

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EDWARD HOLLINS,

Petitioner,

vs.

Case No. 20-3571

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom on November 10, 2020, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Edward Hollins, pro se  
Post Office Box 10516  
Daytona Beach, Florida 32120

For Respondent: Katie Jackson, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 7  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUES

Whether Petitioner demonstrated, by clear and convincing evidence, that he is rehabilitated from his disqualifying offense; and, if so, whether the Agency for Health Care Administration (“AHCA” or “the Agency”) would abuse its discretion by denying Petitioner’s request for an exemption from

employment disqualification, pursuant to chapter 435, Florida Statutes (2020).<sup>1</sup>

#### PRELIMINARY STATEMENT

Chapter 430, Florida Statutes, pertains to Elder Affairs, and section 430.0402(1)(a) requires that direct service providers undergo Level 2 background screening. Section 435.04(2) mandates that people convicted of certain offenses are disqualified from holding positions that require a Level 2 background screening. Via a letter dated July 17, 2020, AHCA notified Edward Hollins that his request for an exemption from disqualification from employment had been denied. In support of this decision, AHCA noted: (a) the circumstances of the criminal incident for which an exemption was sought; (b) the time period that had elapsed since the incident; (c) the nature of the harm; and (d) Mr. Hollins's history since the disqualifying incident. The letter closed by informing Mr. Hollins of his right to challenge the Agency's decision through a formal administrative hearing.

Mr. Hollins requested a formal administrative hearing, and AHCA referred this matter to DOAH on August 11, 2020. The undersigned issued a Notice scheduling the final hearing for October 16, 2020.

The undersigned experienced a scheduling conflict and issued an Order on September 17, 2020, requiring the parties to provide additional, mutual dates of availability for a final hearing between October 21, 2020, and November 25, 2020. After receiving the parties' response, the final hearing was rescheduled for October 27, 2020.

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<sup>1</sup> Unless indicated otherwise, all statutory references will be to the 2020 version of the Florida Statutes.

On October 20, 2020, the Agency filed a Motion requesting that the final hearing be continued for 14 days. The undersigned granted that Motion and ultimately rescheduled the final hearing for November 10, 2020.

The final hearing was convened as scheduled. Mr. Hollins testified on his own behalf and presented testimony from his wife, Lakesha Hollins. Petitioner's Exhibits 1 through 23 were accepted into evidence. AHCA presented testimony from Dino Iampieri and Vanessa Rich. AHCA composite Exhibit 1 and AHCA Exhibit 2 were accepted into evidence.

The one-volume Transcript from the final hearing was filed on December 1, 2020. After being granted one extension, AHCA filed a timely Proposed Recommended Order on December 18, 2020, that has been considered in the preparation of this Recommended Order. Mr. Hollins did not file a proposed recommended order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, matters subject to official recognition, and the entire record in this proceeding, the following Findings of Fact are made:

1. Mr. Hollins graduated from the University of South Florida with a bachelor's degree in accounting in 1992. He held a variety of positions before finding employment in 2000 as an accountant with Jennings Environmental, a waste management company.

2. When Waste Management purchased Jennings Environmental and conducted an audit, it discovered that Mr. Hollins had used his position as an accountant to facilitate an arrangement in which he and several of his co-workers stole money from Jennings Environmental. Mr. Hollins ultimately pled no contest to a charge of grand theft, a first-degree felony, and was

sentenced to five years in prison, 15 years of probation, and payment of restitution.

3. Mr. Hollins was released from prison in 2007 and began working for an excavation company in Daytona Beach, Florida.<sup>2</sup> He also became active with his religious faith and founded the Hope Center, a place where young people could gather to play sports and learn life skills. Mr. Hollins was involved with the Hope Center from 2008 to 2009. He also began working as a manager at a Krystal's restaurant.

4. When the Hope Center merged with a local Police Athletic League, Mr. Hollins's involvement with the Hope Center ended because his past felony caused him to fail a background check.

5. Mr. Hollins then began running a mentoring program out of his home and taught young people how to manage their finances. However, he discontinued the mentoring program in 2010 due to personal and professional demands on his time.

6. Mr. Hollins left the restaurant industry in 2010 or 2011 in order to own and operate a laundromat. That work continued until a new landlord raised the rent beyond what he could afford.

7. In January or February of 2014, Mr. Hollins began working for RNR Tire Express ("RNR"), a company specializing in tires and custom wheels. Mr. Hollins handled collections for RNR and repossessed merchandise when customers fell behind on their payments. Mr. Hollins testified that he left RNR because the work was too dangerous.

