

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████ )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-1744  
 )  
AGENCY FOR PERSONS WITH )  
DISABILITIES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the formal hearing of this case on June 8, 2009, in ██████████, Florida, for the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: ██████████  
(██████████)

For Respondent: Beverly Hunt Diehr, Esquire  
Department of Children and  
Family Services  
9393 North Florida Avenue, Room 902  
Tampa, Florida 33612

STATEMENT OF THE ISSUE

The issue is whether Respondent should deny Petitioner's request for exemption from disqualification for employment in a position of trust pursuant to Subsection 435.07, Florida Statutes (2008).<sup>1</sup>

PRELIMINARY STATEMENT

By letter dated February 17, 2009, Respondent notified Petitioner that Respondent proposed to deny Petitioner's request for exemption. Petitioner timely requested an administrative hearing, and Respondent referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner testified, presented the testimony of three other witnesses, and submitted two exhibits for admission into evidence. Respondent presented the testimony of three witnesses and submitted 10 exhibits.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the record of the hearing. Neither party requested a transcript of the hearing. Petitioner and Respondent timely filed their respective Proposed Recommended Orders on June 17 and 18, 2009.

FINDINGS OF FACT

1. Petitioner is a [REDACTED], approximately [REDACTED] old. Petitioner is seeking a non-licensed, non-certified employment position working with developmentally disabled adults (a position of trust). Respondent is a state agency that is responsible, in relevant part, for regulating the employment of persons in a position of trust.

2. On August 25, 2008, Respondent disqualified Petitioner from employment after receiving the results of a background

screening conducted pursuant to Section 435.04 (a Level 2 screening). On September 9, 2008, Petitioner requested an exemption from disqualification from employment.

3. The Level 2 screening results showed that Petitioner was [REDACTED] disqualifying criminal convictions in [REDACTED] [REDACTED]. The convictions occurred from [REDACTED], a few days before Petitioner's [REDACTED] birthday, through [REDACTED], a few weeks before Petitioner's [REDACTED] birthday.

4. Petitioner does not dispute that [REDACTED] was convicted of [REDACTED] [REDACTED] that disqualify [REDACTED] from employment. The disqualifying convictions and the dates of conviction are:

- a. [REDACTED], a disqualifying [REDACTED] pursuant to Subsection 435.04(2)(u);<sup>[2]</sup>
- b. [REDACTED], a disqualifying [REDACTED] pursuant to Subsection 435.04(2)(ii);
- c. [REDACTED], a disqualifying [REDACTED] pursuant to Subsection 435.04(2)(w);
- d. [REDACTED], a disqualifying [REDACTED] pursuant to Subsection 435.04(2)(u);
- e. [REDACTED], a disqualifying [REDACTED] pursuant to 435.04(2)(oo);
- f. [REDACTED], a disqualifying [REDACTED] pursuant to Subsection 435.04(2)(u);

g. [REDACTED],  
a disqualifying [REDACTED] pursuant to Subsection  
435.04(2)(ii);

h. [REDACTED], a  
disqualifying [REDACTED] pursuant to Subsection  
435.04(2)(u);

i. [REDACTED], a  
disqualifying [REDACTED] pursuant to 435.04(2)(oo);

j. [REDACTED], a  
disqualifying [REDACTED] pursuant to 435.04(2)(oo);

k. [REDACTED], a  
disqualifying [REDACTED] pursuant to 435.04(2)(oo);

l. [REDACTED], a  
disqualifying [REDACTED] pursuant to 435.04(2)(oo);

5. Evidence of the circumstances surrounding the disqualifying  
criminal convictions does not show harm to an individual, other  
than Petitioner, or the public. There is no evidence that the  
convictions for [REDACTED] harmed anyone.  
There is no evidence of a victim, within the meaning of  
Subsection 435.07(3), in any of the criminal convictions.

6. The only prison sentence Petitioner ever received was a  
sentence of [REDACTED] after the [REDACTED]  
on [REDACTED]. Petitioner successfully completed the  
sentence and was not sentenced to prison for any subsequent  
convictions, including the two convictions for [REDACTED]

[REDACTED]  
[REDACTED]. Rather, the

respective courts ordered Petitioner to complete drug programs and undergo drug testing.

7. The time that has elapsed after the last disqualifying conviction on [REDACTED], is sufficient for Petitioner to have rehabilitated [REDACTED]. For example, Petitioner rehabilitated [REDACTED] sufficiently to obtain an exemption from the [REDACTED]

8. In the time that has elapsed after the last disqualifying conviction, Petitioner successfully completed [REDACTED] remaining probation on [REDACTED]; earned [REDACTED] graduate equivalency diploma (GED) on [REDACTED]; and, as of the end of the Spring Semester of [REDACTED], completed 63 credit hours at [REDACTED] working toward an associate degree in applied science.

