

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DENISE A. WILSON,

Petitioner,

vs.

Case No. 16-6360EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on January 6, 2017, in Gainesville, Florida, before W. David Watkins, the assigned Administrative Law Judge of the Florida Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Denise Wilson, pro se
237 Southwest 6th Avenue
Gainesville, Florida 32601

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

STATEMENT OF THE ISSUES

The issues are 1) whether Petitioner has shown, by clear and convincing evidence, that she is rehabilitated from her disqualifying offense(s); and, if so, 2) whether Respondent's intended action to deny Petitioner's request for an exemption

from employment disqualification would constitute an abuse of discretion.

PRELIMINARY STATEMENT

By letter dated September 26, 2016, Respondent, Agency for Persons with Disabilities (APD), notified Petitioner that her request for an exemption from disqualification from employment in a position of special trust had been denied. Petitioner timely filed with APD a Request for Administrative Hearing on the intended agency action announced in APD's September 26, 2016, letter. The matter was referred to DOAH on October 31, 2016, for the assignment of an administrative law judge to conduct a formal hearing in the locality where Petitioner resides and to submit a recommended order to APD.

As noticed, the final hearing was held on January 6, 2017, in Gainesville, Florida. Petitioner testified on her own behalf and presented the testimony of two witnesses: Sherry McCrae and Faye Williams, both of whom were Petitioner's sisters. APD called Leslie Richards, regional operations manager, as its sole witness. Without objection, APD's Exhibits A through D were received in evidence. Petitioner did not offer any exhibits at the final hearing.

While a court reporter was present at the hearing, neither party ordered a transcript prepared.

Both Petitioner and APD subsequently submitted Proposed Recommended Orders, both of which have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Petitioner is seeking employment with The Arc of Alachua County, a service provider regulated by APD.

2. Petitioner's desired employment is to work as a direct service provider, which requires compliance with background screening requirements. The results of Petitioner's background screening identified a history of criminal offenses.

3. Petitioner received notification via letter dated April 4, 2016, from the Department of Children and Families (DCF), Respondent's background screening entity, of her disqualification from employment due to a criminal history. The specific disqualifying offense listed in the letter was Larceny (a violation of section 810.014, Florida Statutes (2016)^{1/}).

4. Florida's Legislature has designated certain criminal offenses as disqualifying offenses, which would prevent an individual from working as a direct service provider. However, an individual may seek an exemption from the employment disqualification.

5. The granting of an exemption from employment disqualification would allow for Petitioner's employment as a direct service provider to APD clients.

6. APD's clients are a vulnerable population, consisting of those individuals whose developmental disabilities are statutorily defined as: intellectual disability, autism, spina bifida, Prader-Willi syndrome, cerebral palsy, Down syndrome, and/or Phelan-McDermid Syndrome. See § 393.063(12), Fla. Stat. Without APD's services, these clients would otherwise require institutionalization.

7. APD's clients often have severe deficits in their abilities to complete self-care tasks and communicate their wants and needs. These clients are at a heightened risk of abuse, neglect, and exploitation because of their developmental disabilities and inability to self-preserve; consequently, employment as a direct service provider to APD clients is regarded as a position of special trust.

8. APD is the state agency responsible for regulating the employment of persons in positions of special trust as direct service providers for which Petitioner seeks to qualify. See §§ 110.1127(2)(c)1. and 393.0655, Fla. Stat. Many of the tasks direct service providers perform for, and/or assist individuals with disabilities with, include those of a social, personal needs, and/or financial nature.

9. APD relies on DCF to initially receive exemption from employment disqualification requests and compile documents received related to such requests.

10. On or around May 10, 2016, Petitioner submitted a Request for Exemption, Exemption Questionnaire, a copy of her criminal record, character references, and other various documents (the Exemption Packet) to DCF in order to demonstrate support for the granting of an exemption from employment disqualification. DCF subsequently forwarded the Exemption Packet to APD for review.

11. In beginning its exemption review, APD considered Petitioner's disqualifying offense. Specifically, in December 1982, Petitioner committed the disqualifying offense of Larceny/Grand Theft (a violation of section 810.014). The court's final disposition of the case included the withholding of adjudication of guilt, two years' probation, and payment of costs.

