

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHAN GOBIN,

Petitioner,

vs.

Case No. 19-3696

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings for final hearing on September 10, 2019, by video teleconferencing in Ft. Pierce and Tallahassee, Florida.

APPEARANCES

For Petitioner: Chan Gobin, pro se
5839 Northwest Drill Court
Port St. Lucie, Florida 34986

For Respondent: Lindsay Worsham Granger, Esquire
Agency for Health Care Administration
Building 1, Mail Stop 7
2727 Mahan Drive
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's request for exemption from disqualification from employment in a position of trust should be granted.

PRELIMINARY STATEMENT

By letter dated May 30, 2019, the Agency for Health Care Administration ("AHCA") notified Petitioner that his "request from disqualification from employment and/or from enrollment as a Medicaid provider under Section 435.07, Florida Statutes, is DENIED." Respondent timely protested the denial and requested an administrative hearing.

On July 11, 2019, AHCA transmitted Respondent's letter to the Division of Administrative Hearings ("DOAH"), and the undersigned was assigned to hear the case. The final hearing was heard on September 10, 2019, as scheduled.

At the hearing, the undersigned granted Agency's Corrected Request for Official Recognition. Petitioner presented the testimony of two witnesses: Roshina Lakram and himself. Petitioner did not present or submit any exhibits into the record at the hearing. Respondent presented the testimony of two witnesses: Vanessa Risch and Isabelle Kalms. Respondent's Exhibits 1 through 6 were received into evidence.

The proceeding was recorded by a court reporter but not transcribed. The parties each filed a timely proposed recommended order, which has been considered by the undersigned in the preparation of the Recommended Order.

Unless otherwise indicated, all statutory references are to Florida Statutes (2018).

FINDINGS OF FACT

1. AHCA is a state agency required to conduct background screenings for individuals who provide certain types of healthcare related services under chapters 400, 408, and 429, Florida Statutes. § 408.809, Fla. Stat.

2. Petitioner is seeking to become owner of a licensed nurse registry for pediatric and special needs care. As such, Petitioner is required to have a background screening check pursuant to section 408.809. Petitioner is interested in the field because his daughter was born with several disabilities.

3. After completing Petitioner's background screening, Petitioner's 2011 disqualifying felony criminal offenses of owning, operating, or maintaining an assisted living facility without a license were identified.

4. On March 6, 2019, Petitioner submitted a request for exemption from disqualification, which included the exemption application and supporting documentation ("exemption package").

5. In Petitioner's exemption package, he listed his work history, which included the following employment: Home Reach, LLC, from April 2013 to October 2013; Five Star Home Health from October 2013 to March 2014; unemployment from March 2014 to August 2014; Home Reach, LLC, from August 2014 to August 2018; and a leave of absence from Home Reach, LLC, starting August 2018.

6. Petitioner also detailed his plans to comply with AHCA's laws and regulations in his exemption package. He explained that he has retained a consultant, Elisabeth Jean-Baptiste ("Jean-Baptiste"), to assist him. She is the director of the FEDEN Healthcare Education Institute, an entity that provides continuing legal and regulatory education in the healthcare field.

7. Petitioner included in his exemption package documentation that he completed a 12-hour Adult Family Care Home course, which covered the rules and regulations for running a healthcare business.

8. On May 15, 2019, as part of the exemption application process, Petitioner participated in a telephonic exemption hearing with AHCA. After the telephonic hearing and discussion, AHCA denied Petitioner's request for an exemption by letter dated May 30, 2019. Subsequently, Petitioner requested an administrative hearing.

Disqualifying Offenses

9. On May 26, 2011, Petitioner was arrested and charged with a two-count felony of operating, owning, or maintaining an assisted living facility without a license.

10. Petitioner's criminal charges stem from him operating Heaven Sent Group Home, which he labeled "sober living" houses. At the two facilities Petitioner owned and operated, medication

was distributed, and daily activities for the residents were performed without being licensed as an assisted living facility.

11. On June 27, 2011, AHCA also charged Petitioner by Administrative Complaint in Case No. 2011001367 for operating Heaven Sent Group Home, which was the same unlicensed assisted living facility subject matter as the criminal Case No. 2011CF001679A.

12. On or about September 20, 2011, Petitioner pled no contest in Case No. 2011CF001679A to the two felony counts of operating, owning, or maintaining an assisted living facility without a license. The court withheld adjudication and sentenced Petitioner to three years of probation, 100 hours of community service, court costs, and fines.

13. On January 25, 2012, AHCA issued a Final Order in Case No. 2011001367, imposing a \$99,000.00 fine for Petitioner's unlicensed activity.

14. By letter dated October 2, 2013, Petitioner was notified that he completed his terms of probation and was no longer under the supervision of the Department of Corrections for Case No. 2011CF001679A.

