

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CLARISSA AILES,

Petitioner,

vs.

Case No. 17-0940EXE

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 18, 2017, via video teleconference at sites in Jacksonville and Tallahassee, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Clarissa Ailes, pro se  
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For Respondent: Kurt Eric Ahrendt, Esquire  
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STATEMENT OF THE ISSUES

Whether Petitioner demonstrated, by clear and convincing evidence, that she is rehabilitated from her disqualifying offense; and, if so, whether Respondent would abuse its

discretion if it denied Petitioner's request for an exemption from disqualification from employment, pursuant to chapter 435, Florida Statutes (2016).<sup>1/</sup>

PRELIMINARY STATEMENT

Via a letter dated August 23, 2016, the Agency for Persons with Disabilities ("APD") notified Clarissa D. Ailes that her request for an exemption from disqualification had been denied. As stated in the letter, APD's decision meant that Ms. Ailes was "not eligible to be employed, licensed or registered in positions having direct contact with children or developmentally disabled people served in programs regulated by [APD]." Ms. Ailes requested an administrative hearing to challenge APD's proposed action, and the matter was referred to DOAH to conduct a formal administrative hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes.

The undersigned scheduled the final hearing to occur on April 19, 2017. However, during a telephonic pre-hearing conference convened on April 11, 2017, it became apparent that Ms. Ailes had not been adequately apprised of exactly why APD had denied her request for an exemption from disqualification. While APD specified during the phone conference the exact basis for the denial, the undersigned sua sponte cancelled the final hearing in order to ensure that Ms. Ailes would have an opportunity to prepare her case.

After receiving mutual dates of availability from the parties, the undersigned rescheduled the final hearing to occur on June 13, 2017.

The undersigned convened the final hearing on June 13, 2017, at the scheduled time. However, Ms. Ailes never appeared, and the undersigned asked his assistant to contact Ms. Ailes and schedule a phone conference.

During the June 15, 2017, telephonic conference, Ms. Ailes explained that she did not attend the June 13, 2017, final hearing because she did not receive the notice of hearing in the mail. After verifying that all parties were available for a final hearing on July 18, 2017, the undersigned issued an Order on June 16, 2017, rescheduling the final hearing for July 18, 2017.

The final hearing was convened as scheduled. Ms. Ailes testified on her own behalf, and APD presented the testimony of Leslie Richards. In addition, APD called Ms. Ailes as a witness. APD's Exhibits 1 through 5 were accepted into evidence. APD's Exhibits 6 and 7 were officially recognized.

The parties did not order a transcript. Therefore, they had until July 28, 2017, to file proposed recommended orders. APD filed a timely Proposed Recommended Order on July 25, 2017, but Ms. Ailes did not file anything prior to the deadline, nor

has she since. APD's Proposed Recommended Order was considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. APD serves clients with autism, intellectual disabilities, Downs Syndrome, and Prader-Willi Syndrome. ADP's clients range from those needing total care to those who can live on their own with minimal assistance.

2. The services APD provides to its clients include personal care, respite care, adult day training, supported living, and a wide variety of other services.

3. The aforementioned services are provided by APD's vendors in individual homes, group homes, and supported living arrangements.

4. Section 435.06(2) mandates that an employer may not hire someone for a position requiring contact with any "vulnerable person" until a completed background screening "demonstrates the absence of any grounds for the denial or termination of employment." See § 435.02(6), Fla. Stat. (providing that a "vulnerable person" means "a minor as defined in s. 1.01 or a vulnerable adult as defined in s. 415.102.").

5. If the position in question requires "Level 2" screening, then an applicant cannot be hired if he or she has committed one or more of the disqualifying offenses enumerated under section 435.04(2).

6. However, an applicant with one or more disqualifying offenses can still be hired if he or she is granted an exemption by the pertinent agency. § 435.06(2)(a), Fla. Stat.

7. When APD considers whether to grant an exemption from a disqualifying offense, it considers the following factors:

(a) the nature of any harm that resulted from the disqualifying offense; (b) any events occurring since the disqualifying offense; (c) any training or counseling received by the applicant since the disqualifying offense; and (d) has the applicant presented clear and convincing evidence of rehabilitation.

