

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SONYA NICOLE SAMUELS,

Petitioner,

vs.

Case No. 16-6424EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

On December 20, 2016, an administrative hearing in this case was held in Leesburg, Florida, before Lawrence P. Stevenson, a duly-appointed Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sonya Nicole Samuels, pro se
496 Goss Avenue
Leesburg, Florida 34748

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

STATEMENT OF THE ISSUE

The issue in this case is whether it would be an abuse of discretion to deny Petitioner's request for exemption from employment disqualification.

PRELIMINARY STATEMENT

By letter dated September 26, 2016, Barbara Palmer, the Director of the Agency for Persons with Disabilities (the "Agency"), denied the request of Petitioner for exemption from employment disqualification. Petitioner timely filed a Request for Administrative Hearing in which she disputed the facts on which the Agency relied in making its decision to deny the exemption and requested a formal administrative hearing. The Agency forwarded the Request for Administrative Hearing to the Division of Administrative Hearings ("DOAH") on November 2, 2016.

The hearing was scheduled for December 20, 2016, on which date it was convened and completed.

At the hearing, Petitioner testified on her own behalf and presented the testimony of her daughter, Candace Chatman. Petitioner offered no exhibits. The Agency presented the testimony of its Deputy Regional Operations Manager for the Central Region, Michael Sauvé. The Agency's Exhibits A through D were admitted into evidence.

No Transcript was ordered. The Agency timely filed its Proposed Recommended Order on December 30, 2016. Petitioner made no post-hearing filing of any kind.

Unless otherwise noted, all references to the Florida Statutes are to the 2016 edition.

FINDINGS OF FACT

1. Petitioner is seeking employment with the Lake County Board of County Commissioners, in a service provider function that is regulated by the Agency. As a prospective direct service provider, Petitioner was required to comply with background screening requirements.

2. The Agency's clients are a vulnerable population, consisting of persons with the following statutorily defined developmental disabilities: intellectual disability, autism, spina bifida, Prader-Willi syndrome, cerebral palsy, Down syndrome, and/or Phelan-McDermid Syndrome. § 393.063(12), Fla. Stat. Without the Agency's services, these clients would otherwise require institutionalization.

3. The Agency's clients often have severe deficits in their abilities to complete self-care tasks and communicate their wants and needs. Such 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 the Agency's clients is considered a position of special trust.

4. The Agency is responsible for regulating the employment of direct service providers in positions of special trust such as that sought by Petitioner. See §§ 110.1127(2)(c)1. and 393.0655, Fla. Stat. Many of the tasks undertaken by direct

service providers for individuals with disabilities are of a social, personal needs, and/or financial nature.

5. The background screening unit of the Department of Children and Families ("DCF") performs background screenings for the Agency. Petitioner received notification from DCF, via letter dated January 8, 2016, of her disqualification from employment due to her criminal history. The specific disqualifying offense listed in the letter was aggravated battery with a weapon, in violation of section 784.045, Florida Statutes, a second degree felony.

6. Because Petitioner's screening indicated a disqualifying offense, Petitioner was required to seek an exemption from disqualification in order to proceed with her application to work as a direct service provider.

7. On or about February 26, 2016, Petitioner submitted to DCF a Request for Exemption form, a completed Exemption Questionnaire form, various criminal records, character references, and other documents in support of granting of exemption from employment disqualification. DCF subsequently forwarded these materials to the Agency for review.

8. The Agency began its exemption review by considering Petitioner's disqualifying offense. In June 1988, Petitioner committed the disqualifying offense of aggravated battery with a weapon. The police report of the incident stated that

Petitioner stabbed her husband in the shoulder with a knife during an argument. The stab wound was serious enough to require treatment at the hospital and a subsequent visit to a specialist. On her Exemption Questionnaire form, Petitioner indicated that her husband suffered permanent scarring from the wound.

