

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LATORY SMILEY,

Petitioner,

vs.

Case No. 16-3765EXE

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On August 17, 2016, Administrative Law Judge Lisa Shearer Nelson conducted a hearing pursuant to section 120.57(1), Florida Statutes (2016), by video teleconferencing, with sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Latory Smiley, pro se  
1104 Slayden Court  
Apopka, Florida 32712

For Respondent: Andrew Langenbach, Esquire  
Agency for Persons with Disabilities  
Suite S430  
400 West Robinson Street  
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STATEMENT OF THE ISSUES

Whether Petitioner has demonstrated rehabilitation from her disqualifying offense, and whether Respondent's intended agency

action to deny her request for an exemption is an abuse of discretion.

PRELIMINARY STATEMENT

On May 27, 2016, Barbara Palmer, as agency head for the Agency for Persons with Disabilities (Respondent, APD, or the Agency), notified Petitioner, Latory Smiley, that her request for an exemption from disqualification for employment in a position of trust was denied. The letter informed her of her right to request a hearing on the Agency's intended action.

Respondent received Petitioner's Request for Administrative Hearing on June 16, 2016, and on July 1, 2016, the Agency referred the case to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge.

On July 14, 2016, a Notice of Hearing was issued, scheduling the hearing for August 17, 2016. A pre-hearing telephone conference was conducted on August 2, 2016, at which time the procedure for the hearing was explained, and Petitioner was informed of the information provided on DOAH's website to assist individuals representing themselves before DOAH.

The hearing commenced and concluded on August 17, 2016. At the hearing, Petitioner testified on her own behalf, and Petitioner's Exhibits 1 through 3 were admitted into evidence. Respondent presented the testimony of Michael Sauve, deputy regional operations manager for APD, and Respondent's Exhibits A

through H were admitted. At the hearing, Respondent requested that Exhibit I, an e-mail from Respondent, be admitted into evidence, and requested the opportunity to late-file the exhibit, inasmuch as it had not been provided to DOAH in accordance with the Pre-hearing Order prior to the hearing. The Agency was given until August 24, 2016, to file a copy of exhibit: however, the exhibit was never received.

The proceedings were recorded, but no transcript was ordered. Both parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is the state agency charged with providing services to persons with developmental disabilities, including those with autism, cerebral palsy, spina bifida, Prader-Willi syndrome, and Down syndrome. The population the Agency serves is one with a heightened risk for abuse, neglect, and exploitation, and people employed to work with this population are considered to be in positions of special trust.

2. Anyone seeking employment with an entity that serves this fragile population is required to undergo a Level 2 screening, in order to ensure that someone who has been convicted or found guilty of certain enumerated crimes is not placed in a position of trust with the people the Agency serves.

3. Petitioner applied for a position with an entity called "The Mentor." The position for which she applied required that she undergo Level 2 screening.

4. A Level 2 background check was performed by the Department of Children and Families. The background check included criminal history record checks at state, national, and local levels. Petitioner's state and local criminal record checks were clear. However, the background check revealed that Petitioner has a disqualifying offense that was committed in 2002 in Virginia. The background check also revealed some subsequent arrests and one non-disqualifying conviction occurring after the disqualifying offense.

5. On December 14, 2015, the Department of Children and Families notified Petitioner by letter that she was disqualified from employment by virtue of her disqualifying offense, identified in the letter as grand larceny. The letter notified Petitioner of her eligibility to seek an exemption from disqualification.

6. Petitioner completed a Request for Exemption Questionnaire, which was provided to her. She obtained those documents related to her criminal history that were available, but was unable to retrieve all of them due to the passage of time. She also submitted copies of documents related to her

training and education, employment history, and restoration of her civil rights.

7. There is an Exemption Review Request Checklist that gives some aide in completing the exemption packet, but there does not appear to be a set of instructions or any directions regarding what is sought in the questionnaire. For example, the checklist and the questionnaire speak of providing information regarding "each of your criminal offenses." There is no explanation that "offenses" is meant to include not only convictions, but guilty and nolo contendere pleas, and arrests where the charges were dismissed. Similarly, the questionnaire asks the applicant to list "stressors" existing at the time of the disqualifying offense and existing now, but does not ask an applicant about their background. Petitioner testified that she called the Agency with questions regarding information to be supplied with the questionnaire, but did not get any meaningful assistance.

8. By letter dated May 27, 2016, Barbara Palmer, as director of the Agency, notified her that the Agency had denied her request for exemption from disqualification because she had not submitted clear and convincing evidence of rehabilitation. No further explanation of the Agency's decision was provided. Petitioner was notified of her right to request an administrative

hearing if she disputed the Agency's decision, and she timely invoked this right.