9. Petitioner has an educational goal of graduating from the Paralegal Degree Program at MCC and becoming a paralegal. The person who teaches the paralegal program at MCC testified at the hearing for Petitioner. The program manager for the Paralegal Degree Program at [REDACTED] is a licensed attorney in the state and wrote a letter supporting Petitioner's request for exemption. Seven of Petitioner's former employers also wrote letters of recommendation.

10. Petitioner has also completed CPR certification, AHCA Homemaker and Companion License, and a Validation Certificate from Respondent in medication administration. Petitioner has earned a Senior Care Pharmacy Training Certificate and completed 40 hours of training as a nursing assistant. Petitioner has completed eight hours of training in medical record documentation and four hours of training in basic medical skills to prevent and control AIDs and other infections disease and patient's rights. Petitioner has completed a supported living pre-service training offered by Respondent, a work readiness program. Finally, Petitioner has a Baptismal Certificate from the church [REDACTED] attends, The [REDACTED].

11. The history of Petitioner after the last disqualifying conviction is another factor that Respondent is statutorily authorized to consider in determining whether to grant the requested exemption. It is less than clear and convincing from the history of Petitioner after the last disqualifying conviction that Petitioner would not present a danger to those in [REDACTED] care if Respondent were to employ Petitioner in a position of trust.

12. On [REDACTED], a jury convicted Petitioner of the felony of [REDACTED]. The court fined Petitioner and sentenced [REDACTED] to [REDACTED] with

credit for time served. The court entered a judgment for [REDACTED] on [REDACTED].

13. The circumstances of the [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] During the custody dispute, a civil court entered two final judgments for injunction protecting against repeat violence by Petitioner. After a hearing on [REDACTED], the court found that the then-legal guardian of Petitioner's [REDACTED]

[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]

14. [REDACTED], the court found Petitioner guilty of [REDACTED]

[REDACTED]

15. On [REDACTED], the court found Petitioner guilty of violating the terms of [REDACTED] probation. The court revoked the probation, found Petitioner guilty of [REDACTED] and sentenced Petitioner to [REDACTED]<sup>5</sup>

CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the parties to and subject matter of this case. §§ 120.569 and 120.57(1). DOAH provided the parties with adequate notice of the administrative hearing.

17. Petitioner has the burden of proof in this proceeding. § 435.07(3). Petitioner must show by clear and convincing evidence that Petitioner is entitled to an exemption from disqualification. Id.

18. In order for Respondent to grant an exemption to Petitioner, Petitioner must demonstrate by clear and convincing evidence that ■■■ should not be disqualified from employment. Id. Evidence of sufficient rehabilitation, includes, but is 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 Petitioner since the incident, or any other evidence or circumstances indicating that Petitioner will not present a danger to others if ■■■ were employed in a position of trust. Id.

19. Petitioner satisfied the burden of showing that the circumstances surrounding the disqualifying criminal convictions do not disqualify Petitioner from employment in a position of trust. Petitioner also showed that the time period after the last disqualifying criminal conviction has been sufficient for Petitioner to be rehabilitated. Petitioner has made remarkable strides and achieved significant personal growth relative to the abject origin of ■■■ journey.

20. It is less than clear and convincing from the history of Petitioner in the last five years that Petitioner is ready to care for developmentally disabled adults. The relevant history includes a felony conviction, 364 days in jail, two injunctions for threatened violence, and contempt of court.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, it is

RECOMMENDED that Respondent enter a final order denying Petitioner's application for exemption.

DONE AND ENTERED this 6th day of July, 2009, in Tallahassee, Leon County, Florida.

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DANIEL MANRY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of July, 2009.

ENDNOTES

<sup>1/</sup> References to subsections, sections, and chapters are to Florida Statutes (2008), unless otherwise stated.

<sup>2/</sup> The court's adjudication was a "finding of delinquency," within the meaning of Subsection 435.07(1)(d), rather than a "conviction" because Petitioner was not an adult at the time.

<sup>3/</sup> Petitioner also has [REDACTED] sons. The youngest, [REDACTED], resides with Petitioner. The oldest, [REDACTED], has his own family and resides in another state.

<sup>4/</sup> The [REDACTED] at dinner with the legal guardian was the minister of the family's church.

<sup>5/</sup> Respondent submitted evidence of multiple traffic violations committed by Petitioner during her history after the disqualifying criminal convictions. The trier of fact does not rely on this evidence as a basis for any findings of fact.

COPIES FURNISHED:

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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.