

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGEL CHILD HOME CARE
CORPORATION, INC.,

Petitioner,

vs.

Case No. 17-4353FL

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

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RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings ("DOAH"), on November 29, 2017, by video teleconference at sites located in St. Petersburg and Tallahassee, Florida.

APPEARANCES

For Petitioner: Shaddrick Haston, Esquire
Suite 103
1618 Mahan Center Boulevard
Tallahassee, Florida 32308

For Respondent: Trevor S. Suter, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
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STATEMENT OF THE ISSUE

The issue for determination in these proceedings is whether Petitioner's application for licensure of an additional group

home facility should be approved by Respondent, the Agency for Persons with Disabilities ("APD").

PRELIMINARY STATEMENT

On February 7, 2017, Petitioner submitted an application to Respondent for licensure as a group home facility. Petitioner has other group home licenses issued by Respondent. The February 7, 2017, application is for an additional license. On March 29, 2017, Petitioner completed its application for licensure as a group home facility. By letter dated June 7, 2017, APD notified Petitioner that Petitioner's application for licensure was denied. Petitioner timely filed a request for an administrative hearing involving disputed issues of material fact to contest the denial of its application for licensure. On August 2, 2017, this matter was referred to DOAH and was assigned DOAH Case No. 17-4353FL.

At the hearing, Petitioner presented the testimony of Marilou Burden, Joseph Burden, Rebecca Brown, Mary Hall, Daniel Godfrey; and APD employees Nancy Honl, Myra Leitold, and Larry Collins. Petitioner offered five exhibits, all of which were admitted into evidence. Respondent presented the testimony of Myra Leitold, Larry Collins, Nancy Honl, Police Officer Michael Jenson, Police Officer Geoffrey Newton, and Police Detective Eliad Glenn. Respondent offered eight exhibits, all of which were admitted into evidence.

A two-volume Transcript of the final hearing was filed on December 18, 2017. Both parties timely submitted Proposed Recommended Orders on or before January 17, 2018, which have been duly considered in the preparation of this Recommended Order.

References to statutes are to Florida Statutes (2017), unless otherwise noted. References to rules are to Florida Administrative Code (2014), unless otherwise noted.

FINDINGS OF FACT

1. Respondent, APD, is the state agency charged with regulating the licensing and operation of foster care facilities, group home facilities, and residential habitation centers pursuant to section 20.197 and chapter 393, Florida Statutes. APD is charged with reviewing all applications and ensuring compliance with the requirements for licensure.

2. Petitioner is an applicant for licensure of a group home facility. Petitioner's representative, Marilou Burden, submitted the completed application to APD on March 29, 2017.

3. Petitioner's application requested licensure of an additional group home facility. The proposed name of the facility was Iyachel Group Home, to be located at 1625 Woodridge Drive, in Clearwater, Florida.

4. Angel Child Home Care Corporation, Inc., is a Florida registered corporation. Marilou Burden is Petitioner's corporate officer.

5. Respondent may deny an application for licensure if the applicant has "[f]ailed to comply with the applicable requirements of this chapter or rules applicable to the applicant." § 393.0673(2)(a)3., Fla. Stat. Based upon its initial findings of such violations, Respondent denied Petitioner's application for licensure for an additional group home.

6. At all times material to these proceedings, L.L. was a resident of Petitioner's facility.

COUNT I

7. Clearwater Police Officer Geoffrey Newton testified regarding the events of February 24, 2017. Officer Newton was dispatched to Petitioner's facility. Officer Newton testified that upon arrival at the Angel Child Home Care facility, everyone was in the front yard. Officer Newton testified that Resident L.L. was in obvious distress and appeared to be having an emotional breakdown. Officer Newton was able to immediately calm L.L. down and speak to L.L. Officer Newton stated that after speaking to L.L., L.L. was very compliant and cooperative with each request made by Officer Newton. L.L. told Officer Newton that he wanted to harm himself. Officer Newton took L.L. into custody. L.L. was ultimately held pursuant to the Baker Act. Further testimony also noted that on February 24, 2017, Mr. Joseph Burden, an auto mechanic, was also able to easily

calm L.L. However, Ms. Burden and the facility staff were not able to calm L.L. The sole staff member on duty merely told L.L. to listen to music. There is no evidence that facility staff employed any other techniques in an attempt to calm L.L.

8. After easing L.L.'s behavior episode, Officer Newton spoke to Ms. Burden. Officer Newton described Ms. Burden as "absolutely uncooperative." Ms. Burden insisted that L.L. be arrested. Officer Newton refused to arrest L.L. for a criminal act. Ms. Burden informed Officer Newton that Ms. Burden was going to call Congress because Officer Newton was not doing his job. Officer Newton stated that it appeared that Ms. Burden does not have enough staff at the facility to ensure it provides a safe working environment for Ms. Burden's employees.

9. Petitioner failed to properly report the Baker Act of L.L. to APD.

COUNT II

10. Police Detective Eliad Glenn testified that on February 11, 2017, he was dispatched to Petitioner's facility because of a call about an emotionally disturbed person. Upon arrival at the facility, Detective Glenn found that L.L. had hit himself and had suffered a small laceration on his face. L.L. indicated that he wanted to hurt himself. Detective Glenn took L.L. to a facility for emotionally disturbed persons pursuant to the Baker Act.

