

STATE OF FLORIDA
DEPARTMENT OF REVENUE

BAYFRONT HMA MEDICAL CENTER, LLC

Petitioner,

DOAH Case No.: 19-1880
19-1881
19-1882

v.

DOR 2020-002 - FOF

FLORIDA DEPARTMENT OF REVENUE,

FILED

Department of Revenue – Agency Clerk
Date Filed: April 8, 2020
By: Megan Maxwell

Respondent.

FINAL ORDER

This cause came before the State of Florida, Department of Revenue (“Department”) for the purpose of issuing a Final Order. Administrative Law Judge Mary Li Creasy (“ALJ”), assigned by the Division of Administrative Hearings (“Division”) to hear this cause, submitted a Recommended Order to the Department on February 7, 2020. A copy of the Recommended Order is attached as Exhibit 1.

The deadline for filing exceptions to the Recommended Order was February 24, 2020. Petitioner timely filed exceptions on February 24, 2020. A copy of the Petitioner’s Exceptions to the Recommended Order (“Exceptions”) is attached as Exhibit 2. The Department did not file any exceptions. The Department timely filed its Response to Petitioner’s Exceptions on March 4, 2020 (“Response”). A copy of the Response is attached as Exhibit 3.

STATEMENT OF THE ISSUE AND PRELIMINARY STATEMENT

The Department adopts the Statement of the Issue and the Preliminary Statement in the Recommended Order.

FINDINGS OF FACT

The Department is bound by the findings of fact in the Recommended Order unless, following a review of the entire record, the Department can determine that a finding of fact is not based on competent, substantial evidence or that the proceedings did not comply with the essential requirements of law. Section 120.57(1)(l), Florida Statutes. A rejection of a factual finding requires identifying the reasons for the rejection with particularity. *Id.*; *Prysi v. Department of Health*, 823 So.2d 823, 825 (Fla. 1st DCA 2002). If the evidence presented at the final hearing may support inconsistent findings, it is the role of the Administrative Law Judge to determine which finding is best supported by the evidence. It is not an agency's role, following issuance of a recommended order, to reweigh the evidence presented or to reconsider the credibility of witnesses. *Walker v. Board of Professional Engineers*, 946 So.2d 604, 605 (Fla. 1st DCA 2006) (per curiam).

Based on a review of the record, the Department concludes that the Findings of Fact in the Recommended Order are supported by competent substantial evidence and comport with the essential requirements of law. Accordingly, they are adopted and reincorporated here *in toto*.

CONCLUSIONS OF LAW AND RULINGS ON EXCEPTIONS

The Department may reject or modify the Conclusions of Law over which it has substantive jurisdiction if the Department can state with particularity why a substituted or revised conclusion of law is as, or more, reasonable than the conclusion of law that was rejected or modified. Section 120.57(1)(l), Florida Statutes; *Barfield v. Dep't of Health, Board of Dentistry*, 805 So.2d 1008 (Fla. 1st DCA 2001).

Additionally, section 120.57(1)(k), Florida Statutes, provides that in most circumstances an agency must rule on exceptions to a recommended order. Petitioner takes exception with Conclusions of Law 57 and 59 and Footnote 4. Petitioner's Exceptions generally do not identify

which excepted-to provisions of the Recommended Order its arguments are directed to. *See* Petitioner’s Exceptions at ¶¶ 4-7. The Exceptions therefore generally do not comply with section 120.57(1)(l), Florida Statutes, which requires each exception to identify specifically which portion of a Recommended Order is being excepted to, and the specific factual or legal basis for each such exception.

Substantively, Petitioner’s Exceptions are in essence an attempt to relitigate the factual question of whether it leases, rents, or licenses its property to its patients. *See* Exceptions at ¶ 6 (arguing that the “evidence shows...Bayfront...charged its patients a room and board charge for the use of the private rooms and patient accessible areas); at ¶ 7 (suggesting that “Bayfront leased space that was subsequently leased, rented, or licensed...”). Respondent, in its Response, accurately points out that the Division never found as much. Response at page 4. Rather, the Division made extensive findings of fact based on competent substantial evidence rejecting the factual scenario and arguments proposed by Petitioner—conclusions and findings not addressed by the Exceptions. *See, e.g.* Recommended Order at ¶¶ 5-11; 54-55.

The Exceptions also are founded on inaccurate statements of law, are unsupported by the factual findings, and are unreasonable, as the Response also points out. *See, e.g.*, Exceptions at ¶4, excluding a substantial portion of cited Rule 12A-1.039(1)(b)4., Fla. Admin. Code; Exceptions at ¶5, asserting the ALJ “improperly conflates sublet and assignment” in relation to Footnote 4, which does not reference those terms; *compare also* Exceptions at ¶8, labelling as “erroneous and irrelevant” Footnote 4 of the Recommended Order, which holds that section 212.08(7)(i), Florida Statutes, does not create a tax exemption applicable to Petitioner, with Exceptions at ¶7, which cites section 212.08(7)(i), Florida Statutes, for the proposition that “tax is not due on the portions [of space leased by Petitioner] used by patients.” Petitioner’s Exceptions are contradictory and

would yield a contradictory final order if adopted without addressing numerous other provisions in the Recommended Order to which Petitioner submitted no exception.

The legal conclusions in Conclusions of Law 57 and 59 and Footnote 4 are reasonable, and are more reasonable than those proposed by Petitioner. To the extent they are based on factual findings, Conclusions of Law 57 and 59 and Footnote 4 are supported by competent substantial evidence in the record. For the foregoing reasons, Petitioner's Exceptions are rejected, and the Conclusions of Law in the Recommended Order are adopted and reincorporated here *in toto*.

Accordingly, the Department hereby DENIES Petitioner's refund claims and SUSTAINS the assessment of \$151,588.36, plus interest, issued to Petitioner.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 8th day of April, 2020.

STATE OF FLORIDA
DEPARTMENT OF REVENUE


ANDREA MORELAND
DEPUTY EXECUTIVE DIRECTOR

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110 Florida Rules of Appellate Procedure, with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, P.O Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **AND** by filing a **copy** of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. **The Notice of Appeal must be filed within 30 days from the date this Order is filed with the Clerk of the Department.**

Copies Furnished To:

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