

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AMELIA HOLLIS,

Petitioner,

vs.

Case No. 17-3264EXE

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

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RECOMMENDED ORDER

A duly-noticed final hearing was held in this case on August 15, 2017, via video teleconference at sites in Tallahassee and Jacksonville, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Amelia Hollis, pro se  
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Jacksonville, Florida 32224

For Respondent: Kurt Eric Ahrendt, Esquire  
Agency for Persons with Disabilities  
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STATEMENT OF THE ISSUE

Whether the Agency for Persons with Disabilities' (Agency) intended decision to deny Petitioner's application for exemption

from disqualification for employment is an abuse of the Agency's discretion.

PRELIMINARY STATEMENT

By letter dated May 2, 2017, the Agency issued its notice of agency action by which it informed Petitioner that her request for exemption from disqualification was denied. As a result, Petitioner was deemed ineligible to "be employed, contract with, be licensed, or otherwise authorized to" serve Agency clients. In the letter, the Agency reported its determination that Petitioner had "not submitted clear and convincing evidence of [her] rehabilitation."

Petitioner filed her Request for Administrative Hearing with the Agency on May 22, 2017, which request was referred to the Division of Administrative Hearings on June 6, 2017. The case was initially assigned to Administrative Law Judge R. Bruce McKibben and scheduled for final hearing on June 19, 2017. The case was transferred to the undersigned on June 15, 2017, and the final hearing commenced as scheduled.

At the final hearing, Petitioner testified on her own behalf but offered no witnesses and introduced Exhibit P1 in evidence.

Respondent presented the testimony of Leslie Richards, the Agency's Northeast Regional Operations Manager, and Petitioner. Respondent's Exhibits R1 through R5 were admitted in evidence. The undersigned granted the Agency's request for official

recognition of chapter 435 and section 393.0655, Florida Statutes.

The proceedings were recorded, but the parties did not order a transcript thereof. Respondent timely filed a Proposed Recommended Order, which has been considered in preparing this Recommended Order. Petitioner did not make any post-hearing filings.

All references herein to the Florida Statutes are to the 2017 version.

#### FINDINGS OF FACT

1. Petitioner is a 68-year-old female residing in Jacksonville, Florida. Petitioner's most recent employment is with Linda L. Curtis Health Care Agency (Curtis Agency), where she "sits with patients," and provides entertainment and meals for patients.

2. Respondent is the state agency responsible for licensing and regulating the employment of persons in positions of special trust. Specifically, the Agency's mission includes serving and protecting vulnerable populations, including children and adults with developmental disabilities.

3. In connection with her employment at Curtis Agency, Petitioner underwent background screening on July 26, 2017, and was deemed automatically disqualified from employment based on a past offense. See § 435.06, Fla. Stat. Petitioner applied to

the Agency for an exemption from disqualification, pursuant to section 435.07, which the Agency denied and which forms the basis of the instant Petition for Administrative Hearing.

Disqualifying Offense

4. On September 25, 1999, Petitioner was arrested and charged with misdemeanor battery for an incident at her home involving her 18-year-old cousin, Shanique Barner, whom she was raising, along with the cousin's baby.

5. The altercation began when Petitioner approached Ms. Barner about failing to keep her bedroom clean, an issue about which Petitioner had spoken to Ms. Barner repeatedly. The confrontation became physical and both parties began punching and hitting each other. When the fight ended, Petitioner took Ms. Barner to the hospital for a tetanus shot and treatment for a bite or bites inflicted by Petitioner during the altercation.

6. An off-duty officer at the hospital was informed of the domestic violence incident and the arresting officer was dispatched to Petitioner's residence.

7. At Petitioner's home, the arresting officer observed Ms. Barner with a swollen left eye and two bite marks on her left arm. After taking both parties' statements, the officer arrested Petitioner and took her to a detention facility for booking.

8. Petitioner pled nolo contendere to the charge of domestic battery and adjudication was withheld. On October 4,

1999, Petitioner was sentenced to four months' probation and ordered to pay court costs of \$104. Terms of Petitioner's probation included no contact with Ms. Barner, completion of an anger control program, and payment of the costs of supervision.

9. Petitioner's probation was early-terminated on November 2, 1999, at which time Petitioner had completed the anger management program, paid her fine and court costs in full, and was current in the monthly cost of supervision.

