

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

YARON H. MAYA, O.D.,

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

DOAH CASE NO. 19-2881

AHCA NO. BGS_AHCA_20177612

RENDITION NO.: AHCA-20-033 -FCF-SED

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Mary Li Creasy, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether Petitioner provided clear and convincing evidence of rehabilitation and whether the Agency abused its discretion when it denied Petitioner's request for an exemption from disqualification. The Recommended Order dated September 24, 2019, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Respondent filed exceptions to the Recommended Order.

In determining how to rule upon Respondent's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency must follow section 120.57(1)(l), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a

finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

§ 120.57(1)(l), Fla. Stat. Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on Respondent’s exceptions:

In Exception No. 1, Respondent takes exception to the ALJ’s conclusions of law in Paragraph 62 of the Recommended Order, arguing the ALJ erred in concluding the Agency abused its discretion when it denied Petitioner’s request for an exemption from disqualification. In Paragraph 62 of the Recommended Order, the ALJ concludes “that it would be an abuse of discretion to deny the exemption” based on all the evidence presented at hearing. In A.P. v. Dep’t of Children & Fam., 230 So. 3d 3 (Fla. 4th DCA 2017), an ALJ reached an identical conclusion of law based on the record evidence of the case that was reversed by the Department of Children and Families (“DCF”). On appeal, the Fourth District Court of Appeal reversed the Agency’s final order because DCF’s rejection of the ALJ’s conclusion of law was not reasonable considering DCF adopted all the ALJ’s findings of fact, which demonstrated A.P. was rehabilitated and posed no danger if employed in a position of trust. Here, Respondent has not taken exception to any of the findings of fact in the Recommended Order, including those where

the ALJ found Petitioner “has never been the subject of any complaint or investigation by the Florida Medicaid program” (Paragraph 47), “There is also no evidence of any prior or subsequent criminal history for [Petitioner]” (Paragraph 48), and “there was no evidence or allegation in this proceeding that [Petitioner] in any way injured a patient or conducted himself as a clinician in anything other than consistent with applicable medical standards.” (Paragraph 49). Thus, it would be unreasonable for the Agency to reject the ALJ’s conclusions of law in Paragraph 62 of the Recommended Order. Therefore, the Agency denies Exception No. 1.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.


CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

Petitioner’s request for an exemption from disqualification from employment/Medicaid provider enrollment is hereby granted. The parties shall govern themselves accordingly.

DONE and ORDERED this 9 day of January, 2020, in Tallahassee, Florida.



MARY C. MAYHEW, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

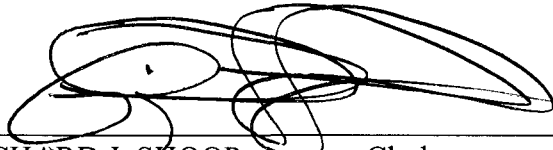
A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY ALONG WITH THE FILING FEE PRESCRIBED BY LAW WITH THE DISTRICT COURT OF

APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished to the persons named below by the method indicated on this 9th day of

January, 2020.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
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COPIES FURNISHED TO:

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