

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Charlotte Gerhardstein,

Appellant,

v.

Case No. 2013-REC-02-0044

Department of Job & Family Services, and
Department of Administrative Services,

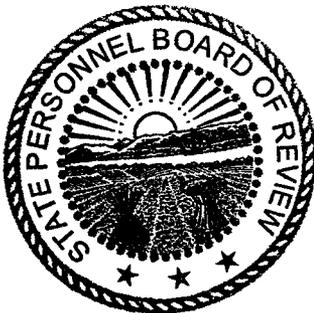
Appellees.

ORDER

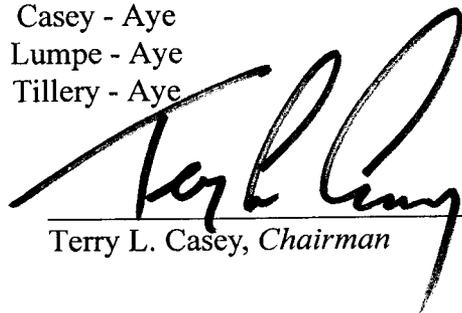
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the Class Plan Review Determination of the Department of Administrative Services be **MODIFIED** and Appellant's position be reclassified to ODJFS Program Administrator 1 (64291), pursuant to Ohio Revised Code Sections 124.03 and 124.14.



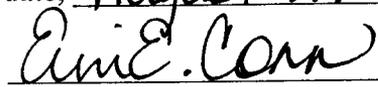
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, August 29, 2013.


Anne E. Conn
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Charlotte Gerhardstein,

Case No. 13-REC-02-0044

Appellant

v.

July 1, 2013

DEPARTMENT OF JOB AND FAMILY SERVICES and
DEPARTMENT OF ADMINISTRATIVE SERVICES,

Appellees

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came to be heard at pre-hearing on February 26, 2013, and at record hearing on June 17, 2013. Present at the hearing was Appellant, Charlotte Gerhardstein, who appeared *pro se*. Appellee Department of Job and Family Services (ODJFS) was present through its designees, Janet Kaplan, Intermittent Program Administrator 3, and Dan Shook, ODJFS Program Administrator 2, and was represented by Nicole S. Moss, Senior Staff Attorney. Appellee Department of Administrative Services (DAS) was present through its designee, Ashley Hughes, Human Capital Management (HCM) Manager for the Classification and Compensation Unit (Class/Comp).

This cause came on due to Appellant's February 1, 2013, timely filing of appeal from the reclassification of her position from Management Analyst Supervisor 2 (63216) (Pay Range 14) to Human Services Program Administrator 3 (69417) (Pay Range 14), effective with the payroll period beginning January 13, 2013. This Class Plan Review Determination was a result of DAS's deletion of Appellant's former Class of Management Analyst Supervisor 2 from the State Class Plan. Because this reclassification resulted in a lateral move, Appellant was not placed into "Step X" pursuant to R.C. 124.14 (A).

Appellant believes the Classification of ODJFS Program Administrator (PA) 1 (64291) (Pay Range 15) would better fit Appellant's duties.

At hearing, Appellant and Appellees waived their respective opportunities to offer oral or written closing statements. The instant record was then closed.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, three witnesses testified, in accordance with O.A.C.124-7-03 ("Procedure in reclassification appeals").

First to testify was **Charlotte Gerhardstein, Appellant**, whose position is currently classified as Human Services Program Administrator 3.

Next to testify was **Dan Shook**, Appellant's supervisor, whose position is classified as ODJFS Program Administrator 2.

Last to testify was **Ashley Hughes**, HCM Manager.

Appellant began her testimony by indicating that she works in the Bureau of Fiscal Accountability (BFA) in the Office of Families and Children (OFC). Appellant stated she has five subordinates. Two of Appellant's subordinates are classified as Management Analysts Supervisor 1s. One is classified as a Management Analyst Supervisor 2, and the other is classified as an Office Assistant 3. Within the Bureau, Appellant reports to Dan Shook, who is currently classified as an ODJFS Program Administrator 2 and is the Bureau Chief of the Bureau of Fiscal Accountability. Appellant's supervisor reports to OFC Deputy Director Jennifer Justice.

Appellant stated in her role she serves as an assistant to the Program Administrator. She explained that her office supports all the internal bureaus and programs as well as supports the counties, private agencies, and juvenile courts. Appellant emphasized that her duties are 100 percent fiscal. She explained that her unit creates all the budgets for all the offices and program areas within the Office of Families and Children.

Appellant went on to describe how the Bureau manages the Title IV-E Program, a federal program that subsidizes the cost of care for eligible youth placed in foster care. The BFA manages the fiscal maintenance, administration,

as well as the policies for the whole program. Appellant explained that, for example, after a juvenile court applies for Title IV-E and becomes a participant, her unit reimburses the individuals for their expenses.

Appellant indicated her unit supports the program areas with the contracts in which they have entered. Her unit reviews and approves invoices. Appellant stated her unit serves as a liaison for all audits, both state and federal. Appellant also assists in formulating corrective action plans when violations are found. In addition, her unit is responsible for receiving and reconciling grants and ensuring the money is distributed correctly.

In terms of compliance, Appellant indicated her unit is responsible for ensuring the program areas are in compliance with fiscal rules and regulations. She indicated, however, there are policy developers who formulate the policy. In addition, Appellant emphasized that she supports all of the programs from a fiscal standpoint.