10. Petitioner was 50 years old at the time of the disqualifying offense, and Ms. Barner was 18. By Petitioner's account, Ms. Barner was a rebellious and troubled teenager, who had become pregnant at age 17 despite Petitioner's attempts to persuade Ms. Barner to begin using birth control at age 15.

#### Subsequent Non-Disqualifying Offense

11. Petitioner had no further involvement with law enforcement until April 8, 2008, almost nine years later, when she was arrested and charged with aggravated battery with a deadly weapon.

12. The details of the incident are unclear and disputed. The record supports the following findings: For a month prior to the incident, Petitioner had allowed a male friend, Mr. Jones, to temporarily live at her home. Mr. Jones was ill, had lost his employment, and had applied for social security disability, but had not received payments in time to pay his rent. Mr. Jones had

a "roommate," Ms. Green, who was identified only as Mr. Jones' girlfriend's daughter. Ms. Green also moved into Petitioner's home, temporarily, at the request of the girl's mother.

13. Apparently, Ms. Green, like Ms. Barner, was not much of a housekeeper. Despite assurances from Mr. Jones that Ms. Green would "clean behind herself," Ms. Green frequently left dirty dishes in the sink, with which Petitioner was met upon her return from work.

14. On the date of the incident, Petitioner returned from a day at work to find dirty dishes in her sink, left there by an unwelcome, and apparently ungracious, guest whom Petitioner, no doubt, expected to be a short-term guest.

15. Petitioner informed Mr. Jones that Ms. Green would have to leave. Ms. Green began removing her belongings, but not at a pace Petitioner found very efficient, so Petitioner "assisted" in removal of Ms. Green's belongings. Ms. Green objected, telling Petitioner not to touch her belongings. Petitioner responded by informing Ms. Green she could not re-enter Petitioner's home to remove the rest of her belongings. Petitioner told Mr. Jones to remove the remainder of Ms. Green's belongings.

16. Petitioner positioned herself to block Ms. Green's entry to Petitioner's home. When Ms. Green attempted to enter Petitioner's home, a physical altercation ensued. The altercation was broken up by Mr. Jones and Ms. Barner,<sup>1/</sup> but

proved only a brief interlude in the fighting. A second physical altercation ensued but the evidence conflicted as to which party initiated the fight, and whether either party was armed with a weapon of some sort.

17. Ms. Green emerged from this altercation with a deep cut above her left eye.

18. Following Ms. Green's injury, Petitioner left the scene in her vehicle.

19. An officer who had been dispatched to the scene observed Petitioner's vehicle on his way to the scene, conducted a traffic stop, and transported Petitioner back to the scene. After the investigation, Petitioner was arrested and transported to a detention facility for booking.

20. The State Attorney's office declined to prosecute Petitioner and the charge against Petitioner was dropped.

#### Educational and Employment History

21. Petitioner maintained consistent employment both prior and subsequent to the 2008 arrest.

22. Between April 2004 and March 2007, Petitioner was employed as a shop foreman and an office manager for Air Distributors Inc., a metal and fiberglass fabricator.

23. Petitioner was a part-time cashier at WalMart from March 2007 to November 2011.

24. Petitioner was employed with River Region Human Services (River Region) from April 2009 through June 2014. River Region is a residential rehabilitation facility providing methadone maintenance treatment to recovering addicts. At River Region, Petitioner served as a Monitor Technician, observing client activities and medication administration, filing behavior and incident reports, conducting perimeter checks, and transporting clients to off-site services.

25. The record does not support a finding of the exact date on which Petitioner's subsequent employment with Curtis Agency commenced.

26. In connection with Petitioner's employment by River Region, Petitioner received an exemption from disqualification from the Department of Children and Families.

27. While employed with River Region, Petitioner completed a number of trainings sponsored by that agency, including Non-Violent Practices in 2013, as well as HIV/AIDS Parts I and II, HIPAA, Clinical Documentation, and Security Awareness in 2014.

#### Subsequent Personal History

28. The record was devoid of any subsequent history on Petitioner. It is unknown whether Petitioner lives alone or with roommates of any sort.



## Petitioner's Exemption Request

29. In her application for exemption, Petitioner provided a lengthy account of both incidents. Notably, Petitioner prefaced her explanation as follows: "To start I want to relate both incidents occurred because I cared about others. I tried to deaden this concern for others, but it just wouldn't happen."

