

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

2020 MAY 26 A 10: 10

MARIA CLACHER,

DOAH CASE NO. 19-6185

AHCA NO. BGS\_AHCA\_201710662

Petitioner,

RENDITION NO.: AHCA- 20 -395 -FOF-SED

v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent.

**FINAL ORDER**

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Yolonda Y. Green, 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 March 23, 2020, is attached to this Final Order and incorporated herein by reference, except where noted infra.

**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 43 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 43 of the Recommended Order, the ALJ concludes “that it would be an abuse of discretion to deny Petitioner the exemption that she seeks” based on all the evidence presented at hearing.

In A.P. v. Department of Children and Families, 230 So. 3d 3 (Fla. 4th DCA 2017), an ALJ reached an identical conclusion of law based on the record evidence of that case. The Department of Children and Families (“DCF”) then entered a final order rejecting the ALJ’s conclusion of law. On appeal, the Fourth District Court of Appeal reversed the Agency’s final order, finding DCF’s rejection of the ALJ’s conclusion of law was unreasonable since DCF had

adopted all the ALJ's findings of fact, which demonstrated that A.P. had been rehabilitated and posed no danger if employed in a position of trust.

The Agency has cited to A.P. in three prior final orders as grounds for rejecting exceptions to an ALJ's conclusion of law on the issue of whether the Agency would be abusing its discretion if it denied a request for an exemption of disqualification. See Riquel Gonzalez-Salcerio v. Agency for Health Care Administration, DOAH Case No. 19-0124EXE (AHCA 2019); Aaron Jay Goodrum, M.D. v. Agency for Health Care Administration, DOAH Case No. 19-0643 (AHCA 2019); and Yaron H. Maya, O.D. v. Agency for Health Care Administration, DOAH Case No. 19-2881 (AHCA 2020). However, the record in all three of those cases clearly demonstrated ample grounds for granting the individuals' requests for an exemption from disqualification, and supported a finding that the Agency Secretary would have abused her discretion had she not granted the exemption. For instance, in each of the three cases many years had passed since the last arrest and the date of the exemption request (12 years for Salcerio, 11 years for Goodrum, and 10 years for Maya), and the individuals requesting exemption had been Medicaid providers for 5 or more years without incident prior requesting the exemption (5 years for Salcerio, 9 years for Goodrum, and 21 years for Maya).

In contrast, the record of this case is not replete with evidence favoring Petitioner; rather, there is ample record evidence that supports a determination that the Secretary of the Agency did not abuse her discretion when she denied Petitioner's request for an exemption from disqualification. Indeed, unlike the individuals in the three cases referenced above, Petitioner's most recent criminal offense occurred only 6 years ago (the offenses occurred in 2012 and 2014, as found by the ALJ in Paragraphs 5 and 6 of the Recommended Order). Also, unlike the individuals in the three cases above, Petitioner was only a Medicaid provider for 1 year without

incident before requesting the exemption (See Paragraph 27 of the Recommended Order). And, although the ALJ found in Paragraph 27 of the Recommended Order that Petitioner credibly testified she understood her mistakes, the record also demonstrates that Petitioner was evasive at the exemption hearing, did not seem to understand the nature of here offenses, and did not show any remorse. See Respondent's Exhibit 5. Moreover, the Agency cannot limit Petitioner's exemption to just caring for her sister, as the ALJ noted in Footnote 4 of the Recommended Order, and therefore must consider whether Petitioner will present a danger to the public if allowed to be a Medicaid provider.

The Agency has a responsibility to protect the citizens of Florida and does not take that responsibility lightly. Considering the nature of Petitioner's criminal offense, the fact that it has only been 6 years since Petitioner completed her probation (See Respondent's Exhibit 9), her short track record of providing services without incident thereafter, and the inconsistencies in Petitioner's testimony between the exemption hearing and the final hearing (Compare Respondent's Exhibit 5, 14:10 – 14:23 with Transcript, Pages 39-40), it would not be an abuse of discretion for the Secretary of the Agency to deny Petitioner's request for an exemption from disqualification. The Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraph 43 of the Recommended Order because it has the authority to grant or deny requests for an exemption from disqualification from being a Medicaid provider in Florida. The Agency also finds that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants Exception No. 1, and modifies Paragraph 43 of the Recommended Order as follows:

43. However, even wWith the benefit of this information, much of which was not available to the Secretary when she made her original decision, it would not be an abuse of discretion to deny Petitioner the exemption that she seeks.

**FINDINGS OF FACT**

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

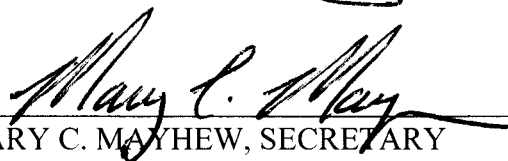
**CONCLUSIONS OF LAW**

The Agency adopts the conclusions of law set forth in the Recommended Order, except where noted supra.

**IT IS THEREFORE ADJUDGED THAT:**

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

**DONE and ORDERED** this 21 day of May, 2020, in Tallahassee, Florida.


  
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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 26<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
RICHARD J. SHOOP, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, MS #3  
Tallahassee, Florida 32308  
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**COPIES FURNISHED TO:**

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