction.

5. In 2006, at age 44, Petitioner pled guilty to Petit Theft with Two or More Prior Convictions (a felony), and was sentenced to serve one year and one day in the Department of

Corrections, to be served concurrently with any active sentence being served at the time.

6. Between the 1991 prostitution conviction and the 2006 petit theft conviction, Petitioner had a number of convictions for non-disqualifying offenses. In 2000, Petitioner was arrested twice for driving with a suspended or revoked license. In 2005, Petitioner was again arrested twice for driving with a suspended or revoked license, and on three charges of petit theft. In 2006, Petitioner was charged with petit theft (retail), as well as resisting detainment by a retail merchant. In this interim period, Petitioner was sentenced to serve 420 days in the Marion County jail and pay at least \$1,200 in court costs and fines.

7. Petitioner's 2006 sentence required her to perform 20 hours of community service, complete a Shoplifter's Anonymous course, and serve 12 months on probation through Salvation Army Corrections.

8. Petitioner served her time in the Lowell State Correctional Facility from November 29, 2006, to July 20, 2007. However, Petitioner did not satisfy all conditions of the judgment until March 31, 2011.

9. Petitioner testified, credibly, that her significant criminal history began after the tragic death of her two

children, ages one and three, in 1985. Petitioner turned to alcohol and drugs, including crack cocaine, to dull the pain of her loss, rather than dealing with it through professional grief counseling and treatment. Petitioner testified that she "wanted to die" during this period in her life. Petitioner supported her habit through retail theft, after a single failed attempt at prostituting herself.

10. Clarence Lewis, the agency's Central Region Operations Manager, testified that the main reasons the Agency is denying Petitioner's request for exemption are (1) the lengthy history of Petitioner's criminal activity, and (2) a lack of detail in Petitioner's application regarding her post-conviction treatment, education, training, and work history.

11. Petitioner's exemption questionnaire is not detailed. In the questionnaire, Petitioner stated generally that, during her incarceration, she "utilized available resources to obtain rehabilitation for emotional, psychological & substance abuse." With regard to her work history for the past three years, Petitioner listed a number of employers without details on the type of work or length of employment. With regard to her education and training, Petitioner listed four institutions without dates of attendance or dates she completed the noted certificate or license. Petitioner stated that she received

counseling "on the inside" through many programs, but mainly credits her faith for her true reform.

12. Petitioner's exemption packet and testimony received at the final hearing established Petitioner's pursuit of treatment, education, and training, both during and after her confinement, as well as her subsequent community involvement and work history.

13. In 2006, Petitioner completed a "Christian 12 Step Recovery Course," a ten-week Personal Development Life Management Skills Course, and an Anger Management class.

14. Petitioner was baptized while incarcerated in February 2007, and completed a Peacemakers' class, a bible study on "Breaking Strongholds and Bondages," and a discipleship class through the facility chaplain in March and April 2007. Petitioner's testimony regarding her faith was sincere, credible, and convincing.

15. Petitioner received six months of psychiatric treatment while incarcerated. In June 2007, Petitioner completed an Anger Resolution Seminar "focusing on identifying the causes of anger and how to successfully resolve them." She also completed 72 hours of transition training in July 2007 prior to her release.

16. Upon her release, Petitioner enrolled in Alcoholics Anonymous and Narcotics Anonymous and attended meetings for approximately two years. Petitioner testified that she still regularly attends meetings with an organization known as 12 Steps with the Bible.

17. In April 2008, Petitioner completed a Targeted Aggression Control Training program administered by Professional Education Services, Inc.

18. In August 2009, Petitioner completed a specific behavior training program focused on responding to target behaviors and providing replacement behaviors.

19. Jena Woodyard is the owner of Eagle Medical, which provides both onsite educational services and Adult Day Treatment (ADT) to persons with disabilities.

20. Ms. Woodyard hired Petitioner as an office assistant in September 2007. Petitioner completed a battery of training programs in October 2007, including Introduction to Developmental Disabilities, Person-Centered Service Delivery, Consumer Choice and HIPA, Health and Safety, Abuse/Neglect/Exploitation, and Zero Tolerance.

21. Shortly after hiring Petitioner, Ms. Woodyard promoted Petitioner to Director of ADT. Ms. Woodyard testified, credibly, that she chose to promote Petitioner to a position of

direct service to clients because of Petitioner's compassion with and dedication to the clients, her acumen as a coordinator of services, and her dedication to the agency's success and compliance with all requirements.

22. Petitioner applied for an exemption from disqualification in 2008. She was denied because she did not meet the statutory prerequisites, which require an applicant to pay all court-ordered fees and wait three years from the date he or she is released from confinement or supervision prior to applying for an exemption. See § 435.07(1)(a) and (b), Fla. Stat.