8. Dino Iampiere was the RNR manager who hired Mr. Hollins, and he testified as follows:

I want to say too that Ed is very charming, very smart. When I first hired him, I was pretty excited about him. I actually remember thinking that this

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<sup>2</sup> Mr. Hollins completed his probation on February 26, 2018, and has paid all of the restitution owed to Waste Management.

was a guy that could probably move up through promotions pretty quick with our company. However, in a very short period of time, you know, four or five months, we started noticing some irregularities in that store's collection. You know, if we've got – we monitor based on what they close and how many customers are past due. We also know what our average customer agreement value is, so we know how much money should be collected, and the money that was being collected didn't match the closing percentages that we were seeing. It took quite a while and I had to go spend quite a bit of time in the store to start figuring it out, and one thing that came very clear was I started having a lot of customers complain that their payoff amount was not going down. Now, sometimes – I hear that a lot, so at first that didn't alarm me too much because a customer's agreeing, for an example, if it's a thousand-dollar rent-to-own agreement, they can pay it off at any time at a cash sale price of half off, 50 percent off. So it's a \$500 cash balance. They come in and make a \$100 payment, that \$100 doesn't come off their \$500 balance. Half of that does. So – but then I started having customers start bring me in some receipts from before and show it to me. I started going wait a minute, this doesn't look right, something's irregular, something's wrong.

So, ultimately, what I ended up doing was I ended up coming in and getting all of the field receipt books from the counter area and the books that Ed was using and started going through those one by one in the computer, and what I started discovering was that a customer would come in maybe to put \$100 down, for example, on getting a set of wheels and tires installed on their car, but when the agreement was typed up, it was typed up with either zero dollars and done as a promotional code, or it was done with maybe 20 bucks, but the other 80 was missing.

Same thing I found in the collections area. As he was going out in the field and collecting payments

from customers, he would then come back and either three time the account with a promotional code, or he would pay partial money to the account and then free time it. He'd do one or the other. This hurts the customer double because when you free time a customer's account, that doesn't apply towards ownership. It's just free time. It's just moving their agreement forward a week or two weeks or whatever it is. So basically the paid money didn't get applied to their account.

And once we discovered that, I found hundreds of examples. And so we – I brought in a guy named Ryan, he works at the corporate office . . . Ryan came in – into the account manager's office with me as my witness as I began to question Ed on the money discrepancies and the missing funds and all of these specific receipts. Ed was obviously very, very nervous. He changed his story repeatedly. At one point he'd say, "Okay, yeah, I did it," and then he would turn around and say, "No, I didn't do it." And this went on for probably a good 45 minutes to an hour where we just finally – Ryan and I both got so frustrated we just said, "All right, listen, we're going to end your employment today with RNR and – and we're going to go ahead and seek legal remedies."

9. Mr. Iampiere estimates that Mr. Hollins stole \$7,000 to \$8,000. As for the authorities' involvement in this incident, Mr. Iampiere explained as follows:

So at that point, after I terminated Ed, we – I then contacted the police department and started a case . . . After a few months of a lot of work, we were still going back through receipt books, it was a very time-consuming, tedious task to go through one by one, match up dates and all the stuff that you got to do, the owner of RNR had decided that since we had hundreds and hundreds and hundreds of customers, the police wanted to now interview and talk to each one of those customers in order to solidify this case, and the owner, Larry Sutton, was

afraid that that would not be good on the business and decided instead of filing charges, he was just going to write this stuff off. We redid a bunch of customers' agreements to credit them the money that they had been missing and then just decided to move forward.

The interesting thing I think is important to note, A, when I interviewed Ed, I remember him talking about the church and everything as well. It was one of the things I was originally fond of him about. But, also, when – after we did not file charges, the detectives that were working the case called me back, pleading with me to continue with those charges because they said there had been other businesses that had done the same thing and Ed needed to pay a price. I went back to the owner, tried to convince him. He did not want to do it. And so it was water under the bridge at that point.

10. Mr. Iampiere was a compelling witness and his testimony regarding Mr. Hollins's tenure at RNR is credited.

11. After separating from RNR, Mr. Hollins spent three years working as a logistics specialist for U-Haul and earned several sales and service awards.

12. Mr. Hollins met his wife, Lakesha Hollins, in 2014. She founded and runs a mentoring program called Arising Phenomenal Princess ("APP"). APP is a not-for-profit organization "created to empower young ladies to live out their full potential in Christ." The organization works to enrich the lives of young women between the ages of 7 and 21 by "providing weekly Bible study, career and college preparation, life skills training, peer to peer mentoring, etiquette classes, self-esteem workshops, leadership training, and character building."

13. Mr. Hollins facilitated a partnership between APP and a church in Daytona Beach, organized APP's finances, and eventually became APP's chief financial officer.

14. After Mr. Hollins left U-Haul, he and his wife founded a daycare facility called Cradles of Greatness. At the time of the final hearing in this matter, Cradles of Greatness was caring for 40 children.

15. Mr. Hollins has completed a substantial amount of training relevant to working in a daycare facility. He has earned certifications from the Department of Children and Families (“DCF”) in the following areas: Health, Safety, and Nutrition; Child Care Facility Rules & Regulations; Child Growth and Development; Identifying and Reporting Child Abuse and Neglect; Behavioral Observation and Screening; Understanding Developmentally Appropriate Practices; and Preschool Appropriate Practices. Mr. Hollins also has training in adult and pediatric first aid, CPR, emergency planning, child safety and prevention, health and sanitation, precautions in transporting children, safe sleep practices, and preventing child abuse and trauma.