12. In its continued exemption review pursuant to section 435.07(3)(b), Florida Statutes, APD considered the following non-disqualifying offenses which Petitioner committed subsequent to her December 1982 disqualifying offense: an arrest for Worthless Check on December 23, 1995 (a violation of section 832.05, Florida Statutes); a second arrest for Worthless Check on December 23, 1995 (a violation of section 832.05); a conviction

for Worthless Check on December 24, 1995 (a violation of section 832.05); an arrest for Driving While License Suspended/Revoked in June 1996 (a violation of section 322.34(2), Florida Statutes); an arrest for Worthless Check in January 2007 (a violation of section 832.05(4) (a)); and an arrest for Violation of Injunction Domestic Violence/Contempt of Court in August 2012 (a violation of section 741.31(4) (a), Florida Statutes).

The Disqualifying Offense

13. Petitioner provided an account of her disqualifying offense, Larceny/Grand Theft, in an addendum to the Exemption Questionnaire, dated August 3, 2015. Petitioner indicated in her account that she relocated to Tampa from Gainesville. She was 22 years old, single, and employed with the State of Florida. She became roommates with another female who was attending college at the University of South Florida. Petitioner stated "I have no explanation as to why the both of us committed a crime of theft." Petitioner further explained that she received a two-year term of probation and completed all her court-ordered sanctions within a year. Petitioner also noted that "[s]ince that time, I have not committed any further crimes."

14. Petitioner provided the following record concerning her disqualifying offense: state attorney court record (13th Judicial Circuit, Hillsborough County, State Attorney).

The Non-Disqualifying Offenses

15. Court records received in evidence indicate a total of six non-disqualifying offenses as previously mentioned. Petitioner did not disclose any of her non-disqualifying offenses, nor did she provide accounts for such on the Exemption Questionnaire, despite the directions specifically requiring an applicant to do so.

16. Petitioner did not provide records of her non-disqualifying offenses. Records of those offenses were obtained by APD as part of its detailed review process. Records of the non-disqualifying offenses obtained included: worthless check affidavit, witness form, copies of check, and no information filed court filing (Sears 12/23/1995); worthless check affidavit, witness form, and copy of check (Pic'n Save 12/23/1995); worthless check affidavit, witness form, copy of check, and court judgment (Pic'n Save 12/24/1995); worthless check affidavit, witness form, copy of check, copy of court diversion judgment and supporting documentation, and copy of dismissal of charge (Publix 1/30/2007); and warrant affidavit for arrest (Alachua County Sheriff's Office, August 2012).

17. Petitioner indicated that she has no current involvement with any court system; specifically, she stated "I have not experienced any criminal charges since my last event in 1982."

18. Regarding whether there was any degree of harm to any victim or property, including damage or injuries, Petitioner stated "I have not experienced any harm or damage to anyone or any property since my last event in 1982."

19. In answering the question about stressors in her life at the time of the disqualifying incident, Petitioner indicated that there were none, other than being on probation.

20. Regarding whether there are any current stressors in her life, Petitioner stated "I have no current stressors with the law."

21. Petitioner indicated that her current support system and living arrangements include being married and having one daughter and numerous grandchildren. Petitioner also explained that her community activities/volunteer efforts include volunteering with the school system (field trips/activities) and attending church and performing functions for the church's treasury department.

22. Regarding educational and training achievements, Petitioner stated that she graduated from high school, started a career with the State of Florida, and attended a word processing/information course where she received the Most Outstanding Student Award.

23. The Exemption Questionnaire asks whether an applicant has ever received counseling for any reason. Petitioner

indicated that she has not received counseling for any reason; if she felt stress, she would call the Employee Assistance Program. Petitioner noted she has not experienced any "major post-traumatic [stress]."

24. As to whether she has used and/or abused drugs or alcohol, Petitioner replied that she has "not abused any type of drugs or alcohol in [her] life."