30. While there is some credibility in associating Petitioner's actions in the first incident with a concern for her cousin, whom she was raising the record does not support a finding that the incident between Petitioner and Ms. Green, whom she was removing from her home for being untidy, is at all related to a concern for others.

31. In her lengthy explanation of both incidents, Petitioner blamed the victim. With respect to her cousin, Petitioner explained that her cousin hit her first. With respect to Ms. Green, Petitioner explained that the victim came at her first with "something in her hand," which Petitioner "immediately knocked out and caught." Petitioner wrote:

It was an unopened small red object. That's when I recognized it was a small box cutter. As she kept coming I push [sic] it and cut her across her eyebrow.

32. Petitioner's account is troubling in many respects. First, if Petitioner recognized the object as a box cutter, she

had time to drop the weapon, rather than use it against the victim, whether in self-defense or otherwise.

33. Second, Petitioner's account of the incident differs significantly from the accounts given by both Petitioner's cousin and Mr. Jones to the officer at the scene. Both witnesses told the officer that, after the initial altercation between Petitioner and Ms. Green, Petitioner retrieved a scraper from her car, which she carried with her to her perch outside the door blocking Ms. Green's reentry to her home.<sup>2/</sup>

34. If the witnesses' accounts are accurate, Petitioner was untruthful on her application, and attempted to shift blame to the victim, when in actuality Petitioner was the party who intentionally armed herself for an anticipated second altercation with Ms. Green.

35. Petitioner made no attempt to explain the discrepancy between her version of the 2008 incident and the version recounted in the police report.

36. The lack of explanation is notable because Petitioner went out of her way to contradict other aspects of the police reports on both incidents. For example, while the police report noted Ms. Green suffered wounds on her chest, nose, and above her left eye, Petitioner insisted the 2008 report was incorrect and she cut Ms. Green only above the eye. As to the 1999 incident, the police report noted Ms. Barner had a swollen left eye and two

bite marks on her left arm. Petitioner insisted the report was wrong, arguing that she bit Ms. Barner on the chest and not the arm.

37. The remainder of Petitioner's application is bereft of detail. In response to the question regarding the degree of harm to the victims or property, Petitioner noted only "Bite mark," and "laceration over eyebrow." Petitioner's demeanor at hearing evidenced a complete lack of understanding of the seriousness of her actions against Ms. Green. Assuming Petitioner's version of the events is accurate, Petitioner could have permanently blinded Ms. Green by intentionally striking her in the face with a box cutter.

38. Regarding whether Petitioner had stressors in her life at the time of the disqualifying offense, Petitioner responded "None." That response is contrary to Petitioner's detailed description of the 1999 incident, which evidences significant stress between her teenage cousin, who was rebellious in many respects, including refusing to pick up after herself, not to mention bringing into the household an unexpected mouth to feed.

39. With regard to current stressors and support system, Petitioner responded that she had no stress in her life and that prayer is her support system. She described her current living arrangements as a "2 bedroom, 2 bath apartment," and that she has maintained her own household since she was 17 years of age.

40. Petitioner failed to grasp the importance of distinguishing her current life circumstances and living arrangements from those at the time of the disqualifying offense and subsequent non-disqualifying offense. Without any distinguishing circumstances, the Agency is justified in questioning whether Petitioner's circumstances are more stable.

41. Petitioner stated that she had never received any counseling for any reason, and that she had never used or abused drugs or alcohol.

42. Petitioner's response to the question regarding whether she feels remorse and accepts responsibility for her actions reads as follows:

Regret was immediately felt during incidents. We are responsible for our actions so to keep this always in mind take on fruitage of God's spirit faith, goodness, kindness, love, longsuffering, joy, peace, mildness and **self-control**.

43. Petitioner's response is telling--it uses passive language and avoids the first person. Petitioner did not state, nor did she testify, that she regretted her actions, or that she was responsible for the harm caused. Both her written account and her live testimony evidence her intent to shift blame to the victims and acknowledge responsibility only in the broadest sense.

## Personal References

44. Petitioner included two reference letters in support of her application: one from Ms. Barner and one from someone named Trinette Simmons.

