

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
2016
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A PLACE CALLED HOME,

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

DOAH CASE NO. 15-2042
AHCA CASE NO. 2015002103
FILE NO. 11966904
LICENSE NO. 56061
FACILITY TYPE: ASSISTED
LIVING FACILITY

RENDITION NO.: AHCA-16-0047 -FOF-OLC

FINAL ORDER

These cases were referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Darren A. Schwartz, conducted a formal administrative hearing. At issue in this case is whether the Agency for Health Care Administration (“Agency”) correctly denied Petitioner’s assisted living facility (“ALF”) licensure renewal application based on deficiencies found during a survey that the Agency conducted on January 20 through 27, 2015. The Recommended Order dated December 9, 2015, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Respondent filed exceptions to the Recommended Order.

In determining how to rule upon Respondent’s exceptions and whether to adopt the ALJ’s Recommended Order 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)(l), 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 Respondent’s exceptions:

In its sole exception to the Recommended Order, Respondent takes exception to the findings of fact in Paragraph 81 of the Recommended Order and the conclusions of law in Paragraphs 110, 111, 112 and 114 and Endnote 5 of the Recommended Order, arguing that the ALJ made erroneous findings and conclusions as to what constitutes a “significant change” for purposes of rule 58A-5.0131(32), Florida Administrative Code. In Paragraph 81 of the Recommended Order, the ALJ states that “[t]he determination of whether a resident suffered from a ‘significant change’ in behavior or mood cannot be made by a non-medical professional.” Respondent argues that “[t]here is no basis in law for this statement.” However, Respondent’s argument is not a valid basis for overturning the ALJ’s finding. The Agency can only overturn a finding of fact if it is not based on competent, substantial evidence. The ALJ’s finding of fact is based on competent, substantial evidence in the form of Respondent’s own witness. See Transcript, Volume II, Pages 120-121. Thus, the Agency cannot reject or modify it. See §

120.57(1)(l), 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 regard to the ALJ’s conclusions of law in Paragraphs 110, 111, 112 and 114 and Endnote 5 of the Recommended Order, these conclusions of law are based on the ALJ’s weighing of the competent, substantial evidence presented at hearing. “The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifetz; 475 So. 2d at 1281. It is obvious from these conclusions of law that the ALJ weighed the evidence of both parties’ witnesses and found the testimony of Petitioner’s witnesses, namely Linda Mays, to be more credible as to whether MR’s fall and injuries therefrom constituted a “significant change” under rule 58A-5.0131(32), Florida Administrative Code. Contrary to Respondent’s argument, the ALJ did not add any criteria to the definition of “significant change.” He simply applied the definition to the evidence presented. Therefore, the Agency must deny Respondent’s exceptions.

FINDINGS OF FACT

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

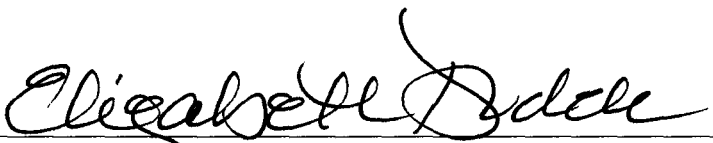
CONCLUSIONS OF LAW

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

ORDER

The Agency hereby grants Petitioner’s licensure renewal application. The parties shall govern themselves accordingly.

DONE AND ORDERED in Tallahassee, Florida, on this 22 day of January, 2016.

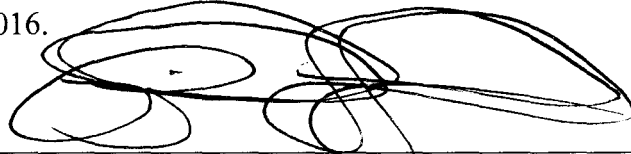

ELIZABETH DUDEK, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE 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 THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 25th day of January, 2016.



RICHARD J. SHOOP, Agency Clerk
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2727 Mahan Drive, MS #3
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Copies furnished to:

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