25. Petitioner indicated the following regarding feeling remorse/accepting responsibility for her actions: "I am the type of person to feel remorse towards everything and every person that I have contact with. I always take full responsibility for any action(s) that I encounter when I am in the wrong."

26. The Exemption Questionnaire asks for an applicant's prior three years' work history. Petitioner provided the following information: 4/2016 to 5/2016--The Arc of Alachua County (support tech/direct care); 11/2007 to 7/2014--DCF--North Florida Evaluation & Treatment Center (Human Services Worker III); 3/2004 to 7/2007--DCF--State of Florida Foster Care (word processor/data management specialist); 4/1998 to 9/2003--American Psychiatric Association (membership coordinator/secretary).

27. In addition to the criminal record submitted, Petitioner also provided the following additional documents that were included in her Exemption Packet: local law background

checks, a volunteer award (Head Start), three letters of reference attesting to Petitioner's character, and an Affidavit of Good Moral Character. The letters were written by persons who have known Petitioner for several years; they described Petitioner as devoted, loyal, honest, kind, and trustworthy. Finally, Petitioner submitted a copy of an exemption letter she received from DCF, dated February 12, 2016.

28. Leslie Richards, regional operations manager for APD's Northeast Region, advised that APD reviewed all documentation provided by Petitioner in her Request for Exemption, the information indicated in Petitioner's Exemption Questionnaire, the various records documenting Petitioner's criminal history, her volunteer award, character letters, and exemption from DCF.

29. Following a review of Petitioner's Exemption Packet, Agency Director Barbara Palmer, advised Petitioner by a letter dated September 26, 2016, that her request for an exemption from her disqualifying offense was denied. The basis for the denial was that Petitioner failed to submit clear and convincing evidence of her rehabilitation.

30. Petitioner sent APD a request for hearing on or around October 11, 2016. APD received this request timely and subsequently forwarded this appeal to DOAH. Along with her request for hearing, Petitioner submitted a personal statement explaining her reasons for disputing the denial and requesting

the hearing, a copy of the denial letter, and a copy of a training certificate summary for APD-approved courses through her former employer, the Arc of Alachua County.

31. At hearing, Ms. Richards explained APD's process of reviewing exemption requests and the consideration of Petitioner's application for such. Per Ms. Richards, APD considers the disqualifying offense, the circumstances surrounding the offense, the nature of the harm caused to the victim, the history of the applicant since the incident, and finally, any other evidence indicating that the applicant will not present a danger if employment is allowed.

32. Additionally, Ms. Richards testified that APD looks for consistency in the applicant's account of events in his or her Exemption Questionnaire, the passage of time since the disqualifying incident, whether the applicant accepts responsibility for his/her actions, and whether the applicant expresses remorse for his or her prior criminal acts. Because an applicant will be occupying a position of special trust if granted an exemption, APD weighs all of these factors in its determination.

33. Ms. Richards testified that all of Petitioner's submissions were reviewed and taken into consideration; she noted that the starting point of APD's review began with the date of the disqualifying offense and any criminal conduct occurring

thereafter. Ms. Richards emphasized that in APD's review, it was noted that Petitioner failed to disclose sufficient details of the account of her disqualifying offense. Specifically, Petitioner provided what appeared to be background information about the time frame surrounding the offense and the person whom she committed the offense with, but indicated in her statement "I have no explanation as to why the both of us committed a crime of theft." Petitioner provided other details about this time in her life, but nothing specific about the crime itself. Ms. Richards stated that it left APD with a concern that Petitioner was not forthright with disclosure of the circumstances involving the crime.

34. Ms. Richards also explained that APD took note that Petitioner failed to disclose any of her non-disqualifying offenses, and that this fact was also of concern. APD obtained records of the non-disqualifying offenses and considered them in its review. Ms. Richards noted that the nature of the offenses, particularly the Worthless Checks and the Violation of the Injunction Domestic Violence/Contempt of Court, were troubling because those offenses involved monetary transactions and interpersonal relations. Ms. Richards observed that the individuals APD serves are highly susceptible to abuse, neglect, and exploitation, and a person who is in a role as a direct

service provider would be assisting those individuals in a social and financial capacity.