9. An arrest affidavit for probable cause was issued by the Leesburg Police Department. Petitioner later pled nolo contendere to the disqualifying offense and adjudication was withheld. She was sentenced to thirty-six (36) months of probation, payment of fines, court costs, mental health counseling, and a drug and alcohol program. Petitioner successfully completed her probation on August 29, 1991.

10. In the Exemption Questionnaire form, Petitioner set forth her version of the circumstances involved in the disqualifying offense:

At 21 years of age, I was dealing with regular occurrences of mental distress within the home, such as emotional, mental, verbal and physical abuse by my ex-husband. On the day of this offense, my ex-husband entered our home in a rageful [sic] manner. Fear gripped me. He began to argue. He also went into the closet, pulling out a motorcycle chain. He began to strike me with it. After running outside, my ex-husband chased me with his belt off, hitting me with the belt buckle. A girl scout's knife was already in my hand. He continued to hit me with the belt buckle, swinging his arm. As I turned around in self-defense, my

ex-husband was struck with the girl scout's knife. Realizing what happened, I began to cry frantically, (my concern was to get medical attention for him), apologizing and begging for forgiveness.

11. Petitioner's record indicates no other criminal offenses of any kind, whether disqualifying or non-disqualifying.

12. The Exemption Questionnaire form requires applicants to describe the degree of harm to any victim of their disqualifying offenses. Petitioner wrote, "Thanks be unto God, my ex-husband sustained non-life threatening injuries with permanent scarring."

13. The Exemption Questionnaire form requires applicants to describe any stressors in their lives at the time of the disqualifying incident and at present. Petitioner wrote that there were stressors in her life at the time of the disqualifying incident. She did not elaborate, but in answer to another question she wrote that at age 21 she "had begun to abuse chemical substances." She stated that her drug use was short-lived and that she ceased it permanently after the stabbing incident.

14. Regarding whether there are any current stressors in her life, Petitioner wrote that she is "practising [sic] unhealthy habits." Again, Petitioner did not elaborate as to the nature of these unhealthy habits, but at the hearing she

explained that she was referencing overeating and not exercising.

15. Petitioner wrote that she is single and lives with her mother, and that her community activities include her family, women's group, church, art workshops, poetry and prose writing, and volunteering for the community development center when needed.

16. The Exemption Questionnaire form asks for an applicant's prior three years' work history and an explanation of any job changes. Petitioner's employment record indicated she had driven a school bus for several years. Petitioner provided the following explanation for changing jobs: "changed careers from transportation to medical industry to procure an immense financial gain. Have also decided to strive above and beyond my comfort zones to secure a position of my dreams."

17. The Exemption Questionnaire form requires the applicant to list his or her educational history and any specialized training. Petitioner listed the following:

Office Support Technology, specializing in Professional Leadership Development; Master Security Officer, specializing in Basic Supervisor, Leadership, & Advanced Manager; Patient Care Technician, specializing in Pharmacy Aide, EKG Aide and Unit Secretary/Coordinator; and Private Investigation, specializing in Legal Assistant & Fraud Insurance.

18. Petitioner listed no specific institution for these certifications or specializations, but other documents submitted by Petitioner indicate that the Office Support Technology and Patient Care Technician courses were provided by Lake Technical College in 1996-97 and 1999, respectively; the Master Security Officer certification was provided by Barton MSO in 2003; and the Private Investigator diploma was received from City College in 2011.

19. In response to the Exemption Questionnaire form's requirement that the applicant document any history of counseling, Petitioner wrote that she received mental health counseling in 1988 and anger management counseling in 2007.

20. Finally, under the heading "Remorse/accept responsibility," the Exemption Questionnaire form requires the applicant to document any relevant information related to the acceptance of responsibility for his or her offenses. Petitioner wrote as follows:

The harm done to my ex-husband caused me to feel very awful. Because of the forgiveness from my trespasses, the acceptance of the offense towards my ex-husband subsided day by day. Taking responsibility for my actions made me realize that I must become a better person and live a better life by improving myself so that I would someday become a productive citizen and asset to society and my family.

