

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DONYEL GOODMAN,

Petitioner,

vs.

Case No. 16-6196EXE

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) conducted the final hearing in this matter on December 19, 2016, by video teleconference at locations in Lakeland and Tallahassee, Florida.

APPEARANCES

For Petitioner: Jeannette L. Estes, Esquire  
Agency for Persons with Disabilities  
Suite 422  
200 North Kentucky Avenue  
Lakeland, Florida 33801

For Respondent: Donyel Goodman, pro se  
2209 Chestnut Hill Drive  
Lakeland, Florida 33809

STATEMENT OF THE ISSUES

A. Did Petitioner prove by clear and convincing evidence that she was rehabilitated from a felony conviction for

aggravated assault with a deadly weapon, which disqualified her from working with vulnerable adults and children?

B. If she did, is Respondent's intended denial of Petitioner's request for an exemption an abuse of discretion?

PRELIMINARY STATEMENT

By letter dated September 16, 2016, Respondent, Agency for Persons with Disabilities (Agency), notified Petitioner that it intended to deny her request for an exemption from disqualification from employment in a position of special trust. Petitioner timely requested a formal administrative hearing to contest the decision. The Agency referred the dispute to DOAH to conduct the requested hearing. The hearing was conducted as noticed.

Petitioner testified and presented the testimony of Narranji Benton, Myosha Clark, Bakeisha Cooper, Juanita Goodman, Silas Harris, and Meletha Lyons. Petitioner's Exhibits 1 through 3 were accepted into evidence. The Agency presented the testimony of Michael Suave. Agency Exhibits A through D were admitted into evidence.

The parties were provided an opportunity to submit proposed recommended orders. The Agency submitted one. Petitioner did not.

## FINDINGS OF FACT

1. Petitioner seeks employment with Utopian Support Services, d/b/a Great Expectations. It serves people with disabilities, and the Agency regulates it. The clients that the Agency and the entities it regulates serve vulnerable individuals. They are people with intellectual disabilities, autism, spina bifida, Prader-Willi syndrome, cerebral palsy, Down syndrome, and/or Phelan-McDermid Syndrome. § 393.063(12), Fla. Stat. (2016).<sup>1/</sup> These individuals often have severe deficits in their ability to care for themselves and to communicate their needs and wants. They are at a heightened risk of abuse, neglect and exploitation. Consequently, employment as a direct service provider for them is a position of special trust.

2. Direct service providers assist individuals with social activities and personal needs. Providers also often transport clients and assist them with financial matters.

3. Petitioner wants to work as a direct service provider to individuals with disabilities. This requires her to comply with background screening requirements. Petitioner's background screening identified a guilty plea to a felony that disqualified her from working with vulnerable individuals, including people with disabilities. The disqualifying offense is Aggravated Assault with a Weapon, a violation of section 784.045, Florida Statutes (2006) (now section 784.021, Fla. Stat.).

4. The Department of Children and Families (Department) conducts screenings for the Agency. The Department advised Petitioner and the Agency that she was disqualified from serving vulnerable individuals because of her guilty plea.

5. Petitioner submitted a Request for Exemption, Exemption Questionnaire, various criminal records, character references, and other various documents (the Exemption Packet) to the Department. It forwarded the Exemption Packet to the Agency for review.

6. The Agency for Health Care Administration has already granted Petitioner an exemption from disqualification for the same offense involved here, applying the same standards that apply here.

Disqualifying Offense

7. On April 1, 2006, when she was 23, Petitioner pled guilty to the disqualifying offense of Aggravated Assault with a Weapon. The court withheld adjudication. The court sentenced Petitioner to a 36-month period of probation, 100 hours of community service, payment of \$1,350.25 in costs and fees, and anger management class. Due to an admitted violation of community control requirements of her probation, the court extended Petitioner's probation by six months. Petitioner successfully completed her probation on May 21, 2010.

8. In documents and testimony, Petitioner provided two different accounts of the circumstances of the assault. In one version, she and the owner of a beauty supply store exchanged insults because of a comment he made about not carrying uniforms in her size. She says she did not display a weapon.

9. The police report of the storeowner's description of the incident differs. It reports the owner saying Petitioner threatened him with a knife. These facts are the basis of the charge to which Petitioner pled guilty. Without the knife, there would have been no weapon to support the charge. The owner's version is also consistent with Petitioner's statement in her hearing request that she feared for her life and needed to protect herself.

10. In the other version, Petitioner testified about an earlier incident involving the storeowner and his son. She did not mention this version of the incident in materials she submitted to the Agency in support of her exemption request.

11. Petitioner's statements about the crime to which she pled guilty demonstrate confusion rather than a refusal to accept responsibility. Petitioner was in her early twenties at the time, drinking heavily, and behaving irresponsibly. Now she is not.

### Subsequent Non-disqualifying Offenses

12. Petitioner was also charged with Obtaining Property in Return for a Worthless Check on March 7, 2011. This involved a check for \$258.00 written to Stanley Steamer. The prosecutor dismissed the charges because Petitioner successfully completed a worthless check diversion program.