9. Petitioner was born June 25, 1982, and is approximately 34 years old. She never knew her father, and her mother was a drug addict. Her older brother provided what little parenting she received, and the environment in which she grew up had no real moral compass. As a result, it was easy for Petitioner to become entangled with people who were not healthy influences.

#### The Disqualifying Offense

10. The offense which disqualifies Petitioner from holding a position of trust occurred on February 13, 2002, when she was 19 years old. Ms. Smiley was a back-seat passenger in a stolen car. When the car was stopped by police, the others in the car fled the scene. Ms. Smiley did not flee, but refused to give up the names of those who had. As she stated in her exemption questionnaire, "I was young and dumb at the time, and believed I was protecting my friends by not giving the cops their names. I was very very foolish!"

11. Ms. Smiley was originally charged with grand larceny (the crime that the Department of Children and Families identified), but pled to and was found guilty of receiving stolen property, a felony under Virginia law, as well as a lesser included misdemeanor offense of eluding a police officer. As a result of the plea agreement, on May 30, 2002, Ms. Smiley was

sentenced to two years' incarceration for Count 1 and 12 months' incarceration for Count 2. The court suspended the sentences for both counts, subject to two years of unsupervised probation, payment of court costs of \$1,315.50 and restitution of \$700 to the owner of the car.<sup>1/</sup>

12. As of February 1, 2008, Petitioner paid both the costs and the restitution related to her disqualifying offense, and she received releases of judgment for them from the Norfolk County Court. She also wrote a letter of apology to the victim and stated in the questionnaire that the victim in turn had given her encouraging words regarding the importance of the company one keeps that she has taken to heart.

#### Subsequent Criminal Events

13. Agencies conducting disqualification exemption requests are permitted to consider arrests and convictions that occur after any disqualifying offense, whether or not the subsequent event would be considered a disqualifying offense if the applicant was found guilty, and regardless of the disposition of any arrest. Based on its authority to do so, the Agency considered the following events in Petitioner's past when it denied her request for an exemption.

14. There was some mention at the hearing of an arrest in 2003, which the Agency indicates was explained in an e-mail which would be in Respondent's Exhibit I. However, as noted

previously, Respondent did not submit Exhibit I after the hearing, and there is no documentation regarding this arrest. However, it appears from the brief testimony at the hearing on this issue that Petitioner was actually the victim in this incident, and the charges against her were dismissed.

15. On January 23, 2006, Petitioner was arrested and charged with indecent language. Petitioner was 23 at the time. The charge was dismissed on January 26, 2006.

16. Petitioner explained that she had gotten into an argument with a friend when she learned the friend was seeing Petitioner's boyfriend, and used some off-color language during the argument.

17. It is surprising that this could, in this day and age, even be a criminal offense that is actually charged. One cannot help but wonder how small the employment pool would be if all who used indecent language could not hold positions of trust. Nonetheless, this ten-year-old arrest is a factor that the Agency considered, concluding that it was evidence of Petitioner's lack of judgment.

18. On June 1, 2009, Petitioner was arrested for failure to appear. The Norfolk, Virginia, criminal records indicate that the offense date was June 30, 2008. The charge was dismissed on June 29, 2009. Petitioner testified candidly that she totally forgot her court date and was remorseful about doing so.



19. On June 14, 2009, Petitioner was arrested for obstruction of justice, a misdemeanor. Petitioner apparently pled guilty and was sentenced to 90 days in jail, with 80 days of the sentence suspended. Petitioner paid the costs associated with this offense on or before October 5, 2009.

20. Petitioner explained that she and some friends had been partying, and that she "mouthed off" at a security guard. She described her behavior as "completely out of line," for which she took full responsibility. She no longer drinks alcohol or parties, because she wants to be a better role model for her children.

21. As is explained below, Petitioner left the Norfolk area and moved to Fairbanks, Alaska, where she sought and received training in counseling for alcohol and drug abuse. She worked as a counselor in Fairbanks until moving to Florida in 2013. Her efforts to obtain employment in Florida have been stymied by the requirement for Level 2 screening. While she has not been employed since moving to Florida, she has worked toward obtaining her education and has been active in her church and her children's education.

#### Educational History

22. On June 15, 2002, after the entry of the felony plea, Ms. Smiley graduated from Granby High School in Norfolk, Virginia.

23. On October 6, 2011, Ms. Smiley received her certification from the Regional Alcohol and Drug Abuse Counselor Training Program (RADACT), in Anchorage, Alaska, as a Counselor Technician/Behavioral Health Aide I. To earn this certification, she completed 112 hours of coursework from September 19 through October 6, 2011.