35. APD reviewed Petitioner's involvement with three DCF investigations involving allegations of abuse toward a vulnerable adult, Petitioner's spouse. Although there were no findings against Petitioner in these cases, based on the issues presented, DCF did make the recommendation for Petitioner to pursue family counseling. Ms. Richards noted that there is no evidence that Petitioner followed through with DCF's recommendation, and by Petitioner's own admission on the Exemption Questionnaire, has "not received counseling for any reason."

36. In addition to both the criminal offense and DCF-related information, APD noted Petitioner's less than stellar driving record. Ms. Richards advised that a direct service provider will often be in a position to transport clients, and Petitioner's driving record reflects a series of both moving and non-moving violations, which pose a concern. The record reflects a total of five driving-related violations: driving while license suspended/revoked (previously mentioned); tag not assigned (criminal traffic); red light camera citation; unlawful speeding; and a second red light camera citation.

37. Ms. Richards testified regarding APD's consideration of Petitioner's prior employment history with DCF, and the subsequent exemption for employment granted to Petitioner by DCF.

At hearing, APD presented employment evaluations and records of written disciplinary action taken against Petitioner by DCF while in its employ. Ms. Richards specifically noted that some of the disciplinary issues for which Petitioner was cited included: sleeping on the job while employed at a forensic facility; not securing the front door of a building at a forensic facility; tardiness; inappropriately streaming media on a state-owned computer; insubordination (refusal to work a shift); failure to report to work; and poor performance/negligence (failure to answer phones/answer front door of facility).

38. Petitioner ultimately was dismissed from DCF due to her inability to perform her job functions because of an injury. Ms. Richards explained that these disciplinary issues gave APD great pause in considering granting Petitioner an exemption, as they were indicators for potential behaviors that could pose a great risk to individuals served by APD, many of whom are unable to communicate their wants and needs. The setting in which Petitioner committed these workplace violations mirrors those in which clients of APD are served.

39. Ms. Richards did state that APD considered the exemption granted by DCF to Petitioner, however, the weight of the prior disciplinary issues outweighed that decision when compared to the possible jeopardy in which APD clients could be placed. Should Petitioner obtain future successful employment

with DCF, APD would consider that in a subsequent exemption application review.

40. Petitioner testified on her own behalf at the hearing. She spoke about the circumstances surrounding the disqualifying offense, reiterating her statement from the addendum to the Exemption Questionnaire. She provided no new information or surrounding details about the crime. Again, she stated that she has not had any legal issues since 1982. Regarding her non-disqualifying offenses, Petitioner remarked that she "didn't consider those bad checks as crimes," and though she denied being convicted of such, she admitted having overdrafted checks.

41. Petitioner also stated that regarding the DCF investigations and the Injunction Violation/Contempt of Court charge, "that's not why we are here today, so I am not going to talk about that." Petitioner did admit to the driving infractions on her record, but stated that two of them, running red lights, were due to the fault of her daughter, as she was the driver at the time, rather than Petitioner.

42. Petitioner stated that she is older and wiser and has changed. She enjoyed working at the adult day care program with the Arc of Alachua County. She indicated that any bad checks she has written, she "took care of." Petitioner offered explanations for the disciplinary situations involving her prior employment with DCF, attempting to minimize her role. She explained that

she and her husband, who Petitioner described as a vulnerable, disabled adult, no longer have domestic issues; however, they are currently homeless. Petitioner stated that APD's denial is keeping her in an adverse financial situation, stating "I cannot find a job right now because of this denial." When cross-examined by counsel regarding her ability to obtain gainful employment with DCF and its covered providers, Petitioner admitted that she can seek a job under DCF's purview.

43. Petitioner presented the testimony of two witnesses. Her sister, Sherry McCrae, a retired police officer, stated that she lived with her sister the entire time she was in college; Petitioner provided a source of support to her during this period. Ms. McCrae stated that her sister has been working all the years since the disqualifying incident. She affirmed that their maiden name is Williams, Petitioner's last name at the time of the disqualifying incident.