45. In Ms. Barner's letter, she refers to Petitioner as her mom and explains that Petitioner cared for her from two weeks of age until five years of age, that she came to live with Petitioner again at age 13, and that she has "periodically resided at [Petitioner's] residence for some years." Ms. Barner states that Petitioner encouraged her and helped her graduate from school after becoming pregnant at age 17, and that love has always been in her mom's heart.

46. Petitioner did not explain her relationship to Ms. Simmons. The letter from Ms. Simmons states that she has known Petitioner since 2002, that Petitioner is capable of handling any situation "with thoughtfulness and maturity," and that Petitioner is "a team player, as well as a team leader, who can adjust to changes within any environment."

47. The references are from persons who knew her when the 2008 incident occurred, but neither letter addresses the incident or explains that Petitioner's behavior at that time was uncharacteristic, or that it has changed significantly since that incident. Moreover, neither of the letters is from an employer

or other authority figure who has observed Petitioner interact with River Region clients or Curtis Agency patients.

48. The Agency is charged with protecting the most vulnerable populations in Florida--children and adults with developmental disabilities. Some members of this population are uncommunicative, can be hostile, and act out. The Agency must be confident that any applicant seeking to work directly with these clients has demonstrated self-control and maturity to handle difficult, and often stressful, interactions with the clients.

49. Both Petitioner's disqualifying, and subsequent non-disqualifying, offense evidence Petitioner's lack of self-control and good judgment when faced with stressful situations involving individuals who are defiant and refuse to take a course of action requested by Petitioner. Neither of Petitioner's personal references document Petitioner's ability to control herself and her reactions when faced with similar difficulties more recently. Petitioner's account of the incidents shifts the blame to the victims and fails to demonstrate true remorse or responsibility for her actions, the harm she inflicted, and the potential for more serious harm based on her choices at the time of the incidents.

50. While Petitioner seems to truly interested in continuing to help vulnerable citizens, even in a volunteer

capacity as she nears retirement, she did not present evidence sufficient to demonstrate her rehabilitation.

CONCLUSIONS OF LAW

51. The Division has jurisdiction over the subject matter of, and the parties to, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

52. Section 435.04, Florida Statutes, provides, in pertinent part, that:

(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.

\* \* \*

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or another jurisdiction.

53. Section 741.28, Florida Statutes, defines "domestic violence" to include battery resulting in physical injury of one family member by another family member. § 741.28(2), Fla. Stat.

54. Petitioner's plea of nolo contendere to battery against her cousin constitutes a disqualifying offense pursuant to section 435.04.

55. Section 435.07 establishes a process by which persons with criminal offenses in their backgrounds, that would disqualify them from acting in a position of special trust working with children or vulnerable adults, may seek an exemption from disqualification. That section provides:

435.07 Exemptions from disqualification.--  
Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1) (a) The head of the appropriate agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

\* \* \*

2. Misdemeanors prohibited under any of the statutes cited in this chapter . . . for which the applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court[.]

\* \* \*

(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.

\* \* \*

(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 decision is an abuse of discretion.

56. An exemption from a statute enacted to protect the public welfare is strictly construed against the person claiming the exemption. Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000).

57. The abuse of discretion standard of review set forth in section 435.07(3)(c) has been described as follows:

If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.

\* \* \*

The discretionary power that is exercised by a trial judge is not, however, without limitation . . . . [T]he trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner.

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

58. The Agency has a heightened interest in ensuring that the vulnerable population being protected by chapter 393, i.e., developmentally disabled children and adults, is not abused, neglected, or exploited. In light of that mission, the Legislature has imposed a heavy burden on those seeking approval to serve this vulnerable population when they have disqualifying offenses in their past.

59. Petitioner did not provide enough evidence to prove her rehabilitation clearly and convincingly. Given the dearth of evidence, the undersigned concludes that the Agency's intended denial of Petitioner's requested exemption does not constitute an abuse of discretion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered denying Petitioner's request for an exemption from disqualification.

DONE AND ENTERED this 3rd day of October, 2017, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of October, 2017.

ENDNOTES

<sup>1/</sup> The record does not support a finding whether Ms. Barner was residing with Petitioner at the time, or how she otherwise came to be a witness to the second incident.

<sup>2/</sup> Neither a box cutter nor a scraper was retrieved from either the scene or from Petitioner's car.

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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.