8. Ms. Ailes applied for a position as an "adult day counselor and companion" with the YMCA.

9. An adult day counselor works in a facility where clients learn job skills and participate in activities that facilitate independence. A companion assists a client with connecting to resources in the local community and assists with transporting the client to those resources.

10. On March 7, 2016, and in conjunction with her application for a position with the YMCA, Ms. Ailes filled out an APD standardized form entitled "Affidavit of Good Moral Character." She signed the form and thus verified that she had not been found guilty of or entered a plea of guilty or nolo

contendere to a long list of enumerated offenses, including forgery and uttering forged instruments.

11. The Department of Children and Families ("the Department") reviewed Ms. Ailes' application and determined whether the information therein was correct and current.

12. On March 11, 2016, the Department issued a letter notifying Ms. Ailes that the Department had reviewed her criminal history in the course of conducting a background check and discovered that she had three offenses involving forgery and passing a forged check.

13. The aforementioned offenses occurred on October 12, 2010. After Ms. Ailes entered a guilty plea, the Duval County Circuit Court withheld adjudication and imposed 12 months of probation. Ms. Ailes was also required to pay \$788.54 in restitution.

14. Because of the aforementioned offenses, the Department's letter stated that section 435.04 prohibited Ms. Ailes from having the position for which she had applied.

15. The Department's letter closed by notifying Ms. Ailes that she may be eligible to apply for an exemption from disqualification. In addition, the letter directed her to a website having the eligibility requirements and an application for exemption from disqualification.

16. On May 3, 2016, Ms. Ailes completed a "Request for Exemption" application.

17. A questionnaire accompanied the application and asked Ms. Ailes to describe her disqualifying offense.

18. Ms. Ailes responded to that question by writing "Uttering Forged Bill - 2010." She also wrote that, "When this incident took place in my life, I was not in a good place. I had no support system and was raising a child on my own. Some serious health issues were placed upon me and I did not know what to do."

19. In response to a question regarding her "current status with the court system," Ms. Ailes stated that, "My current status is adjudication withheld and in compliance [with all that] was required of me."

20. Another question inquired about the "degree of harm to the victim," and Ms. Ailes stated that "[r]estitution was paid back to the victim by myself and an apology was written."

21. With regard to the stressors in her life when she committed the disqualifying offense, Ms. Ailes stated that she "suffered from lack of support from family, financial issues, single parent, and health issues. This is now 6 years later and I am in a better place with a clear mind."

22. As for her current stressors, Ms. Ailes stated that:

My current stressor right now is trying to find adequate employment so I can provide a better life for my daughter and [me]. I do not just want any job. I would love to get back to my passion of helping others in need. Before this incident took place I was 10 years strong in the nursing field and continuing my nursing career. My current support system would be my daughter, mother, church family, counselors and friends. I am still a single mother raising my 9 year old daughter who is ADHD, with some learning disabilities and we live in a 2 bedroom apartment. We are barely making it off of my Social Security Benefits. I volunteer at my daughter's school a couple of days a week and I am involved in 2 ministries at my church.

23. With regard to whether she has accepted responsibility for the disqualifying offense, Ms. Ailes stated that:

I have accepted responsibility for my actions 6 years ago. [I] wrote an apology letter to the victim and apologized face to face in court. I also paid restitution back to the victim and the documents are attached from the Clerk of Courts. I have asked God for forgiveness and to open the heart of the victim to forgive me. Everything that I have been through has been a real eye opener and has brought me closer to God. I now know my purpose here on earth and I just want to be remembered for making a difference in people's lives and not destroying them. God has given me another chance to make things right in my life and that is all I am trying to do. I find myself [often] ministering to young adults on staying out of trouble, telling my story and teaching them about God.



24. In response to a question asking her to provide her employment history over the last three years, Ms. Ailes stated that she had "no employment history for the past 5 years due to disability."

