

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KRISTI TAYLOR,

Petitioner,

vs.

Case No. 16-0067

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case on February 19, 2016, via video teleconference sites in Tallahassee and Jacksonville, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kristi Taylor, pro se  
1605 West 12th Street  
Jacksonville, Florida 32209

For Respondent: Melissa E. Dinwoodie, Esquire  
Agency for Persons with Disabilities  
3631 Hodges Boulevard  
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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 the Agency's discretion.

PRELIMINARY STATEMENT

By letter dated November 13, 2015, 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. In the letter, the Agency reported its determination that Petitioner had "not submitted clear and convincing evidence of [her] rehabilitation."

On January 6, 2016, Petitioner filed her Request for Administrative Hearing with the Agency (Request). In her Request, Petitioner disputed the Agency's determination that she had not proven her rehabilitation. On September 15, 2016, the Agency referred the case to the Division of Administrative Hearings for a formal administrative hearing. A Notice of Hearing scheduling the final hearing for February 19, 2016, was entered, and the hearing commenced as scheduled.

At the final hearing, Petitioner testified on her own behalf, and introduced Petitioner's Exhibits P1, P2, and P3, which were admitted into evidence.

Respondent presented the testimony of Leslie Richards, the Agency's Regional Operations Manager. Respondent's Exhibits R1 through R4 were admitted into 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 in preparing this Recommended Order.

### FINDINGS OF FACT

#### Background

1. Petitioner is a 37-year-old female residing in Jacksonville, Florida. She desires to work as a Medicaid waiver provider, an independent solo provider of community-based services to the Agency's clients with developmental disabilities.

2. On October 12, 2009, the Agency granted Petitioner an exemption from disqualification from employment for an offense of grand theft committed on December 28, 2001.

3. Between 2004 and 2009, Petitioner was a service provider for Agency clients both in a group home setting and as a solo provider of community-based services.

4. On July 14, 2011, the Florida Department of Children and Families issued Petitioner a notice that she was ineligible for continued employment in a position of special trust working

with children or the developmentally disabled based on a felony offense of aggravated assault committed on December 30, 2010.

The Disqualifying Offense

5. On December 30, 2010, Petitioner was driving by her boyfriend's home and noticed a vehicle backing out of his driveway. Petitioner knew the vehicle belonged to another woman, Ms. Stevens.

6. Petitioner called her boyfriend on his cellular phone, confirmed he was in the car, and began conversing with him. Petitioner and her boyfriend engaged in a series of calls with each other over the next few minutes while she followed Ms. Stevens' vehicle.

7. Petitioner wanted the driver of the car to pull off the road so she could talk to her boyfriend in person. Petitioner pulled her vehicle alongside Ms. Stevens' vehicle. The situation escalated. The vehicles were traveling on a parallel path on a two-lane road in a residential subdivision.

8. In her anger, Petitioner threw an open soda can through the rear window of Ms. Stevens' vehicle.

9. Finally, Petitioner's vehicle struck Ms. Stevens' vehicle. Shortly thereafter, both vehicles pulled off the road. Petitioner's boyfriend exited the vehicle, but Ms. Stevens took off and returned with a law enforcement officer.

10. The police report notes approximately \$700 in damage to the two vehicles.

11. During the entire incident, Petitioner's two minor children were back seat passengers in Petitioner's vehicle.

12. Following an investigation, the police determined Petitioner was the primary aggressor. Petitioner was charged with one count of aggravated battery with a deadly weapon, and one count of criminal mischief and reckless driving. Petitioner served two days in jail.

13. Petitioner pled nolo contendere to both charges, adjudication was withheld, and Petitioner was placed on 12 months' probation, ordered to complete 75 hours of community service, attend anger management training, and pay fines and fees amounting to \$1,068.

14. Petitioner attended a one-day anger management class through the Salvation Army in 2011.

15. Petitioner was released from probation on May 3, 2012.

#### Employment Following the Disqualifying Offense

16. Petitioner worked as an executive housekeeper for a Hilton Garden Inn in Jacksonville from June 2012 to November 2013.

17. Petitioner worked briefly as a manager at a Subway restaurant between March and October 2014.

18. In November 2014, Petitioner began employment as a manager at a Burger King restaurant in Jacksonville, where she remained employed on the date of hearing.

#### Subsequent Criminal History

19. Petitioner has had no disqualifying offense since the 2011 aggravated battery offense.

20. Petitioner was cited for three traffic infractions between 2011 and 2013. One of the infractions was a criminal charge of driving without a valid driver's license. The other two citations were for speeding and failing to yield the right-of-way.