21. Petitioner listed the following specific employment record: CareMinders Home Care, February 2015 to August 2015 (certified nurse assistant); Interim Healthcare, December 2014 to June 2015 (certified nurse assistant); Lake County School Board, October 2005 to August 2013 (school bus driver).

22. In support of her exemption request, Petitioner also submitted a copy of a "Lake County Head Start Parent of the Year" award she received in 1999, a copy of an "International Poet of Merit" award she received in 2000, and reference letters from previous employers and longtime friends. Petitioner's friends described her as hard-working, compassionate, respectful, and considerate.

23. By letter dated September 26, 2016, the Director of the Agency informed Petitioner that her request for an exemption from disqualification had been denied "based on a Background Screening that was performed on 1/07/2016 The Agency considered all available information that led to your disqualification, as well as all information provided by you regarding your disqualification. The Agency has denied your request for an exemption because you have not submitted clear and convincing evidence of your rehabilitation."

24. The Director's letter informed Petitioner of her right to request an administrative hearing to dispute the Agency's

proposed action. Petitioner timely filed a Request for Administrative Hearing.

25. At the hearing, the Agency presented the testimony of Michael Sauvé, the Agency's Deputy Regional Operations Manager for the Central Region. Mr. Sauvé testified that the Agency had reviewed all of the documentation submitted by Petitioner in response to the Exemption Questionnaire, as well as additional documents she submitted with her Request for Administrative Hearing. These additional documents included an exemption from disqualification, dated March 26, 2013, granted by the Department of Health, Board of Nursing; and a letter of disqualification from employment from the Agency for Health Care Administration, dated December 30, 2015.

26. Mr. Sauvé testified that in reviewing exemption requests, the Agency 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 any other evidence indicating that the applicant will not present a danger to a vulnerable population if the exemption is granted. Mr. Sauvé also stated that the Agency seeks consistency in the applicant's account of events in his or her Exemption Questionnaire, and considers the passage of time since the disqualifying incident, whether or not the applicant

accepts responsibility for his or her actions, and whether the applicant expresses remorse for his or her prior criminal acts.

27. Mr. Sauvé testified that the Agency noted marked inconsistencies between Petitioner's account of her disqualifying offense and the statements found in the police report. However, the police report of the incident consists of hearsay within hearsay, i.e., the responding officer's narrative of events as told to him by the involved parties. The police report may not be relied upon in this tribunal for the truth of the matters asserted therein. It is of no use in establishing that Petitioner's version of events is untruthful or minimizes the seriousness of the incident.

28. In any event, the inconsistencies noted by the Agency were relatively minor critiques of Petitioner's written narrative. For example, Petitioner stated in her Exemption Questionnaire that she ran outside as her husband chased her and hit her with his belt buckle and that she already had a Girl Scout knife in her hand. She offered no explanation as to how or why the knife came to be in her hand. Given that she freely admitted to stabbing her husband, Petitioner's failure to detail exactly when she picked up the knife, as he hit her with a motorcycle chain and a belt buckle, seems of little importance.

29. Mr. Sauvé testified that the Agency was also concerned that Petitioner appeared to minimize the seriousness of the

incident when she wrote that her husband suffered "non-life threatening injuries with permanent scarring." Mr. Sauvé contrasted Petitioner's statement with the police report stating that the victim was "stabbed deep enough that he had to go to [the hospital] for treatment and then to have a specialist work on him due to the seriousness of the cut." The cut was on the back of the victim's shoulder and in no account was the incident described as "life threatening." Petitioner's description may have lacked detail but was more or less consistent with the police report.

30. Mr. Sauvé testified that the Agency examined Petitioner's driving record and found three speeding tickets. Such violations are a concern to the Agency because individuals who are granted exemptions could be called upon to transport clients. The Agency must be confident that these clients will be transported safely.