25. Ms. Ailes attached a statement to the questionnaire describing her life since she committed the disqualifying offenses in 2010:

Looking back on 2010, I had goals and dreams since the age of 16. Those goals are still obtainable and I will continue to strive for success. Somewhere I lost my way and everything that I had worked so hard for went down the drain by my actions. I've had two near death experiences and God kept me through it all. I have a passion and a purpose which is very clear. He wants me to continue to do His work and along the way share my story with others. My life is so much better now since 2010. I had some deep rooted issues that all came to pass. I had to go through some extensive healing and therapy. Today I am a woman of God first, a great mother, full of life, filled with love, full of wisdom, determination and very passionate. Every chance I get now I find myself ministering to others and just letting them know that God loves them and to never give up. I've experienced His work and I am a living testimony on how good He is. I thank God each and every day for restoring me and making me like new so I can continue to bless others. My daughter, who is my world, has suffered a great deal through it all and that is why I am still fighting for a better life for us. She is depending on me and watching everything I do. I just want to be a positive role model in her life and when I leave this earth, I want her to be able to say that her mom made a difference. I see her future and it is

very bright, I want to give her what my parent's didn't give me. A chance, an opportunity, the best education, guidance, encouragement and love most of all. My current situation is that I am receiving Social Security benefits, food stamps, Medicare and child support. I was declared disabled in 2010 and have not worked since. I am currently in a two-bedroom apartment with my 9 year old daughter, barely making it off of the income I have coming in but I am not giving up. The only family I have here in Jacksonville, FL is my mother and my church family. I have other family support back home where I am from which is Omaha, NE. They all support me in everything I do, they are aware of my struggle and what I am trying to accomplish going forward with my life. It has been hard finding employment in other fields due to my work history being all Health Care. I have been doing everything in my power to get back into the work field doing what I love to do. As I am currently in the Vocational Rehabilitation Program and Clay Behavioral Health Program. As far as my Certified Nursing Assistant license, I have applied to retake my exam through Prometric and should be able to take it within a month. I have been studying online and taking practice exams to brush up on my skills and Medical Terminology. My future goal is to finish up my Medical Assistant Degree through Kaplan University and I only have about 15 credits to complete the program. I am looking at mid next year to complete it because I am going through Total Permanent Disability, they have discharged all my previous student loans and they have me in a three year post-monitoring period which will be up in June 2017. No therapy was recommended at the time of incident, only to continue medication. I would just like the opportunity to prove to everyone that people can change for the better. God has forgiven me that I know. I also asked Him to open up the heart and mind of the victim to forgive me as well and it

was already done. I would just like to thank you for your time and consideration for this exemption.

26. On May 10, 2016, the Duval County Circuit Court issued an Order sealing the records pertaining to the offenses committed by Ms. Ailes on October 12, 2010.<sup>2/</sup>

27. On June 17, 2016, the Agency for Health Care Administration ("AHCA") notified Ms. Ailes that she had "demonstrated by clear and convincing evidence that an exemption from disqualification from employment should be and is granted."

28. On August 23, 2016, APD issued a letter notifying Ms. Ailes that her request for an exemption from disqualification had been denied based on the background screening conducted on March 9, 2016. As stated in the letter, "[t]his decision means you are not eligible to be employed, licensed or registered in positions having direct contact with children or developmentally disabled people served in programs regulated by [APD]."

29. The letter also stated that all of the information considered by APD did not amount to "clear and convincing evidence of your rehabilitation."

30. APD's letter closed by notifying Ms. Ailes of her right to request a formal administrative hearing.

## Evidence Adduced at the Final Hearing

31. Through her testimony during the final hearing, Ms. Ailes presented much more information than in her application for an exemption.

32. For instance, Ms. Ailes obtained a certified nursing assistant ("CNA") license and began working in the healthcare field in 2000. During the ensuing years, she worked with disabled adults and disabled children.

33. Ms. Ailes' disqualifying offenses resulted from her forging a check for \$800 and another for \$900.

34. The checks in question belonged to an elderly friend of hers. Ms. Ailes was close to the victim and his wife, and the victim gave Ms. Ailes his checkbook so that she could pay his bills and expenses.