11. Again, Petitioner failed to report the Baker Act of L.L. to APD.

12. At the hearing, Petitioner attempted to demonstrate that Petitioner submitted the required incident report to APD via e-mail. However, Petitioner failed to admit the incident reporting form from this incident into evidence. Instead, Petitioner merely submitted what appears to be a screen shot of the header of an e-mail. The header of the e-mail does not indicate that the e-mail contained an attachment. Petitioner's attempt to prove that it submitted the incident report in this manner is not credited, since the document purported to have been submitted to APD was not produced.

COUNT III

13. Clearwater Police Officer Michael Jenson testified that on July 26, 2016, he was dispatched to Ms. Burden's facility in response to a potential battery. Officer Jenson contacted L.L. Angel Child Home Care staff informed Officer Jenson that L.L. had gotten upset and thrown furniture inside the home. Angel Child Home Care staff informed Officer Jenson that no one was injured. Officer Jenson determined that a battery did not occur.

14. L.L. informed Officer Jenson that he did not want to go back to the home. Officer Jenson asked Angel Child Home Care staff if there was a counselor or physician available to speak to L.L. Officer Jenson was informed that no counselor or

physician was available to assist L.L. Officer Jenson took L.L. into custody pursuant to the Baker Act, so that L.L. could receive assistance from a counselor or physician.

15. Again, Petitioner failed to report the Baker Act of L.L. to APD.

16. Similar to the February 11, 2017, incident, Petitioner attempted to demonstrate that it submitted the required incident report to APD via e-mail. However, as before, Petitioner failed to admit the incident reporting form from this incident into evidence. Instead, Petitioner merely submitted what appears to be a screen shot of the header of an e-mail. The header of the e-mail does not indicate that the e-mail contained an attachment. Petitioner's attempt to prove that it submitted the incident report in this manner is not credited, since the document purported to have been submitted to APD was not produced.

COUNT IV

17. Clearwater Police Officer Michael Jenson testified that on July 5, 2016, he was dispatched to Ms. Burden's facility located at 1641 Sunset Point Road. St. Michael's Guardian Home Care ("St. Michael's"), a Department of Children and Families group home, which is owned by Ms. Burden, reported Resident B.B. as a runaway. St. Michael's agents or employees reported that B.B. was not welcome at St. Michael's. Officer Jenson

confirmed that the child was locked out of St. Michael's, and B.B. stayed at Petitioner's facility on Sunset Point Road.

COUNT V

18. On May 2, 2016, police were called to Angel Child Home Care's facility. As a result, L.L. was institutionalized pursuant to the Baker Act.

19. Yet again, Petitioner failed to report the Baker Act of L.L. to APD.

20. As before, Petitioner failed to admit the incident reporting form from this incident into evidence. Instead, Petitioner merely submitted what appears to be a screen shot of the header of an e-mail. The header of the e-mail does not indicate that the e-mail contained an attachment. Petitioner's attempt to prove that it submitted the incident report in this manner is not credited, since the document purported to have been submitted to APD was not produced.

CONCLUSIONS OF LAW

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

22. Petitioner, as the party asserting the affirmative of the issue in this proceeding, has the burden of proof. Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977); Dep't of Agric. & Consumer Servs. v. Strickland, 262 So. 2d 893 (Fla. 1st DCA

1972). The level of proof is generally a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). See also Davis v. Dep't of Child. & Fam. Servs., 160 So. 3d 854, 857 (Fla. 2015). Here, Petitioner must prove by a preponderance of the evidence that its application for an additional licensed facility should be approved.

23. Section 393.067 sets forth APD's responsibilities regarding application procedures and provider qualifications. Section 393.0673 provides considerations pertaining to the denial, suspension, or revocation of a license. Section 393.0673(2) provides that the agency may deny an application for licensure submitted pursuant to section 393.067, if the applicant has failed to comply with the requirements of chapter 393 or the rules applicable to the applicant. § 393.0673(2)(a)3., Fla. Stat.

24. In Counts I-III and V, Petitioner violated rules applicable to the applicant by failing to properly report L.L.'s commitments to a mental health service pursuant to the Baker Act. Fla. Admin. Code R. 65G-2.010(5)(b)7. and 65G-2.010(5)(c), (d), and (e).

25. In Counts II-V, Petitioner violated rules applicable to the applicant by failing to provide the level of supervision necessary to ensure that residents are protected from harm and

that a safe and healthy living environment is created and maintained. Fla. Admin. Code R. 65G-2.009(3)(b) and 65G-2.009(6)(a) and (c).

26. The evidence and testimony at hearing demonstrated that Petitioner is unable to properly supervise L.L. or ensure that he has a safe living environment. Petitioner merely demands that L.L. be arrested by police whenever L.L. has an outburst. Police officers and an auto mechanic were better able to calm L.L. than Petitioner's staff. Additionally, Petitioner does not have enough staff at the facility to provide a safe working environment for Petitioner's employees.

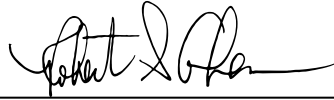
27. Petitioner failed to meet its burden of proving that it can comply with the statutes and rules for operation of its current facility in a safe and proper manner. The thought of awarding Petitioner a license for an additional facility is neither supported by the evidence nor sensible.

28. Accordingly, considering the various statutory and rule provisions cited above, APD was justified in denying Petitioner's application for licensure of an additional facility.

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 licensure.

DONE AND ENTERED this 9th day of March, 2018, in
Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2018.

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.