24. On January 26, 2012, Petitioner completed two hours of continuing education in clinical documentation, approved by the State of Alaska, DHSS Behavioral Health.

25. On June 7, 2012, Petitioner received a certification for the completion of a Motivational Interviewing course offered by RADACT, representing 16 contact hours.

26. On October 4, 2012, Ms. Smiley received her certification from RADACT, as a Level I Counselor. To earn this certification, she completed 112 hours of coursework from September 17 through October 4, 2012.

27. All of the certifications from RADACT indicate that the coursework has been approved by the National Association of Alcoholism and Drug Abuse Counselors and will be accepted by the Alaska Commission for Behavioral Health Certification.

28. Ms. Smiley submitted documentation indicating that she had attended classes at Valencia College in the summer of 2015, taking classes toward her college degree. She also has taken

courses at Seminole State College, although the time frame for this coursework is unclear from the documentation presented.

#### Employment History

29. Petitioner submitted the following information related to her work history on the exemption questionnaire. From May 14, 2000, to September 16, 2003, Ms. Smiley worked on a seasonal basis as a summer camp worker for the City of Norfolk Parks and Recreation Department. The undersigned notes that she was employed in this capacity during the time period when her disqualifying offense occurred, and that the City of Norfolk continued to employ her working with children, despite her felony conviction. There is no indication that any child was harmed as a result of the care she provided to children during her employment with the city.

30. From October 1, 2003, to June 10, 2005, Petitioner worked as a youth counselor for the YMCA in Norfolk. Her job duties included assisting with homework and after-school activities in the YMCA's before and after school programs. Ms. Smiley held this job working with children not long after her felony conviction, in the same town where the conviction occurred.

31. Petitioner worked for the City of Norfolk, Parking Division, from June 10, 2006, through October 1, 2008, collecting parking fees. The City of Norfolk employed her in a position

involving the collection of money despite her felony conviction for receiving stolen property.

32. Ms. Smiley moved to Alaska, and from February 2, 2009, to February 13, 2013, Petitioner worked for Fairbanks Native Associates in Fairbanks, as a counselor.<sup>2/</sup> In that capacity, she worked with clients to develop ways to cope with issues such as HIV, grief, stress, and addiction, and, potentially, to incorporate 12-step programs to assist with recovery and prevent relapse. With each of her jobs, Petitioner remained employed for a minimum of 20 months to approximately four years. Ms. Smiley left her job in Alaska in order to move to Florida. While she has sought employment in Florida, she has been unable to get past the Level 2 screening and cannot work in the field for which she has trained because she does not have an exemption.

#### Community Involvement

33. On December 9, 2015, Ms. Smiley's civil rights to vote, hold public office, serve on a jury, and to be a notary public were restored by the Governor of Virginia. She has completed an application to register to vote in Florida.

34. Ms. Smiley has three special-needs children and is an involved parent. She attends all of her children's school functions and belonged to the PTA at her children's elementary school. She also attends church twice a week and is active in a faith-based organization called "I am Judah."

35. Petitioner also provided to the Agency two positive letters regarding her character, from Daquisha Presley and Shavon Haskins. Both letters are glowing in their praise of Ms. Smiley, but contain no real explanation of how the writers know her or any description of activities in which she is involved that would point to rehabilitation. However, both letter-writers are from Virginia, making their attendance at a hearing in Florida unrealistic. Both writers speak of Ms. Smiley's thoughtfulness and giving heart, with Ms. Presley also referring to her strength, grace, compassion, leadership, courage, and faith.

#### The Agency's Decision

36. The Agency declined to grant Petitioner's request for exemption, stating that she had not provided clear and convincing evidence of rehabilitation.

37. At the hearing, the Agency gave little explanation regarding the reasoning behind its decision. It is unclear whether Agency personnel realized that Ms. Smiley's disqualifying offense was receiving stolen property, as opposed to grand larceny, as identified in the Department of Children and Families' December 14, 2015, letter. Mr. Sauve testified that Ms. Smiley's lack of employment after moving to Florida was troubling and that the Agency had considered her non-disqualifying offenses since the 2002 conviction. In its Proposed Recommended Order, the Agency asserts that Petitioner

"has not demonstrated any rehabilitation specific to the disqualifying offense, and a majority of the evidence given for her rehabilitation existed during the ensuing non-qualifying offenses."