35. Ms. Ailes entered a guilty plea to the forgery and uttering charges, but adjudication was withheld.

36. Ms. Ailes was released from probation after paying restitution to the victim.

37. Ms. Ailes paid restitution through money she received via child support payments, temporary cash assistance, and her mother.

38. Prior to the health problems mentioned in her application, Ms. Ailes had worked as a CNA for a home care business in Jacksonville, Florida, from 2008 through 2010.

39. However, she was forced to leave that job because of several serious health problems.

40. Ms. Ailes' health problems began with severe headaches that necessitated frequent trips to the emergency room. She was ultimately diagnosed as having a brain tumor.

41. In addition, Ms. Ailes developed diabetic neuropathy that led to her feet being numb for approximately two years. She also lost sensation on the right side of her body.

42. Ms. Ailes had been experiencing frequent seizures but no longer does so.

43. She has degenerative disc disease and sciatica in her lower back and treats with a pain management specialist once a month.

44. As a result of the aforementioned health problems, Ms. Ailes was unable to work between 2010 and 2016.

45. While Ms. Ailes considers herself to be disabled, she has returned to the work force.

46. In February of 2016, Ms. Ailes began working at Panera Bread. In addition to being a delivery driver, Ms. Ailes worked in the dining area by bringing food to customers and bussing tables.

47. Ms. Ailes decided that she did not want to work in food service and left Panera Bread in the beginning of May of 2016.

48. At that point in time, Ms. Ailes wanted to return to working with the disabled.

49. Accordingly, Ms. Ailes began working as a residential aide for an assisted living facility in August of 2016.

50. However, she left that position approximately six weeks later because her coworkers became hostile toward her after she reported incidents of abuse to the Department and the Attorney General's Office.

51. For the last 11 months, Ms. Ailes has worked at St. Michael's Homecare, a business that provides light housekeeping, transportation to and from doctor's appointments, and personal care. The personal care component can include assistance with bathing, meal preparation, and dressing.

52. Ms. Ailes is working with one client at this time. That client is 42 years old, visually impaired, and physically handicapped.

53. While Ms. Ailes' CNA license is no longer current and active, she is studying to retake the CNA licensing exam, and she has worked to further her education by taking business administration courses at Kaplan.

54. Leslie Richards, APD's Northeast Region Manager, testified that Ms. Ailes' application provided very little information about her disqualifying offenses and the victim of those offenses. Given that lack of detail and the fact that her

criminal records had been sealed, Ms. Richards testified that APD did not have enough information to make an informed decision as to whether to grant Ms. Ailes' request for an exemption.

55. Ms. Richards acknowledged that AHCA has granted Ms. Ailes an exemption from employment disqualification. According to Ms. Richards, APD is justified in imposing a higher standard on exemption applicants because APD's clients are more vulnerable than AHCA's.<sup>3/</sup>

#### Ultimate Findings of Fact

56. After considering the evidence and testimony presented at the final hearing, the undersigned finds that Ms. Ailes has not presented clear and convincing evidence that she has been rehabilitated.

57. As explained in the Conclusions of Law below, Ms. Ailes has made considerable progress in overcoming her health issues and improving her circumstances. If Ms. Ailes were to re-apply for an exemption and present more information about the circumstances of her disqualifying offenses, the victim of those offenses, and witness testimony regarding her character, then there is a good chance that she could satisfy her burden of presenting clear and convincing evidence of rehabilitation.

CONCLUSIONS OF LAW

58. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 435.07(3), Florida Statutes.

59. Section 110.1127(2), Florida Statutes, provides that "[a]ll positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week . . . are deemed to be persons and positions of special trust or responsibility" and require employment screening pursuant to chapter 435, using the Level 2 standards set forth in that chapter."

60. Section 393.0655(5), Florida Statutes, establishes Level 2 screening requirements by providing in pertinent part:

(5) 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:

\* \* \*

(k) Section 831.01, relating to forgery.

