



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Jan 25, 2024, 9:27 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 23-FH3179

[REDACTED]

PETITIONER,

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

On December 19, 2023, Petitioner requested a Fair Hearing based on Respondent's termination of Behavior Analysis services. This request is identical to another made on September 29, 2023, which resulted in a Final Order being rendered on December 6, 2023.

The Supreme Court of the United States holds that Res Judicata "is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts". *Federated Department Stores, Inc.*, 452 U.S. 394, 401, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). The Supreme Court further explained that, "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Id.* 452 U.S. at 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). "[R]es judicata does not require the precluded claim to actually have been litigated; its concern, rather, is that the party against whom the doctrine is asserted had a full and fair opportunity to

litigate the claim." *EDP Med. Comput. Sys., Inc. v. United States*, 480 F.3d 621, 624 (2d Cir. 2007). In other words, rehearing issues of fact or law is prohibited if the parties already had an opportunity to litigate those issues and a valid and final determination was made with respect to those issues. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S.Ct. 1293, 1303 (2015). The test to determine whether an order is final in nature is whether the case is disposed of by the order. *Taylor v. Dept. of Children and Families*, 81 So. 3d 566 (Fla. 4th DCA 2012); citing *Hill v. Div. of Retirement*, 502 So. 2d 456 (Fla. 1st DCA 1986). "It is now well settled that res judicata may be applied in administrative proceedings." *Thomson v. Department of Environmental Regulation*, 511 So.2d 989, 991 (Fla. 1987); and see Restatement (Second) of Judgments § 83 *Adjudicative Determination by Administrative Tribunal* (1982).

In the context of Fair Hearings before the Agency for Health Care Administration ("Agency" or "AHCA"), Rule 59G-1.100(14)(b), Florida Administrative Code, states that "[t]he Hearing Officer may find that a Fair Hearing is abandoned if the recipient or enrollee fails to appear at a properly noticed Fair Hearing without good cause." *Accord* 42 C.F.R. § 431.223 (2017). Rule 59G-1.100(18)(h), Florida Administrative Code, states that "[r]ehearing or reconsideration of a Final Order is prohibited under this rule." Consistent with Res Judicata, this prevents duplicative testimony and judgments made with respect to a Final Order already rendered.

In the instant case, the Notice of Action ("NOA") is dated September 12, 2023, and the Notice of Reconsideration Determination ("NRD") is dated September 26, 2023. However, the records of the Office of Fair Hearings show that on September 29, 2023, Petitioner requested a Fair Hearing based on the same Behavior Analysis services in AHCA Case Number 23-FH2511. The relevant NOA is dated September 12, 2023, and the NRD is dated September 26, 2023, which are

identical to the instant case. A Final Order was rendered in AHCA Case Number 23-FH2511 on December 6, 2023, after a Fair Hearing scheduled on November 17, 2023, was conducted whereat Petitioner failed to appear without good cause.¹ The Final Order of December 6, 2023, held that Petitioner had abandoned the Fair Hearing and adjudged the matter closed. Because the Fair Hearing of November 17, 2023, afforded Petitioner a full and fair opportunity to litigate the issues raised in the subject NOA and NRD, the undersigned concludes that Res Judicata bars the rehearing of the claim in the instant case.

On January 12, 2024, the undersigned issued an Order to Show Cause (“Order”) why the Fair Hearing request should not be dismissed under the doctrine of Res Judicata and Rule 59G-1.00(18)(h), Florida Administrative Code. The Order notified Petitioner that failure to comply with the Order on or before January 22, 2024, would result in dismissal of the case.


In this case, the Office of Fair Hearings did not receive, on or before January 22, 2024, a response to the Order.

Based on the foregoing,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

The case is dismissed and is now closed.

DONE and ORDERED this 25th day of January, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
23-FH3179
2024.01.25 08:26:47
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Kimberly Roche, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings

¹ The Final Order of December 6, 2023, concludes with a “NOTICE OF RIGHT TO JUDICIAL REVIEW”, wherein instructions and the time frame for further review of that Final Order is provided.

2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

NOTICE OF A 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.

COPIES FURNISHED TO (w/ enclosure):

[REDACTED]
[REDACTED]

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**