44. Petitioner's second witness, Faye Williams, testified that after Petitioner's disqualifying incident, she got a job and was active in the community. Petitioner has a desire "to be a part of something." She loves people, especially children.

45. Petitioner asserted that she enjoys working with individuals with disabilities; at her last place of employment, she believed she found her "purpose and mission." She loves helping people. She admits she made some mistakes, but that was

long ago. Petitioner argued that she “really only committed one crime”; she has rehabilitated herself and that should be enough for APD. She believes APD abused its discretion in denying her request for exemption.

46. The individuals APD serves are vulnerable and highly susceptible to abuse, neglect, and exploitation, due to their developmental disabilities. APD’s representative observed that APD’s clients must be assigned to direct care providers without fear of their endangerment. This necessarily requires reliance on a caregiver’s good character and trustworthiness.

Individuals who provide direct care are frequently responsible for assisting individuals in making decisions of a financial, medical, and social nature. APD must weigh the benefit against the risk when considering granting an exemption.

47. Ms. Richards cautioned that Petitioner’s criminal history reflects a pattern of poor judgment. Petitioner’s failure to disclose certain details in her account regarding her disqualifying offense calls into question her trustworthiness. Additionally, failure to disclose her non-disqualifying offenses, along with a failure to recognize that those offenses are truly crimes, is not only troubling, but calls into question Petitioner’s trustworthiness. It also demonstrates a complete lack of remorse and acceptance of responsibility for her actions.

48. Petitioner did not admit to any of the harm she caused to her victims. Petitioner's minimization of the discipline she received while employed by DCF also gives great pause, as the individuals she was charged with caring for were clients in a forensic setting, a clear parallel to the clients she would serve should an exemption be granted by APD.

49. Petitioner's multiple driving citations are concerning as well, and demonstrate a pattern of questionable decision-making, especially when considering her for a position where she could potentially transport clients. All of the aforementioned factors, along with proximity in time of her application to her last arrest (2012), caused APD to question Petitioner's fitness for providing services to the vulnerable individuals for which it is responsible, the most vulnerable population in the state.

50. Petitioner failed to meet her burden of proving clear and convincing evidence of rehabilitation, and therefore, the denial of the exemption was proper.

CONCLUSIONS OF LAW

51. Pursuant to sections 120.569, 120.57(1), and 435.07, Florida Statutes, DOAH has jurisdiction over the subject matter and parties of this appeal.

52. Section 393.0655(5), Florida Statutes, provides in pertinent part:

The background screening conducted under this section must ensure that, in addition to the disqualifying offenses listed in s. 435.04, no person subject to the provisions of this section has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

53. Section 435.04 provides in pertinent part:

(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 persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under

any of the following provisions of state law or similar law of another jurisdiction:

* * *

(cc) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

54. Section 393.0655(2) states in relevant part:

EXEMPTIONS FROM DISQUALIFICATION--The agency may grant exemptions from disqualification from working with children or adults with developmental disabilities only as provided in s. 435.07.

55. Petitioner is disqualified from employment based on her 1982 Larceny/Grand Theft offense pursuant to sections 393.0655(5) and 435.04(1)(a) and (2)(cc). She now seeks exemption from this disqualification pursuant to sections 393.0655(2) and 435.07.

56. Section 393.0655 requires APD to follow the requirements set forth in section 435.07 when reviewing a request for an exemption from employment disqualification.

57. Section 435.07(3)(a) provides in pertinent part:

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.

58. Pursuant to section 435.07(3)(b), APD may also consider an exemption applicant's convictions and/or arrests for non-disqualifying offenses that occurred subsequent to a disqualifying offense. As a result, APD's review and consideration of Petitioner's subsequent non-disqualifying offenses and/or arrests were proper.

59. Pursuant to section 435.07(5), APD must consider Petitioner's prior exemption granted by DCF in its determination for exemption; however, DCF's decision is not binding upon APD. The evidence established that APD gave due consideration to DCF's exemption in its determination.

60. An applicant must provide clear and convincing evidence of his or her "rehabilitation," pursuant to section 435.07(3), as that term is defined by the statute.