31. More than her written statements, Petitioner's testimony caused the undersigned to share the Agency's concern about Petitioner minimizing her disqualifying offense. She seemed much more concerned with explaining the speeding tickets than in expanding upon her brief written statement regarding aggravated battery with a weapon. Petitioner simply read aloud her written statement about stabbing her husband, then launched into a detailed discussion of her speeding tickets. Also,

Petitioner could not recall whether her driver's license had ever been suspended. When confronted with documentation that it had, Petitioner stated that her license had never been suspended "for cause." None of this testimony was helpful in establishing Petitioner's unvarnished veracity or her appreciation of the seriousness of her disqualifying offense.

32. Mr. Sauv  testified that the Agency had a concern with Petitioner's statement that she had changed careers to the medical field to "procure an immense financial gain." Mr. Sauv  noted that it is not unreasonable for a person to seek a decent income, but that it is highly unusual and somewhat disconcerting for a person to enter the field of serving persons with disabilities with the idea of "immense financial gain."

33. Mr. Sauv 's concern on this point was well taken. In another case, the undersigned might be inclined to find that the applicant had merely chosen an unartful way to express her hope of bettering her station in life, but Petitioner presents herself as the professional author of two books. She may be presumed to understand the form of the thoughts she puts to paper. Petitioner said nothing at the final hearing to allay the concern Mr. Suave expressed about her stated motivation for entering the field.

34. Mr. Sauv  also discussed three DCF reports involving Petitioner in allegations of abuse. The first report, dated

1989, involved a verified finding of sexual battery against Petitioner's then-husband. According to the report, a relative told the investigator that the husband had a history as a sexual perpetrator. The report stated that Petitioner allowed access to her daughter and that the husband had fondled the child. The report stated that Petitioner had been made aware of what happened but chose to forgive the husband. She remained in the home with him, allowing continued access to the child. DCF cited Petitioner for failure to protect her child. The husband was subsequently arrested and charged with sexual battery.

35. Petitioner testified that her actions should be viewed in light of the fact that she herself was an abuse victim. She stated that she took steps to protect her children as soon as she learned her husband was abusing them.

36. Petitioner presented the testimony of her daughter, Candace Chatman, who stated that she was the child victim identified in the 1989 DCF report. Ms. Chatman testified that, contrary to the report, her mother did not know about the abuse when it was occurring. She stated that she was eight years old and was living with her grandmother at the time of the abuse, which she recalled occurring only once. Ms. Chatman stated that she did not tell her mother about the abuse; rather, she told another child at school about it. Ms. Chatman's testimony was credible.

37. The second DCF report, dated 1996, involved allegations that Petitioner hit her daughter in the head, resulting in migraine headaches. According to the report, the daughter stated that Petitioner "does hit her in the head" and once threw a bowl at her, hitting her in the face. DCF rendered findings of "some indicators" for the maltreatments of beatings, physical injury, and family violence that threatens a child, though the report assessed the risk as "low" because of the presence of family members to monitor the situation.

38. Neither Petitioner nor Ms. Chatman directly addressed the 1996 report in their testimony. The hearsay report may not be relied upon for the truth of the matters asserted therein, but the undersigned is entitled to take notice of Petitioner's silence as to the very serious allegation made in the report.

39. Mr. Sauv  discussed the final DCF report, dated 2002. This incident pertained to an allegation involving Petitioner's sons, who were then aged 13 and 8. The older boy had been sexually abused by Petitioner's spouse, and was now believed to be sexually "acting out" with his younger brother. The DCF report states that Petitioner denied any knowledge of an incident between the boys, and that Petitioner alternatively admitted and then denied having knowledge of the older boy's prior molestation. Child services authorities advised Petitioner to separate the boys at any time they might be

unsupervised. The younger child started going to his grandmother's house after school, where he stayed until Petitioner picked him up on her way home from work.

40. At the hearing, Petitioner testified that she had never seen the 2002 DCF report. She first denied that any abuse was occurring in her home in 2002, then stated that she had not been aware of anything untoward. Petitioner denied any knowledge that her older son had been molested by her husband. She testified that her admission to the authorities that molestation had occurred "was a way to get him counseling" because of the way he had been acting out in school.