23. Despite Petitioner's failure to obtain an exemption from disqualification, Ms. Woodyard retained Petitioner as an employee at Eagle Medical. However, in 2009, she moved Petitioner to the position of Human Resources Director. Petitioner's office was located in an administrative area of the offices separated from the classrooms and ADT areas.

24. In early 2011, Eagle Management rented a building adjacent to the main building and moved Petitioner's office to the adjacent building.

25. Ms. Woodyard terminated Petitioner's employment in 2011 only out of concern for the agency's compliance with state regulations. Ms. Woodyard desires to re-employ Petitioner as

Human Resources Director. If Petitioner obtains an exemption, Ms. Woodyard would like to hire Petitioner in a direct-service position.

26. Kathleen Bellamy is an employee of Eagle Medical and worked with Petitioner from 2009 to 2011. Ms. Bellamy testified that Petitioner is extremely compassionate and caters to the clients' best interests in coordinating services.

27. Courtnee Colson submitted a letter of reference to the Agency which is included in Petitioner's exemption packet. Ms. Colson was also Petitioner's co-worker at Eagle Medical. In her letter, Ms. Colson extolled Petitioner's leadership skills, explaining that Petitioner had oversight of 70 employees and disabled adults.

28. Sandra Woodson is another of Petitioner's former co-workers at Eagle Medical, and submitted a letter of reference on Petitioner's behalf. Ms. Woodson began working with Petitioner in 2007 and described her as prompt, eager to learn, and quick to master new job tasks.

29. Ms. Woodson also rented a home to Petitioner for over three years, beginning in 2009. In her letter, Ms. Woodson described Petitioner as responsible (always paid her rent on time), and welcomed by the neighbors.

30. Petitioner supervised Shaquila Green at Eagle Medical. Ms. Green testified that she valued Petitioner's advice and guidance, and described Petitioner as exceptionally hardworking. Ms. Green was aware of Petitioner's criminal background and testified Petitioner uses her past experiences to help others and keep them from choosing the "wrong path."

31. In addition to working with Petitioner, Ms. Green has observed Petitioner, and participated with her, in volunteer work through Petitioner's church. Ms. Green is impressed with Petitioner's strong desire to help other people.

32. Petitioner is a lay minister in her church. She is active in a number of community service programs through the church, including the DATA program, which provides re-entry services to persons released from correctional institutions, and an outreach program facilitating alternatives for youth whose parents are incarcerated.

33. Petitioner's primary community service project is coordinating services to residents of the Parkside Gardens Apartments, a low-income housing development. Petitioner spearheads the church's services to that community, including teaching employment skills, coordinating after school programs, organizing job fairs, preparing and serving weekly meals, and providing HIV education and counseling, among others.

34. Steven Westgate is a community volunteer who met Petitioner through various charitable activities. He has volunteered with Petitioner in providing and serving meals to the residents at Parkside Gardens. Mr. Westgate has known Petitioner for approximately twelve years, and described her as reliable, honest, and trustworthy.

35. Ms. Woodyard testified that her company "picked up" Parkside Gardens, which the undersigned infers to mean the agency began serving qualified residents of that property.^{2/} Ms. Woodyard was impressed with Petitioner's dedication and "found the resources" to pay Petitioner for her service to the residents and made her Program Director of what Ms. Woodyard termed "the community side" of the business. Petitioner worked in this capacity in 2010 and 2011.

36. Petitioner obtained her GED on January 13, 2011.

37. Petitioner received her Nursing Assistant certification from the Department of Education on April 15, 2014. Petitioner completed a one-year training course in bloodborne pathogens, infection control, and HIV in August 2014.

38. Petitioner became a volunteer with the Department of Corrections in September 2014.

39. Petitioner has no criminal history subsequent to her 2006 disqualifying offense.

40. After leaving Eagle Management in September 2011, Petitioner obtained seasonal work at Harvey's Groves packing holiday gift baskets.

41. In 2012-2013, Petitioner worked part-time as an agent for Telecom Services, and on the production line at Signature Brands Cake Factory.

42. In January 2015, Petitioner began working as Office Manager for Ardelle Moving and Delivery. On the date of the hearing, Petitioner was providing human resource services for her brother's new business, WingKing, the grand opening of which was planned shortly after the hearing date. Petitioner was working closely with a local workforce agency to employ some qualified former felons at the establishment.

43. At the final hearing, Petitioner made no excuses for her past criminal activities, and frankly accepted full responsibility for her actions. Petitioner expressed genuine remorse for her past. Petitioner's testimony was credible and convincing. Petitioner's personal insight is remarkable; she has dealt with her demons and turned her sorrow into a guiding light for others.