13. In September 2011, Petitioner was arrested for Obtaining Property in Return for a Worthless Check. The charge was paying \$21.60 for a pizza on July 4, 2011, with a check drawn on a closed account. Petitioner says her sibling wrote the check without Petitioner's knowledge. Petitioner says that when she learned of it, she satisfied "both the company and the courts." Court documents indicate adjudication withheld, which indicates a plea or conviction. Petitioner confused the two worthless check charges and their disposition.

### Driving Record

14. Petitioner has had 21 driving violations, including safety belt violations, speeding, and careless driving. At the time of the exemption review, Petitioner had a license suspension pending.

### High Praise from Those Who Know Petitioner

15. Six character witnesses testified to Petitioner's temperament, kindness, dedication to service, and commitment to caring for the vulnerable. They all had personal knowledge of

her. Their memories are distinct, and their testimony is precise and explicit. There is no doubt that the witnesses's testimony is truthful.

16. Silas Harris is a provider of services to Agency clients. He owns and operates Success for All. Mr. Harris has known Petitioner for ten years. He is familiar with Petitioner's work with youth football and cheerleading activities. Mr. Harris commended Petitioner for how well she related to and worked with individuals with disabilities in recreational activities.

17. Bakeisha Cooper is also an Agency provider. She owns and operates Utopian Support Services. Ms. Cooper was once a support coordinator who assisted Agency clients with obtaining services. She met Petitioner working with individuals with disabilities. Petitioner's interactions with the clients were patient and honest. In Ms. Cooper's informed opinion, Petitioner has the ability to work with individuals who have challenging behaviors.

18. Myosha Clark has known Petitioner for several years. She has worked with her in community activities such as fundraising, youth cheerleading, feeding the homeless, and a group known as "Made Men, Made Women." Ms. Clark describes Petitioner as kind-hearted and dedicated to helping the needy. Petitioner has also been a good mentor to Ms. Clark.

19. Meletha Lyons and Petitioner have been friends for ten years. They worked together for Help is on the Way, Inc., an Agency-licensed provider of services to individuals with disabilities. Based upon this foundation of knowledge, Ms. Lyons attests that Petitioner has a caring heart and loves helping others. Ms. Lyons believes that Petitioner would "never abuse, exploit or do anything to neglect a client . . . these people are her heart. She goes above and beyond to help them." She was not aware of any charges of abuse or neglect against Petitioner.

20. Juanita Goodman and Petitioner have been friends for over 20 years. Their children were involved in cheerleading together. She and Petitioner have worked together with Salvation Army-sponsored events. Ms. Goodman observed Petitioner helping people with various needs. Ms. Goodman observed Petitioner gathering donations to help children participate in events like cheerleading. She observed Petitioner's ready willingness to help families with bills and transportation. Ms. Goodman finds Petitioner a sweet, loving person who would give you the shirt off her back.

21. Narranji Benton met Petitioner through a mutual friend. Petitioner has supported Ms. Benton during tough emotional times. She has observed Petitioner feeding the homeless, spending her money on others, and fundraising for community service programs.



Ms. Benton feels blessed to have Petitioner as a friend and would trust her with a loved one with a disability.

22. Letters from Samuel Cooper of Help is on the Way, Inc., and Ivan Brooks of Lakeland Destroyers Youth Sports, Inc., corroborate the uniform evidence of Petitioner's character and knack for caring for people with disabilities.

23. On the record here, there is no question that Petitioner is a kind, patient, caring, and big-hearted person with an affinity for caregiving. Petitioner loves working with people with disabilities and wants to make this service her career. She has also completed certified nurse assistant training.

#### Verified Finding of Neglect

24. In 2010, the Department issued a verified finding of neglect for Petitioner. This resulted from the fact that a person with disabilities who was a passenger in the van Petitioner was driving left the van, and Petitioner did not make sure he returned. Five to ten minutes later Petitioner noticed his absence. She immediately notified her supervisor and returned to find the individual. At the time and in the hearing, Petitioner readily acknowledged her mistake and took responsibility for it.

## Rehabilitation Analysis

25. Petitioner's disqualifying conviction manifests a tendency to violence and lack of self-control. The clear and convincing evidence of this record establishes unequivocally that those traits are far behind her. The clear and convincing evidence establishes that individuals in Petitioner's care are not at risk of violence at her hands or of Petitioner losing her temper. The time that has passed since the incident, completion of an anger management class as a condition of probation, the absence of similar behavior, and Petitioner's uniformly well-regarded record of service all establish this.

26. The law governing granting an exemption, however, puts other facts in play once a disqualifying offense is established. Consideration of the non-disqualifying offenses, Petitioner's traffic violation record, and the finding of neglect are permitted. These are the factors that the Agency relies upon in denying the exemption. They are relevant to caring for persons with disabilities. Transporting clients is a service Petitioner will likely be providing. The traffic offenses and the circumstances of the verified finding create some uncertainty about the safety of persons who may be in Petitioner's care.