41. During cross-examination, Petitioner denied knowing why child services advised her to separate the boys. She stated that she did not ask why. The authorities simply told her that everything would be all right if she separated them and so she complied.

42. Petitioner's testimony as to the 2002 DCF report cannot be credited. This finding is not based on any contradiction between Petitioner's testimony and the facts as stated in the hearsay DCF report; rather, it is based on the inherent lack of credibility in Petitioner's statements. Especially problematic is her claim that she did not even ask the authorities why her sons should be kept apart. Petitioner's unwillingness to admit any knowledge of, or even curiosity as to

what the authorities alleged was happening in her home, raises serious concerns as to her character and judgment.

43. Petitioner's overall presentation tended to undermine her case. As noted above, she seemed unduly preoccupied with traffic tickets as opposed to the far more serious matters that concerned the Agency. Her testimony was rambling, discursive, and argumentative. The undersigned could not help but note that Ms. Chatman often interjected comments, sotto voce, in an effort to keep her mother on point during her testimony. As the hearing progressed, Petitioner became increasingly angry at the Agency for failing to recognize her "compassion."

44. Petitioner's initial burden is to demonstrate, by clear and convincing evidence, that she is entitled to an exemption. The "clear and convincing" standard requires evidence sufficient "to convince the trier of fact without any hesitancy." In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), cert. denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L. Ed. 2d 672 (1996). Petitioner's presentation clearly failed to rise to this standard. Petitioner appears to have turned her life around somewhat after a history of abuse, but she failed to convince either the Agency or the undersigned that she is sufficiently rehabilitated to be trusted to work with persons who are vulnerable and highly susceptible to abuse, neglect, and exploitation due to their developmental disabilities.

45. In light of all the evidence presented at the hearing, it cannot be found that the Agency abused its discretion in denying Petitioner's request for an exemption. Taken in its entirety, the evidence supports the Agency's determination that the evidence of Petitioner's rehabilitation was insufficient.

CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569, 120.57(1), and 435.07, Fla. Stat.

47. Section 435.04, Florida Statutes, provides in relevant part as follows:

(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:

* * *

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

48. In this case, Petitioner's disqualifying offense was aggravated battery with a weapon, in violation of section 784.045, Florida Statutes, a second degree felony.

49. Section 393.0655(1), Florida Statutes, requires the Agency to conduct Level 2 employment screening under chapter 435 for direct service providers who are unrelated to their clients. Section 393.0655(5) provides a list of disqualifying offenses for purposes of the Agency's screening:

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:

* * *

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

50. Under appropriate circumstances, an exemption from disqualification may be available. Section 435.07(1) provides, in relevant 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.

51. Section 393.0655(2) provides: "The agency may grant exemptions from disqualification from working with children or adults with developmental disabilities only as provided in s. 435.07."

52. Section 435.07(3) sets forth the standards to be applied by an agency head in considering a request for exemption, and the standard of review to be applied in a DOAH proceeding reviewing the agency head's preliminary decision:

(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.

53. In this case, the agency head determined that Petitioner did not clearly and convincingly establish that she is sufficiently rehabilitated to warrant an exemption from disqualification from employment in a position of special trust at this time.

54. The "abuse of discretion" standard of review has been cogently described as follows, in the context of appellate review of a trial judge's discretionary rulings:

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 trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result.

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

55. The undersigned concludes that the agency head's determination that Petitioner failed to clearly and convincingly establish her entitlement to an exemption from disqualification was not an abuse of discretion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Agency for Persons with Disabilities enter a final order denying the request of Petitioner for exemption from employment disqualification.

DONE AND ENTERED this 27th day of February, 2017, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of February, 2017.

COPIES FURNISHED:

Jeannette L. Estes, Esquire
Agency for Persons with Disabilities
Suite 422
200 North Kentucky Avenue
Lakeland, Florida 33801
(eServed)

Sonya Nicole Samuels
496 Goss Avenue
Leesburg, Florida 34748
(eServed)

Michele Lucas, Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Barbara Palmer, Director
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Richard D. Tritschler, General Counsel
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

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.