(l) Section 831.02, relating to uttering forged instruments.



61. Because Petitioner committed the offenses noted directly above, she is disqualified from employment in positions of trust in which she would have contact with vulnerable persons. See § 435.04(2), Fla. Stat.

62. Section 435.07 authorizes the agency head to grant a person otherwise disqualified under section 435.04 an exemption from such disqualification under certain circumstances. In that regard, subsection (3)(a) provides that:

[e]mployees 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.

63. Under section 435.07, the applicant for an exemption from disqualification has the ultimate burden to demonstrate, by clear and convincing evidence, that he or she is rehabilitated from the disqualifying offense. § 435.07(3)(a), Fla. Stat.

64. This is a heightened standard, requiring more than a mere preponderance of the evidence. In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997). This evidentiary standard has been described as follows:

[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)).

65. Under section 435.07(3)(a), evidence of rehabilitation may include, but is 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 applicant 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.

66. Section 435.07(3)(c) provides that the agency head's decision to grant or deny 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."

67. Therefore, even if the applicant demonstrates rehabilitation, he or she is only eligible for an exemption, not

entitled to one. The agency head possesses the discretion to deny an exemption request, but may not lawfully do so if the denial would constitute an abuse of discretion. See J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127 (Fla. 1st DCA 2013); see also Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000).

68. Under the highly deferential "abuse of discretion" standard, if reasonable persons could differ as to the propriety of the agency action taken, 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). Conversely, if the agency's denial of the exemption request is unreasonable, then its action constitutes an abuse of discretion. Id. (discretion is abused when the action is arbitrary, fanciful, or unreasonable).

69. In reconciling the "abuse of discretion" standard mandated by chapter 435 with the "de novo" proceeding provided by chapter 120, the First District Court of Appeal has stated that while:

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 facts determined from

the evidence presented at a de novo chapter 120 hearing.

J.D. v. Dep't of Child. & Fam., 114 So. 3d at 1132.

70. However, Ms. Ailes did not present clear and convincing evidence demonstrating that she has been rehabilitated from her disqualifying offense.

71. Ms. Ailes should be commended for overcoming her physical challenges and returning to the workforce. She should also be commended for wanting to make a better life for her daughter and for drawing strength from her faith.

72. Ms. Ailes persuasively asserts that someone should not be endlessly punished for one instance of bad judgment.

73. Nevertheless, the prohibition against employing individuals convicted of disqualifying offenses under section 435.04 in positions of trust is intended to protect the public welfare, and the statute must be strictly construed against the person claiming exemption. See Heburn, 772 So. 2d at 563; Smiley v. APD, Case No. 16-3765EXE (Fla. DOAH Sept. 12, 2016) (stating that "[t]he 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 . . . [T]he 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.”).

74. While Ms. Ailes’ testimony was compelling, it was not enough (by itself) to clearly and convincingly demonstrate that she has been rehabilitated.

75. However, the foregoing statement should not be construed as a conclusion that Ms. Ailes is incapable of presenting clear and convincing evidence of rehabilitation.

76. The primary shortcoming in Ms. Ailes’ case was that she presented no direct testimony other than her own.

77. If Ms. Ailes were to apply again for an exemption and present testimony from her current employer and/or her clients regarding the quality of her character, then it is much more likely that she would be able to satisfy her burden of proof.<sup>4/</sup> See generally Mack v. APD, Case No. 15-3268EXE (Fla. DOAH Sept. 11, 2015) (concluding that APD’s “intended action was formulated without the benefit of the compelling testimony of Petitioner’s six very credible witnesses, including: the couple who are APD clients with developmental disabilities, to whom Petitioner provided exemplary care and safe transport for five years; the family of the disabled couple; a physical therapist assistant who also provided services to the disabled couple and observed Petitioner in his caregiver role over the five-year

span; and Petitioner's uncle who is a pastor at the church where Petitioner serves as a choir director. All of these witnesses would entrust (and have entrusted) their valuables, their loved ones, and their own lives to Petitioner, and each of them emphatically rejected any notion that Petitioner will pose a danger to children, to persons with developmental disabilities, or to any other vulnerable persons, if allowed to resume employment. To the contrary, these witnesses spoke eloquently to the great loss suffered by the APD clients who are no longer extraordinarily well-cared for by Petitioner because he is not eligible to do so without an exemption, and who want him back." ).