61. The evidentiary standard of clear and convincing is that of an "intermediate standard," "requir[ing] more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997). The Florida Supreme Court has defined this standard as such:

[C]lear and convincing evidence requires that the 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: Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995) ("The evidence [in order to be clear and convincing] must be sufficient to convince the trier of fact without hesitancy."). See also Westinghouse Electric Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991) ("Although this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous.").

62. Section 435.07(3)(c) establishes that if the agency head decides that an otherwise eligible applicant has not provided clear and convincing evidence of rehabilitation, the agency head's decision may be contested through the hearing procedures set forth in chapter 120.

63. In considering Respondent's action of denying Petitioner's request for exemption from employment disqualification, the standard of review is whether the agency head abused his or her discretion when issuing such denial. Id.

The "'abuse of discretion' standard is highly deferential." E.R. Squibb & Sons v. Farnes, 697 So. 2d 825, 826 (Fla. 1997). Abuse of discretion within the meaning of section 435.07 is found when an intended action under review "is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the [agency head]. If reasonable [persons] could differ as to the propriety of the [intended] action . . . , then it cannot be said that the [agency head] abused [his or her] discretion." Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); Kareff v. Kareff, 943 So. 2d 890, 893 (Fla. 4th DCA 2006), citing Vandergriff v. Vandergriff, 456 So. 2d 424, 466 (Fla. 1984) (holding that pursuant to the abuse of discretion standard the test is "whether any reasonable person" could take the position under review).

64. Petitioner is to be commended for her educational and training achievements and the desire to serve others; additionally, it is notable that she is actively involved in volunteering with the schools and at her church. It is understandable that Petitioner, based on her passion to help others, would want to serve as a direct service provider under the APD's purview. Petitioner's previous work history and training indicate that she is employable; additionally, Petitioner produced evidence of an exemption granted by DCF

whereby she possesses the means to secure gainful employment in the human services field. This avenue provides Petitioner a means to meet her career and financial goals and needs.

65. With that said, Petitioner's failure to disclose her non-disqualifying offenses and acknowledge those crimes, and her lack of remorse and acceptance of responsibility for her actions and harm caused to others, gives great pause in consideration of granting an exemption. This, along with the proximity in time to the application from the most recent offense, is cause for concern. Additionally, those factors pose an undue risk to those vulnerable individuals APD serves should the exemption be granted.

66. Moreover, Petitioner admitted that she has not sought employment with DCF (by whom she has been granted an exemption) or any of its covered entities, since receiving notice of APD's denial of her exemption request. Consequently, it appears that Petitioner's failure to do so is a barrier to her own financial well-being and success; Petitioner instead points to APD's denial for her current state of affairs. Finally, Petitioner failed to provide substantive details regarding the disqualifying offense itself. Without a complete and clear account of the circumstances surrounding the offense, it is not unreasonable that APD's Director determined not to grant an exemption to Petitioner.

67. Public policy concerns dictate that the individuals APD serves receive the strongest of protections. As a result, the caregivers employed within APD's regulatory authority occupy positions of special trust and must meet stringent requirements pursuant to section 435. The expectation for individuals in these positions is that persons with developmental disabilities can be entrusted to their care without fear of endangerment; APD's reliance on this trust assumes a caregiver's fitness of character and honesty. Based on the evidence presented, Petitioner's ability to meet those expectations is not clear and convincing.

68. Petitioner has not met her burden of proving by clear and convincing evidence that she has shown rehabilitation. Given the circumstances as presented, and a review of section 435.07(3)(a), the APD Director's denial of Petitioner's request for an employment exemption was not unreasonable. Because of Petitioner's failure to meet her burden, APD's decision to deny her exemption request was not an abuse of discretion.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Director of the Agency for Persons with Disabilities issue a final order upholding the denial of Petitioner's exemption request.

DONE AND ENTERED this 22nd day of February, 2017, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of February, 2017.

ENDNOTE

^{1/} Unless otherwise indicated, all statutory references are to
the 2016 version of the Florida Statutes.

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.