16. Mr. Hollins’s position with Cradles of Greatness required him to undergo a background screening. DCF initially determined that Mr. Hollins’s grand theft conviction disqualified him from working in a position having direct contact with children or vulnerable adults served by programs regulated by DCF. Following a formal administrative hearing on February 13, 2019, the Honorable Yolanda Y. Green determined via a Recommended Order issued on March 27, 2019, that Mr. Hollins had shown by clear and convincing evidence that he was rehabilitated from his disqualifying offense.<sup>3</sup>

17. While the exact nature of the position he is seeking to hold with a home healthcare company is not in the record, Mr. Hollins testified that he was seeking to work as a chief financial officer. However, he has not demonstrated by clear and convincing evidence that he is rehabilitated from his disqualifying offense.

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<sup>3</sup> DOAH’s case management system does not indicate whether DCF has issued a final order adopting or rejecting Judge Green’s recommendation.



## CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 435.07, Fla. Stat.

19. Section 430.0402(1)(a) mandates that a Level 2 background screening is required for direct service providers. Section 430.0402(1)(b) defines a “direct service provider” as:

A person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the elderly, has direct, face-to-face contact with a client while providing services to the client and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term includes coordinators, managers, and supervisors of residential facilities and volunteers.

20. With regard to Level 2 screening standards, section 435.04(2) provides that:

[t]he security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction . . .

21. Section 435.04(2) goes on to enumerate several offenses resulting in employment disqualification, and section 435.04(2)(cc) refers to “theft, robbery, and related crimes, if the offense is a felony.”

22. Because Mr. Hollins pled no contest to a charge of grand theft, a first-degree felony, he is disqualified from being a direct service provider.

23. However, section 435.07 authorizes an agency head to grant a person otherwise disqualified under section 435.04 an exemption from disqualification under certain circumstances. In that regard, section 435.07(3)(a) provides that:

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.

24. Clear and convincing evidence is a heightened standard requiring more than a mere preponderance of the evidence. *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). This evidentiary standard has been described as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in 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)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

25. Section 435.07(3)(c) provides that the agency head's decision to grant or deny 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 head's intended action is an abuse of discretion."

26. Therefore, even if the applicant demonstrates rehabilitation, he or she is only eligible for an exemption, not entitled to one. The agency head possesses the discretion to deny an exemption request, but may not lawfully do so if the denial would constitute an abuse of discretion. *See J.D. v. Dep't of Child. & Fams.*, 114 So. 3d 1127 (Fla. 1st DCA 2013); *see also Heburn v. Dep't of Child. & Fams.*, 772 So. 2d 561 (Fla. 1st DCA 2000).

27. Under the highly deferential “abuse of discretion” standard, if reasonable persons could differ as to the propriety of the agency action taken, then the action is not unreasonable and there can be no finding of an abuse of discretion. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). Conversely, if the agency’s denial of the exemption request is unreasonable, then its action constitutes an abuse of discretion. *See Canakaris*, 382 So. 2d at 1203 (discretion is abused when the action is arbitrary, fanciful, or unreasonable).

28. In reconciling the “abuse of discretion” standard mandated by chapter 435 with the “de novo” proceeding provided by chapter 120, the First District Court of Appeal has stated that while:

The ultimate legal issue to be determined by the ALJ in a proceeding under section 435.07(3)(c) is whether the agency head’s intended action was an ‘abuse of discretion,’ the ALJ is to evaluate that question based on facts determined from the evidence presented at a de novo chapter 120 hearing.

*J.D.*, 114 So. 3d at 1132.

29. The evidence does not clearly and convincingly demonstrate that Mr. Hollins has been rehabilitated since the disqualifying offense. While Mr. Hollins carried his burden of proof in Judge Green’s case, there are at least two facts that distinguish the instant case from Judge Green’s.<sup>4</sup> First,

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<sup>4</sup> Even if it were to be assumed that DCF granted an exemption to Mr. Hollins, that exemption is not binding on AHCA in its decision on a request for exemption to act as a

Judge Green’s case involved Mr. Hollins’s effort to obtain an exemption so that he could operate a daycare facility, and there is no evidence suggesting that Mr. Hollins is a danger to children. The other distinguishing factor is that Judge Green did not have the benefit of Mr. Iampiere’s testimony. Section 435.07(3)(a) requires an agency head to consider the applicant’s history “since the incident,” and Mr. Iampiere’s credible testimony cast considerable doubt on whether Mr. Hollins can be entrusted with others’ money. Accordingly, AHCA would not be abusing its discretion by denying Mr. Hollins’s request for an exemption from employment disqualification as it relates to providing direct service to elderly clients, including access to their funds, personal property, and personal identification information.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration deny Edward Hollins’s request for an exemption from employment disqualification.

DONE AND ENTERED this 19th day of January, 2021, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
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direct care provider to elderly clients. § 435.07(5), Fla. Stat. (providing that “[e]xemptions granted by one agency shall be considered by subsequent agencies, but are not binding on the subsequent agency.”).

Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of January, 2021.

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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.