44. In her exemption packet, Petitioner did not include letters of recommendation from Ms. Woodyard, Ms. Green, Ms. Bellamy, or Mr. Westgate. Thus, the Agency did not have the

testimony of those individuals when it made its initial decision to deny Petitioner's request for exemption. The undersigned finds that the Agency would have been better served with the information provided by those witnesses.

45. The witnesses, Petitioner's testimony, and Petitioner's exemption packet, together, provide great detail regarding Petitioner's pursuit of counseling, education, training, community service, and employment subsequent to her disqualifying offense in 2006.

46. Eight years have elapsed since Petitioner's most recent disqualifying offense, during which time Petitioner has had a clean record, recovered from the loss of her children, sought treatment for drug and alcohol abuse, proven herself an invaluable employee, and dedicated her time to serving others in the community.

47. Mr. Lewis testified that the population served by the Agency is extremely vulnerable, including some clients who cannot speak or fend for themselves. Mr. Lewis represented that Petitioner poses a risk to this population due to her lengthy criminal history and no indication that she has sought counseling for impulse control.

48. To the contrary, the undersigned finds Petitioner presents no danger to the vulnerable adult population served by the Agency.

49. Petitioner has proven by clear and convincing evidence that she is rehabilitated from her disqualifying offenses.

CONCLUSIONS OF LAW

50. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.57(1) and 435.07(3)(c), Florida Statutes.

51. Pursuant to section 393.0655, Florida Statutes, providers of direct services to persons with developmental disabilities are required to meet level 2 employment screening standards.

52. Level 2 employment screening standards set forth in section 435.04(2) provide that a person who has entered a plea of nolo contendere or guilty to charges of prostitution and felony theft, as has Petitioner, is disqualified from being a direct service provider to persons with developmental disabilities.

53. The head of the Agency for Persons with Disabilities may grant an exemption from disqualification if the applicant for exemption has completed or been lawfully released from

confinement, supervision, or sanction imposed for a disqualifying offense. Petitioner met all conditions to apply for an exemption.

54. In order to receive an exemption, Petitioner has the burden of proving, by clear and convincing evidence, that she is rehabilitated. See J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013) ("The ultimate issue of fact to be determined in a proceeding under section 435.07 is whether the applicant has demonstrated rehabilitation by clear and convincing evidence.").

55. The prohibition from employment in positions of trust of individuals convicted of disqualifying offenses under section 435.04 is intended to protect the public welfare, and the statute must be strictly construed against the person claiming exemption. Heburn v. Dep't of Child. & Fams., 772 So. 2d 561, 563 (Fla. 1st DCA 2000).

56. The clear and convincing standard of proof has been described by the Florida Supreme Court, as follows:

Clear and convincing evidence requires that evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without

hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

57. Under section 435.07(3)(a), evidence of rehabilitation may include, but is not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the applicant since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

58. Pursuant to section 435.07(3)(c), "the standard of review by an ALJ is whether the agency's intended action is an abuse of discretion."

59. Florida's First District Court of Appeal has reasoned that, "although the ultimate legal issue to be determined by the ALJ in a proceeding under section 435.07(3)(c) is whether the agency head's intended action was an 'abuse of discretion,' the ALJ is to evaluate that question based on the facts determined from the evidence presented at a de novo chapter 120 hearing." J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013).

60. In the case at hand, the chapter 120 hearing produced substantial evidence which was not available to the Agency in formulating its decision to deny Petitioner's exemption request. Notably, the evidence addressed the Agency's stated concerns with Petitioner's application, including lack of detail regarding Petitioner's treatment for behavioral issues, drug and alcohol abuse, and Petitioner's work history subsequent to the most recent disqualifying offense.

61. The undersigned concludes that Respondent's intended decision to deny Petitioner's exemption request would constitute an abuse of discretion. The Agency is not bound by this conclusion. However, if the Agency rejects this conclusion, it must, in its final order, "state with particularity its reasons for rejecting or modifying such conclusion of law . . . and make a finding that its substituted conclusion of law . . . is as or more reasonable than that which was rejected or modified." J.D. v. Dep't of Child. & Fams., 114 So. 3d at 1133 (quoting section 120.57(1)(1)).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered granting Petitioner's request for exemption from disqualification.

DONE AND ENTERED this 9th day of March, 2015, in
Tallahassee, Leon County, Florida.

Suzanne Van Wyk

SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2015.

ENDNOTES

^{1/} Except as otherwise provided herein, all references to the Florida Statutes are to the 2014 version, which was in effect when Petitioner applied for exemption from disqualification.

^{2/} The record does not establish the date on which Eagle Medical began serving residents of Parkside Gardens or the duration of said service.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.