78. Testimony from Ms. Ailes' pastor and other members of her church family regarding her character could also be useful in establishing the quality of her character.<sup>5/</sup> See generally Brown v. APD, Case No. 16-0625EXE (Fla. DOAH May 11, 2016) (noting that "[i]n response to a question in the exemption application regarding whether she receives any form of counseling, she responded vaguely that she gets counseling at her church, as needed. No specifics were offered. No documentation or testimony was presented with regard to the counseling she has obtained at her church, such as a description of the nature of the counseling services she referred to and how often she has availed herself of those services. **Here, too, a**

**better showing could be made, such as by offering testimony of a pastor or other church official who could attest to Petitioner's rehabilitation that may be evident from her drawing on church resources for support.**") (emphasis added); Rivera v. APD, Case No. 15-5039EXE (Fla. DOAH Nov. 11, 2015) (noting that APD's "denial of the exemption was formulated without the benefit of the compelling testimony of Petitioner's four very credible witnesses, all of whom emphatically rejected any notion that Petitioner poses any risk to children, to persons with developmental disabilities, or to any other vulnerable persons.").

79. Because Ms. Ailes failed to present clear and convincing evidence of rehabilitation, there is no need to evaluate whether denial of Petitioner's application would amount to 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 Petitioner's application for an exemption from employment disqualification.

DONE AND ENTERED this 8th day of August, 2017, in  
Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of August, 2017.

ENDNOTES

<sup>1/</sup> Unless indicated otherwise, all statutory references will be to the 2016 version of the Florida Statutes. The statutes relevant to the instant case were not amended during the 2017 legislative session in any manner that would impact the instant case.

<sup>2/</sup> Section 943.059(4)(a), Florida Statutes, provides that one who has had his or her criminal history record sealed "may lawfully deny or fail to acknowledge the arrests covered by the sealed record" except if that person is seeking to be employed or licensed by the Department, the Division of Vocational Rehabilitation, AHCA, APD, the Department of Health, the Department of Elder Affairs, or the Department of Juvenile Justice.

The undersigned took into consideration the fact that Ms. Ailes did not disclose her criminal history on her "Affidavit of Good Moral Character." When she filled out the affidavit, her application to seal her criminal history record was pending before the Duval County Circuit Court.

<sup>3/</sup> In Brown v. APD, Case No. 16-0625EXE (Fla. DOAH May 11, 2016), the petitioner had received exemptions from AHCA and the Department of Juvenile Justice ("DJJ") prior to having her



exemption request denied by APD. The Brown ALJ concluded that APD was justified in exercising greater caution than AHCA and DJJ:

[APD] took those other exemptions into account in reviewing Petitioner's application, but also considered the differences in the types of services that could be provided, and the clients who would be served, in positions of special trust within [APD]'s purview. [APD] believes that greater caution is required because of [APD]'s vulnerable clientele and also because of the nature of the services Petitioner would be able to provide to these vulnerable people. [APD]'s view is reasonable in this case. For example, Petitioner's history skirting around violent incidents is of heightened concern for this vulnerable population. **Petitioner's history with crimes involving theft, forgery, and issuing worthless checks is of heightened concern because of duties that include helping adults with developmental disabilities gain independence by helping them shop, pay bills, balance checkbooks, and manage budgets.**

(emphasis added).

<sup>4/</sup> A representative from APD stated at the final hearing that there is no prohibition to Ms. Ailes re-applying for an exemption.

<sup>5/</sup> APD's third exhibit includes a one-page letter of reference from a Supported Employment Specialist who has worked with Ms. Ailes at the Clay Behavioral Health Center. While such letters are helpful in demonstrating rehabilitation, they are usually not as effective as live testimony.

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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.