#### Petitioner's Exemption Request

21. Petitioner's exemption package was slim. In addition to the exemption questionnaire, in which she provided little information regarding herself, Petitioner submitted a one-page narrative letter and two very brief character reference letters.

22. On the questionnaire, Petitioner reported no damage to any persons or property from the disqualifying offense. Further, Petitioner reported no stressors in her life at the time of the offense. As to her current stressors, Petitioner reported none, and listed her family, church, and herself as her current support system.

23. Petitioner reported no counseling other than the one-day anger management class completed in 2011.

24. Petitioner listed no educational achievements or training.

25. As for accepting responsibility for her actions, Petitioner wrote, "I feel very remorse [sic] for my actions and I take full responsibility for them."

26. One of the character reference letters was from a co-worker (perhaps even someone under her supervision) and did not identify the name of the employer or dates she worked with Petitioner. The letter described Petitioner as "dependable and committed to do her best" as well as "proficient in all cores of her profession." The author further described Petitioner as a Christian who is very involved with her church and youth ministry, and who is considered a good and loving mother.

27. The author of the second character reference letter did not identify her relationship to Petitioner, but indicated that she had known Petitioner for six years. She described Petitioner as "dependable and committed to the community as a youth leader and big sister to the children of her church." Further, she wrote, "[Petitioner] is a compassionate and loving person, but above all she is a Christian who loves her children and her church."

28. In her personal statement, Petitioner described the events surrounding the disqualifying offense as follows:

I was involved with a young man at the time of this incidence [sic]. What happen [sic] on that day was this young man had been calling my phone all day and we passed each other on the street in the same neighborhood and I followed him. We both at this time kept calling each others [sic] phone back to back. After a few blocks both cars came to a stop. Neither of us got out of the car. Each of us pulled off the same time and our cars bumped each other. After a few more blocks we stopped again. He got out of the car from the passenger side. I then realize [sic] that he was not the driver. A few minutes later the car came back. An off duty police officer with JSO wrote me a ticket for reckless driving, operating a vehicle with no insurance and criminal mischief. Mean while [sic] two more officers with JSO arrived on the scene and one of the officers decided to arrest me and charged me with aggravated assault with a deadly weapon (with no intent to kill).

29. Petitioner offered nothing else related to the disqualifying offense.

30. Petitioner's narrative does not reveal an understanding of the seriousness of her offense or offer any explanation for her behavior. Nor does the narrative back up her statements on the questionnaire that she feels remorse and has accepted responsibility for her actions.

31. In formulating its decision to deny Petitioner's request for exemption, the Agency considered the following factors to be significant:

- Petitioner's disqualifying offense occurred just a year after having been granted an exemption from a prior disqualifying offense of grand theft.



- The offense demonstrated a lack of good judgement and decisionmaking.
- Petitioner was the primary aggressor.
- Petitioner's children were in the car at the time of the incident.
- Petitioner was 32 years old at the time of the incident.
- Petitioner reported no life stressors at the time of the disqualifying offense and no significant changes in her life subsequently.
- Petitioner was not forthcoming in her application about the damage to the vehicles incurred during the incident.
- Petitioner's driving record raises a concern with her ability to safely transport Agency clients.

32. The Agency also considered that Petitioner's character references were not from past or current employers, that they revealed very little about the relationship between the author and Petitioner, and that they did not acknowledge the disqualifying offense or offer any indication of changes in Petitioner's life.

#### Final Hearing

33. Petitioner's attitude at hearing was defensive. Petitioner took issue with the description of events surrounding the disqualifying offense noted in the police report. Petitioner particularly stressed that the vehicles were stopped, rather than traveling down the one-lane road side by side, when

she threw the soda can into Ms. Stevens' vehicle. Petitioner denied that she intentionally struck Ms. Stevens' vehicle, but rather insisted that the vehicles "bumped" as they were both pulling off the road at the same time.

34. Petitioner offered no witnesses on her behalf.

35. Petitioner introduced one additional character reference letter from Reverend Charles G. Skinner, Pastor, Twin Springs Missionary Baptist Church. Pastor Skinner stated that he had pastored Petitioner for 10 years and had witnessed "spiritual maturity" in her life. In the letter, Pastor Skinner described Petitioner as an active member of the church, a devout Christian and mother "with an humbling nature exhibiting a thirst for erudition."

