

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

JENNIFER GARCIA,

Petitioner,

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

DOAH CASE NO. 20-~~100~~ 2007 SEP 29 P 1:33
AHCA NO. BGS_AHCA_201711517

RENDITION NO.: AHCA-20-675 -FOF-SED

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), June C. McKinney, 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 August 14, 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 and Petitioner filed a response to Respondent's exceptions.

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 66 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 66 of the Recommended Order, the ALJ concludes “that it would be an abuse of discretion under the specific circumstances of this case to deny Petitioner the exemption from disqualification 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 conclusion of law 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 competent, substantial 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 2 years ago (the offense occurred in 2018, as found by the ALJ in Paragraphs 4, 20, 43, 52 and 53 of the Recommended Order) and

only a year had passed from the date of the offense to when Petitioner requested an exemption (as found by the ALJ in Paragraphs 4 through 8 of the Recommended Order). Additionally, Petitioner was still undergoing psychotherapy for issues related to the criminal offense at the time of the hearing in this matter (See Transcript, Pages 114-115).

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 1 year since Petitioner completed her probation (See Petitioner's Exhibit 8), and the fact that she is continuing to undergo treatment for issues related to the criminal offense, 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 66 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 66 of the Recommended Order as follows:

66. Notably, the concerns expressed by AHCA in the December 20, 2019, denial letter are put to rest by the credible, clear, and convincing live testimony of Petitioner, Dr. Spero, Kroll, and Dr. Anghel that the undersigned heard at hearing to which AHCA was not privy. Dr. Spero's candid and persuasive testimony and Petitioner's Exhibit 11 clarified the circumstances of Petitioner's trauma and level of stress that caused Petitioner to act out and steal. Dr. Spero also provided details of Petitioner's treatment, described her remorse, explained her rehabilitated state, and opined she would not steal again. Kroll candidly disclosed that Costco was the victim of Petitioner's offense, not a person, and that Petitioner made full restitution early for the offense. Additionally, Dr. Anghel credibly confirmed that Petitioner is competent in the health field and he has allowed her to successfully perform her certified nurse midwife duties on non-Medicaid patients in his practice without incident or posing a threat since she has been disqualified.

Furthermore, the credible testimony at hearing also refuted the inaccurate errors and lack of details in the summary. However, even wWith the benefit of Petitioner's Exhibit 11 and all the hearing testimony, much of which was not available to the decision-maker when the original decision was made, it would not be an abuse of discretion under the specific circumstances of this case to deny Petitioner the exemption from disqualification that she seeks.

In Exception No. 2, Respondent argues the ALJ erred as a matter of law by not considering Petitioner's 2014 expunged conviction. The exception pertains to the ALJ's evidentiary ruling in Footnote 1 of the Recommended Order. The Agency is not permitted to reject or modify an ALJ's conclusions of law on an evidentiary issue because it is outside the Agency's substantive jurisdiction. See Barfield v. Dep't of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2002). Therefore, the Agency must deny Exception No. 2.

FINDINGS OF FACT

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

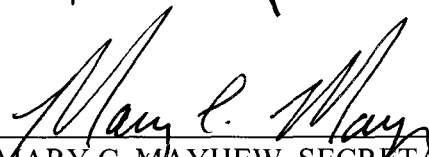
CONCLUSIONS OF LAW

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 29 day of September, 2020, in Tallahassee, Florida.



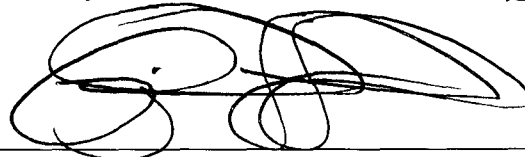
MARY C. MAYHEW, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 29th day of September, 2020.



RICHARD J. SHOOP, Agency Clerk
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