38. The Agency did not indicate what would qualify as rehabilitation "specific to the disqualifying offense." However, the record at hearing demonstrated that Petitioner paid all of the court costs and restitution related to the disqualifying offense, and wrote a letter of apology to the victim. She has stopped drinking alcohol, which contributed to her past indiscretions, and moved away from the environment where her troubles began. All of these actions are evidence of steps toward rehabilitation. Moreover, the statement that the majority of evidence Petitioner presented related to rehabilitation existed during the ensuing non-qualifying offenses is incorrect. With the exception of her high school diploma, all of the training and education that Petitioner has received occurred after the 2009 charge, which is the last encounter Petitioner had with the criminal authorities. The same can be said of her employment as a counselor. Her civil rights were restored in 2015; also well after the 2009 charge.

39. Petitioner's actions and her efforts to move past the behaviors leading to her legal issues must be viewed from two different perspectives: first, through the lens of her

background and upbringing, in order to understand the environment in which she found herself and that which she now lives; and second, through the significant and laudable goal of the Agency to ensure that the fragile population it serves is not exploited or endangered.

40. Petitioner testified at the hearing, and her testimony is something the Agency did not have the advantage of hearing before making its initial decision. As noted above, Petitioner did not have the benefit of a solid family structure. She did not know her father, and her mother was a drug addict. She views her behavior as a young adult for what it was: the foolish and irresponsible behavior of a young woman hanging out with the wrong people, and not thinking about the future. She admitted that her behavior in 2009 also was irresponsible, stating that she was "completely out of line." She testified that she has removed herself from those influences in her life and no longer drinks or parties, instead focusing on being a mother to her children.

41. The Agency points out that she also was a mother in 2009 when the final non-disqualifying offense occurred. While that is true, Petitioner has taken steps to improve her situation since that time: by obtaining training for employment and working in the counseling field, by attending her church and faith-based organization activities, and by being active in her

children's elementary school PTA. All are efforts that Petitioner has made in the last six to seven years to be a positive role model for her children and to rise above the circumstances in which she was raised. In short, she is attempting to provide for her children what no one provided for her. She also has used the time while she has been unable to gain employment to continue her education.

42. The evidence considered at the hearing shows a woman who was truly remorseful for the actions in her past and who is doing her best to overcome the limitations of her upbringing and be a contributing member of society. Ms. Smiley has proven rehabilitation from the single disqualifying offense by clear and convincing evidence.

43. Based on the evidence presented at the hearing, it also demonstrates that Petitioner presents no danger to the vulnerable population served by the Agency. The credible hearing testimony, coupled with the information presented to the Agency, established that Ms. Smiley presents no danger to APD clients, including children. Since her disqualifying offense, she has worked with children, been entrusted with money, and worked with those battling addiction and other stressors. While the Agency is right to take its responsibility to protect a particularly vulnerable population seriously, Ms. Smiley has demonstrated her ability and passion to work with those who are less fortunate



than herself. As she stated in her Proposed Recommended Order, "I want to work with trouble teens [sic] because I know the STRUGGLE, I know how trouble is easy to get into and HARD to get out, even 15 years down the road." She should be allowed to do so.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569, 120.57(1), and 435.07(3)(c), Florida Statutes (2016).

45. As the applicant for an exemption pursuant to section 435.07, Petitioner bears the burden of proof to establish rehabilitation. Section 435.07 provides in pertinent part:

- (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 nonmonetary condition imposed by the court for the disqualifying felony;

\* \* \*

For the purposes of this subsection, the term "felonies" means both felonies prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions.

- (2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are

disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

(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.

(b) The agency may consider as part of its deliberations of the employee's rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense.

(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 action is an abuse of discretion.

46. Petitioner's single disqualifying offense, committed in 2002, was a felony under Virginia law. Section 435.04 provides the list of crimes for which disqualification from employment in a position of trust is a consequence. The list includes crimes

identified in chapter 812, Florida Statutes (2016), relating to theft, robbery, and related crimes, if the offense is a felony. § 435.04(2)(cc), Fla. Stat. Petitioner's conviction under Virginia law for receiving stolen goods is a felony under a similar statute of another jurisdiction as the felonies listed in chapter 812.

47. Petitioner meets the eligibility requirement in section 435.07(1)(b) to obtain an exemption from a disqualifying felony. She paid all of the court costs and the restitution related to her offense on or before February 1, 2008, more than eight years ago. She also completed her probation more than 12 years ago.

48. In order to receive an exemption, Petitioner must demonstrate, by clear and convincing evidence, that she is rehabilitated. 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."). Should Petitioner demonstrate rehabilitation, then it must be determined whether the Agency abused its discretion when it initially determined it would deny the exemption. Id. The abuse of discretion standard 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 [here, the Agency] should be disturbed only when his decision fails to satisfy this test of reasonableness.

Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); Kareff v. Kareff, 943 So. 2d 890, 893 (Fla. 4th DCA 2006) (holding that with respect to the abuse of discretion standard, the test is “whether any reasonable person” could take the position under review).

49. Prohibiting people convicted of disqualifying offenses from employment in positions of trust is intended to protect the public welfare, and section 435.07 is strictly construed against the person seeking an exemption. Heburn v. Dep’t of Child. & Fams., 772 So. 2d 561, 563 (Fla. 1st DCA 2000).

50. 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)); see also, In re Henson, 913 So. 2d 579, 590 (Fla. 2005).

51. 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."

52. Florida's First District Court of Appeal has reasoned that:

[A]lthough 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., supra, 114 So. 3d at 1132. As a consequence, the Agency's initial decision is viewed in light of evidence that the Agency did not have the benefit of considering.

53. The importance of the Agency's goal to protect the public cannot be overstated, and Petitioner's behavior must be viewed through the lens of the Agency's mission: to protect a fragile population whose members often cannot protect themselves. As stated by Mr. Sauve, the Agency considers the statutory requirements for rehabilitation and the vulnerability of the population it serves. Given its mission, it is reasonable for the Agency to consider anything that would point to the possibility of danger to that fragile population.

54. However, even viewing the evidence in this case through this protective lens, there is nothing that indicates that

Petitioner would be a danger to the APD population. The evidence indicates that the genesis of Petitioner's disqualifying offense was a group of teenagers engaging in a joy-ride. When caught, Petitioner compounded her mistake by being loyal to her "friends" and refusing to divulge their names. While her behavior was clearly wrong and irresponsible, it does not evidence an intent or propensity to harm or exploit disabled adults or children.

55. Petitioner's non-disqualifying "offenses" likewise do not provide concern that Ms. Smiley would harm or exploit people with whom she worked. She was a victim in the 2003 incident, for which charges were dismissed. The 2006 charge for indecent language is supportive of nothing more than a pedestrian vocabulary. While not admirable, the failure to appear charge (which was dismissed) and the obstruction of justice charge (the result of "mouthing off" at a security guard) do not point to behavior that would place children or disabled adults in jeopardy. Moreover, these most recent charges occurred more than seven years ago, at a time when Petitioner was in the beginning stages of making true changes in her life. From 2009 to the present, she has had no further encounters with law enforcement, has distanced herself from the environment that contributed to her misdeeds, and has made significant strides toward her goal of helping others avoid her mistakes.

56. To be clear, the determination of rehabilitation does not rest on the mere fact that an applicant has not gotten into any more trouble with the law. There must be affirmative steps in a more productive direction. Petitioner has taken those steps. She has had her civil rights restored. She has been employed in situations where she has been entrusted with both children and money, in the very city where her felony occurred. Her employers there presumably had more opportunity to investigate the circumstances related to her conviction, and employed her regardless. She stepped away from those influences that contributed to her past behavior, moving literally across the country, and has tried to create a more positive environment for her children than she experienced herself. These are all factors that the Agency should consider, and it is not apparent that it did so.

57. The Agency did not have the benefit of Petitioner's testimony at the hearing, in which she described her background and provided additional information regarding her attempts to obtain employment. Moreover, it appears that the Agency did not appreciate the chronological sequence of events with respect to her non-disqualifying offenses compared to her training and employment in the counseling field, or the lengths to which she has gone to remove herself from negative influences. Under these circumstances, and given this additional information, it would be

an abuse of discretion for the Agency to deny Petitioner's request for exemption.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that that the Agency for Persons with Disabilities enter a final order granting Petitioner's request for an exemption from disqualification from a position of trust.

DONE AND ENTERED this 12th day of September, 2016, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of September, 2016.

ENDNOTES

<sup>1/</sup> There is some confusion in the record regarding the amount of the restitution. While the judgment and sentence indicates the amount is \$700, the Final Disposition in the Case Details Sheet from the Norfolk Circuit Court, Criminal Division, indicates that the restitution is only \$60. All indications are, regardless of the amount, that Petitioner satisfied all of her financial obligations related to these charges.



<sup>2/</sup> The documentation Petitioner provided indicated that she began working in Alaska in February 2009, but was arrested in Virginia in June 2009. No one asked about these dates at the hearing. It is assumed, absent any evidence to the contrary, that perhaps the arrest occurred during a visit to Virginia. This is the most plausible explanation, given that the arrest for failure to appear also occurred within days of this incident, while the date of the offense for failing to appear is a year before.

COPIES FURNISHED:

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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.