36. Petitioner did not demonstrate her humble nature at the hearing. Petitioner was defensive, argumentative, and spent her time pointing out "inaccuracies" in the police report.

37. Petitioner has no understanding of the seriousness of her offense, and was "baffled" that the charge included a reference to a deadly weapon when she had no weapon at the time. Petitioner downplayed the event, testifying that the whole incident took maybe 8 to 10 minutes, and that the vehicles were traveling slowly, perhaps 15 to 20 miles per hour.

38. Petitioner acknowledged that her children were in the vehicle at the time of the incident, but insisted they were not

in danger and that she would never do anything to put her children in danger.

39. Throughout the hearing, Petitioner emphasized she had no idea Ms. Stevens was driving the vehicle in which her boyfriend was riding, until the vehicles pulled off the roadway. Apparently Petitioner believed that the facts were more favorable to her if it was only her boyfriend she was trying to run off the road, rather than her boyfriend and "the other woman." Petitioner failed to appreciate that no matter who was driving the vehicle, Petitioner's actions put them at risk.

#### CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the subject matter of the proceeding, and the parties thereto, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).<sup>1/</sup>

41. Section 435.04, Florida Statutes, provides, in pertinent part, that:

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may

include local criminal records checks through local law enforcement agencies.

\* \* \*

(2) The security background investigations under this section must ensure that no person subject to this section . . . have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction.

\* \* \*

(i) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

42. The Agency based its disqualification of Petitioner on her 2010 nolo contendere plea to aggravated battery with a deadly weapon.

43. Section 435.07 establishes a process by which persons with criminal offenses in their backgrounds, that would disqualify them from acting in a position of special trust working with children or vulnerable adults, may seek an exemption from disqualification. That section provides:

435.07 Exemptions from disqualification.-- Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1) (a) The head of the appropriate agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

1. Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony;

\* \* \*

(3) (a) In order for the head of an agency to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing evidence of rehabilitation, including, but 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 employee 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.

\* \* \*

(c) The decision of the head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency's intended decision is an abuse of discretion.

44. An exemption from a statute enacted to protect the public welfare is strictly construed against the person claiming

the exemption. Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000).

45. The abuse of discretion standard of review set forth in section 435.07(3)(c) has been described as follows:

If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.

\* \* \*

The discretionary power that is exercised by a trial judge is not, however, without limitation . . . . [T]he trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner.

Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980);

Kareff v. Kareff, 943 So. 2d 890, 893 (Fla. 4th DCA 2006)

(holding that, pursuant to the abuse of discretion standard, the test is "whether any reasonable person" could take the position under review).

46. The Agency has a heightened interest in ensuring that the vulnerable population being protected by chapter 435, i.e., developmentally disabled children and adults, is not abused, neglected, or exploited. In light of that mission, the legislature has imposed a heavy burden on those seeking approval

to serve this vulnerable population when they have disqualifying events in their past.

47. The statutorily-enumerated factors to be considered by the Agency in evaluating an exemption application are the details surrounding the disqualifying offense, the nature of the harm caused, the history of the employee since the incident, and the time period that has elapsed since the incident.

§ 435.07(3)(a), Fla. Stat.

48. The details of the disqualifying offense demonstrate Petitioner's inability to control her anger and an indifference to the risk of harm Petitioner imposed on her children, the occupants of the other vehicle, and the public traveling on the same roadways.

49. Petitioner paid only lip service to the ideas of expressing remorse and taking responsibility for her actions. Neither her live testimony nor her written narrative accompanying her exemption request reflected any remorse for her actions. Petitioner downplayed the incident and tried to minimize the damage. At hearing, Petitioner failed to take responsibility for hitting Ms. Stevens' vehicle during the incident, insisting that the vehicles simply "bumped."

50. The minimum three years have elapsed since Petitioner's disqualifying offense, and she has not proven any steps toward rehabilitation. She has not sought any counseling

for anger management or impulse control other than the one day class at the Salvation Army in 2010. Meanwhile, Petitioner's driving record reveals both moving and criminal violations exhibiting poor decision making, impulsiveness, and a disregard for the rules. Petitioner offered no explanation for any of the traffic offenses.

51. The undersigned concludes, based on the totality of the circumstances, that the Agency's intended denial of Petitioner's requested exemption does not constitute an abuse of discretion.

RECOMMENDATION

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

DONE AND ENTERED this 24th day of March, 2016, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of March, 2016.

ENDNOTE

<sup>1/</sup> Unless otherwise noted herein, all references to the Florida Statutes are to the 2015 version.

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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.