

HAWAI`I CIVIL RIGHTS COMMISSION

STATE OF HAWAI`I

MAUI FAMILY SUPPORT SERVICES,)	D.R. NO. 07-16
INC.,)	
) Petitioner	ORDER SUMMARILY GRANTING
) vs.	PETITION FOR DECLARATORY
) RELIEF	
) '07 APR 13 A7:29	
WILLIAM D. HOSHIJO, EXECUTIVE)	
DIRECTOR,)	
) Respondent.	CIVIL RIGHTS COMMISSION
) HONOLULU HAWAII	
) _____	
)	

ORDER SUMMARILY GRANTING PETITION FOR DECLARATORY RELIEF

I. INTRODUCTION

On March 26, 2007, Maui Family Support Services, Inc., filed a Petition for Declaratory Relief seeking a declaration on whether state law prohibiting employment discrimination because of arrest and court record is violated when providers in the Early Head Start Program obtain information from current and prospective employees about arrests for child abuse, as required by federal law.

Under HAR § 12-46-64, the Executive Director is required to be made a party respondent. On April 9, 2007, the Executive Director filed a memorandum in response to the Petition and stated that HRS § 378-3(1) provides a broad statutory exception so that "[i]nquiries into and consideration of the criminal

histories of current and prospective employees that are expressly required or allowed by federal law will fall under this statutory exception."

II. FACTS

Petitioner Maui Family Support Services, Inc., is a provider of services under grants from the Early Head Start Program. Pursuant to 45 C.F.R. § 1301.31(b)(2), the Early Head Start Program requires providers to obtain statements from current and prospective employees regarding any arrests for child abuse and the disposition of the cases.¹ Petitioner is concerned that requiring such information may violate state law.

III. LEGAL ANALYSIS

HRS § 378-2(1) prohibits discrimination because of arrest and court record.² HRS § 378-2(1)(C) prohibits an employer from

¹45 C.F.R. § 1301.31(b)(2), provides:

(b) Staff recruitment and selection procedures.

- ...
- (2) Grantee and delegate agencies must require that all current and prospective employees sign a declaration prior to employment that lists:
- (i) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;
 - (ii) Convictions related to other forms of child abuse and neglect[.]

²"Arrest and court record" includes any information about an individual having been questioned, apprehended, taken into custody or detention, held

making any inquiry of prospective employees about their arrest and court record. But HRS § 378-2.5(b) allows an employer to inquire into convictions after making a conditional job offer, and HRS § 378-2.5(d) allows certain employers to inquire into convictions at any time. Requesting information from current and prospective employees about arrests, as opposed to convictions, for child abuse would be an unlawful inquiry under HRS § 378-2(1)(C).

However, HRS § 378-3(1) provides that "Nothing in this part shall be deemed to: (1) Repeal or affect any law, ordinance, or government rule having the force and effect of law[.]" The Executive Director's Memorandum states that federal regulations which require providers in the Early Head Start Program to obtain information about arrests for child abuse fall within the exception created by HRS § 378-3(1).

III. DISPOSITION AND ORDER

The Executive Director's position does not conflict with the declaration sought by the Petitioner. Under HAR § 12-46-63(1), the Commission will summarily grant the petition on the grounds

for investigation, charged with an offense, served a summons, arrested with or without a warrant, tried, or convicted pursuant to any law enforcement or military authority.

HRS § 378-1.

that under the facts and legal analysis set forth above, there is no dispute that a provider of services under the Early Head Start Program can require current and prospective employees to provide information about arrests for child abuse under 45 C.F.R. § 1301.31(b)(2) without violating state law on arrest and court record discrimination.

DATED: Honolulu, Hawaii. April 12, 2007.


CORAL WONG PIETSCH, CHAIR


LISA WONG, COMMISSIONER


SARA BANKS, COMMISSIONER


DESLIE ALAN UEOKA, COMMISSIONER