Hearing

15. At hearing, Petitioner explained that he opened two facilities in 2007 to help the underprivileged. His residents included those that were released from incarceration or mentally

ill and did not have place to live. He testified that most of his residents came from the courts or were referred by New Horizons.

16. Petitioner denied receiving any AHCA notices sent to him regarding his operating the two unlicensed assisted living facilities prior to the 2011 cease and desist on Heaven Sent Group Home. Petitioner further claimed that he did not know he needed a license for the facilities he was running.

17. Petitioner did admit that he was completely responsible for his wrongdoings and not being educated and aware of the rules and regulations regarding operating a group home or an assisted living facility.

18. During the final hearing, Petitioner presented the testimony of Roshina Lakram, who testified that she knew Petitioner for 30 years and that he had been helping people struggling with drugs and mental illnesses with his sober living homes.

19. Vanessa Risch ("Risch"), the health services and facilities consultant manager for AHCA's Background Screening Unit, testified at hearing that in making the decision to deny Petitioner's exemption, AHCA considered Petitioner's entire case file including exemption application, education and training records, personal letters of support, personal attestations, one

employment reference letter, and Petitioner's explanations during the telephonic exemption hearing.

20. AHCA concluded that Petitioner was not particularly candid during the May 15, 2019, telephonic hearing, because Petitioner failed to mention prior to and during the teleconference that he has the outstanding AHCA fine in the amount of \$99,000.00 from his unlicensed activity from Case No. 2011001367.

21. Although Petitioner had some positive letters of recommendation, his failure to be candid and honest in addition to his lack of effort to make any payments toward the outstanding AHCA fine was a major consideration in the denial of Petitioner's exemption. Risch testified that Petitioner failed to meet section 435.07(3)(a) and had not demonstrated by clear and convincing evidence that he was rehabilitated.

22. At hearing, Petitioner also failed to readily admit that he owed the \$99,000.00 fine to AHCA when testifying. First, Petitioner did not own up to currently owing the monies, then testified that maybe it happened while his daughter was in the hospital, and finally inquired about a payment plan. At the time of the hearing, Petitioner had not paid any amount towards the fine nor attempted to negotiate a payment plan agreement with AHCA to pay off the delinquent fine.

Findings of Ultimate Fact

23. Upon careful consideration of the entire record, the undersigned finds that Petitioner was both credible and passionate in his testimony about his future and not wanting to work for other individuals for the rest of his life. He even testified that since it was America, he wanted his own. However, Petitioner failed to testify convincingly regarding the monies owed to AHCA. He was dismissive about his past instead of being honest and forthright regarding the outstanding \$99,000.00. Such lack of candor and accurateness regarding the delinquent AHCA fine establishes Petitioner's ineligibility for an exemption from disqualification because he has not demonstrated by clear and convincing evidence that he has been rehabilitated.

CONCLUSIONS OF LAW

24. DOAH has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57, Florida Statutes (2019).

25. Section 408.809 authorizes Respondent to conduct background screenings under certain circumstances to assure that those seeking positions within the authority of AHCA have not committed disqualifying offenses listed in that section and section 435.04. § 408.809(4), Fla. Stat.

26. Section 408.809(4), which establishes level 2 background screening requirements, provides:

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

27. Because Petitioner pled to the criminal felony charges of operating, owning, or maintaining an assisted living facility without a license, he is disqualified from employment as a direct service provider unless granted an exemption by AHCA pursuant to section 435.07.

28. Section 435.07 provides:

Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section 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:

1. Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary

condition imposed by the court for the disqualifying felony[.]

* * *

For the purposes of this subsection, the term "felonies" means both felonies prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions.

* * *

(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.

(b) The agency may consider as part of its deliberations of the employee's rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense.

(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 action is an abuse of discretion.

29. Pursuant to this statute, Petitioner, as the applicant for an exemption, must demonstrate his rehabilitation by clear and convincing evidence. This is a heightened standard, requiring more proof than a mere preponderance of the evidence. This standard requires that the evidence be found credible, the facts to which the witnesses testify be distinctly remembered, the testimony be precise and explicit, and the witnesses be lacking in confusion as to the facts at 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); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

30. In this matter, it is not necessary to make a determination as to whether AHCA abused its discretion in its initial determination to deny an exemption from disqualification. Instead, for the reasons discussed above in paragraph 23, the compelling evidence at hearing did not establish Petitioner's rehabilitation by clear and convincing evidence. Accordingly, since Petitioner failed to demonstrate rehabilitation, AHCA did not abuse its discretion in denying his request for exemption from disqualification.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Agency for Health Care Administration enter a final order upholding its denial of Petitioner's request for an exemption from disqualification for employment.

DONE AND ENTERED this 10th day of October, 2019, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of October, 2019.

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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.