27. The worthless check charges raise a question about Petitioner's financial responsibility. This is relevant to the care of persons with disabilities because many need help with

personal finances, even if in small ways. Overlooking the individual who left the bus is also relevant.

#### CONCLUSIONS OF LAW

28. Sections 120.569 and 120.57(1), Florida Statutes, grant DOAH jurisdiction over the parties to and the subject matter of this proceeding.

29. Petitioner seeks a position serving vulnerable persons that requires successful completion of Level 2 background screening under section 435.04, Florida Statutes.

30. Petitioner's 2006 conviction disqualified Petitioner from employment directly serving the vulnerable. Petitioner seeks an exemption from disqualification under section 435.07. Petitioner is eligible to seek exemption from disqualification under section 435.07.

31. Section 435.07(3)(a) states that individuals seeking an exemption "must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment." It goes on to state that employees bear "the burden of setting forth clear and convincing evidence of rehabilitation."

32. Clear and convincing evidence must be credible. The memories of witnesses must be clear and not confused. The evidence must produce a firm belief that the truth of allegations has been established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). Evidence that conflicts with other evidence

may be clear and convincing. The trier of fact must resolve conflicts in the evidence. G.W.B. v. J.S.W. (in Re Baby E.A.W.), 658 So. 2d 961, 967 (Fla. 1995).

33. In J. D. v. Florida Department of Children & Families, 114 So. 3d 1127, 1130 (Fla. 1st DCA 2013), Judge Wetherell described the abuse of discretion standard thus:

An agency's decision to grant or deny an exemption is subject to the deferential abuse of discretion standard of review. See Heburn v. Dep't of Children & Families, 772 So. 2d 561, 563 (Fla. 1st DCA 2000). Under this standard, "[i]f reasonable men could differ as to the propriety of the action taken by the [lower tribunal], then the action is not unreasonable and there can be no finding of an abuse of discretion." Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); see also id. ("Discretion . . . is abused when the . . . action is arbitrary, fanciful, or unreasonable . . .") (quoting Delno v. Market Street Railway Co., 124 F.2d 965, 967 (9th Cir. 1942)).

34. Here the question of rehabilitation is close and raises the issue of "rehabilitation" from what? If it is solely "rehabilitation" from the violence and anger manifested in the crime ten years ago, then the clear and convincing evidence establishes "rehabilitation" so clearly that denying the exemption would be unreasonable. The offense was ten years ago. Petitioner was young and abusing alcohol. The harm was restricted to the fear that the offense inherently causes. Petitioner accepted responsibility at the time. Since then,

there have been no similar offenses. She has been with many children and people with disabilities. She has displayed only care, concern, and support.

35. The facts are similar to the facts in B.J. v. Department of Children & Family Services., 983 So. 2d 11, 16 (Fla. 1st DCA 2008). The court reversed the Department's rejection of an Administrative Law Judge's recommendation to grant an exemption. The evidence-based findings were that eight years had passed since the applicant's domestic battery conviction, he had been working in childcare for four years without incident, and that he posed no threat to children in a day care. This led the Judge to make a finding of rehabilitation. The Department abused its discretion when it reversed the finding. The facts, however, are not completely similar. B.J. did not have subsequent disqualifying offenses, a history of traffic violations, or a verified finding of neglect.

36. The Agency for Health Care Administration has granted Petitioner an exemption. This fact must be considered.  
§ 435.07(5), Fla. Stat.

37. If the issue is rehabilitation from the poor judgment underlying the disqualifying offense, reasonable people could differ. Section 435.07(3)(b) permits consideration of arrests or conviction for other crimes, even if they are not disqualifying offenses. Petitioner has arrests and one conviction for passing

worthless bank checks. That indicates continued poor judgment and relates to the vulnerability of the population she seeks to serve.

38. The traffic violations, although not criminal offenses, further indicate poor judgment. They too relate to the services Petitioner will be providing. The traffic violations, like the verified finding, are part of Petitioner's history since the disqualifying incident and may be considered. § 435.07(3)(a), Fla. Stat.

39. The test is whether reasonable people could differ about whether Petitioner sufficiently demonstrated rehabilitation and that she would not present a danger if granted an exemption. J. D. v. Fla. Dep't of Child. & Fams., supra. On the record here, reasonable people could differ. A reasonable person might, and many would, conclude that Petitioner demonstrated rehabilitation and that she does not present a danger to vulnerable people in her care. Perhaps the Agency will choose to exercise its discretion differently after reviewing this fully developed record. But a reasonable person could conclude there is sufficient uncertainty about rehabilitation to deny an exemption. Consequently, the Agency has not abused its discretion by denying the exemption.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Agency for Persons with Disabilities, enter its final order denying Petitioner's exemption request.

DONE AND ENTERED this 30th day of January, 2017, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of January, 2017.

ENDNOTE

<sup>1/</sup> All citations to Florida Statutes are to the 2016 codification unless otherwise noted.

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.