Appellant indicated she does not feel the Human Services Program Administrator 3 is the proper Classification because the Major Worker Characteristics require knowledge of social or behavioral science or pre-medicine. (Joint Exhibit G7) Appellant stated that while she works in a human services area, her background is in business administration and fiscal accounting. She stressed that if she applied to this position based on its current HSPA 3 Class, she would not meet the minimum qualifications.

Appellant also disagreed with the asterisks in the HSPA 3 Major Worker Characteristics that stated the accounting, finance, and budgeting aspect of the position would be developed after employment. Appellant did not feel the expertise her position requires could be obtained by on the job training; it would require existing knowledge of business administration, finance, and accounting.

Appellant also indicated that her unit developed a training program for juvenile courts on how to allocate costs and prepare and submit monthly and quarterly billings.

Appellant's supervisor, Mr. Shook, emphasized that in his absence Appellant is fully in charge of the Bureau. He stated if there is a meeting that he is unable to attend or if he is on vacation, Appellant will attend the meeting in his

place. Mr. Shook expressed that Appellant represents both him and the Bureau at those meetings.

In addition, Mr. Shook clarified that while Appellant does provide input from a policy perspective, she does not write policy. Her participation is on the fiscal side. Mr. Shook stated that his Bureau is responsible for doing a preliminary determination of what programs the budget can continue to support, what it can no longer support, or present reasons why the Bureau needs additional monies to continue to support the programs it is currently running. The preliminary budget is then submitted to Michael McCreight, Assistant Director, and Jennifer Justice, Deputy Director, for review and approval. Mr. Shook stated that for the last year, he has been working with Appellant to help her better understand how to build and implement the budget.

DAS, in the person of Ashley Hughes, Human Capital Management Manager, stated that Appellant was exempt from the bargaining unit because of her supervision assignments. Ms. Hughes stated the reclassification determination is based on a duties test. Ms. Hughes identified the following duties Appellant provided in the position survey: managing fiscal accountability for Title IV-E; monitoring and evaluating contracts; initiating action with public and private agencies that fail to comply with regulations; working with counties to designate a corrective action plan; and supervising assigned staff.

Ms. Hughes went on to read the text added to the HSPA 3 Classification on December 30, 2012. It reads as follows:

Or in ODJFS, performs one of the preceding duties or plans, directs & oversees statewide guidance to counties &/or providers to ensure compliance with state & federal laws, rules & regulations (e.g., development of business requirements & processes that meet client & provider needs to facilitate statewide program delivery; monitoring statewide system &/or program usage & issues to ensure consistent application within all counties &/or adherence to performance expectations; programmatic & related fiscal requirements under partnership & other agency agreements for allowable program reimbursements & serves as liaison with the Office of Fiscal Services in management or program funds; compliance reviews, enforcement actions & development of corrective action plans) & supervises assigned staff.

Ms. Hughes elaborated that it was DAS's position that Appellant's duties fit into the "plan, direct, & oversee statewide guidance to counties &/or providers to ensure compliance with state & federal laws, rules & regulations" duties described in the HSPA 3 Classification. Ms. Hughes also stated that DAS felt Appellant was performing "programmatic & related fiscal requirements under partnership & other agency agreements for allowable program reimbursements & serves as liaison with the Office of Fiscal Services in management or program funds." Ms. Hughes stated that it appeared that Appellant performed those duties in conjunction with the Title IV-E and Cost Report Agreed Upon and Procedures program and that Appellant testified she performed those duties for all programs.

Ms. Hughes addressed Appellant's suggestion that Appellant's duties are better classified under the ODJFS PA 1 Classification. Ms. Hughes stated that the ODJFS PA 1 Class Series Purpose states the reason for the occupation is to direct and administer an assigned program. Ms. Hughes went on to say that Appellant does not manage or a direct a program, and therefore, would not fall into the Series Purpose. Ms. Hughes indicated that the HSPA 3 was a better fit because the Series Purpose discusses implementing a human services program. Ms. Hughes stated it was DAS's position the fiscal components are part of implementing the human services programs within the Office of Families and Children.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth, above, whether express or implied.

Next, I find as accurate and so adopt the duties outlined in Appellant's Position Description and in her testimony at hearing.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether an employee who performs primarily fiscal duties, including some of the duties outlined in the Human Services Program Administrator 3 Class (Appellant's current Class), should have her Classification Plan Review Determination affirmed, when

Appellant suggests her position should be reclassified to ODJFS Program Administrator 1? Based on the findings set forth, above, and for the reasons set forth, below, we must answer that Appellant's position appears to be better classified as an ODJFS Program Administrator 1. Accordingly, this Board should modify DAS's instant Class Plan Review Determination

The Class Concept for the Human Services Program Administrator 3 (69417) Class reads:

The third level management class works under administrative direction & requires thorough knowledge of social or behavioral science or comparable field & applicable federal/state regulations in order to direct & coordinate district or regional human services program function & supervise program supervisors, or to formulate & direct implementation of human services program policies, procedures, goals & objectives having statewide impact, or to plan & administer activities of one bureau having statewide impact and supervise subordinate program or supervisory personnel, or to plan, implement & administer medical cost containment program (i.e., only one position per agency) & all related activities for one agency & supervise assigned staff or in ODJFS, performs one of the preceding duties or plan, direct & oversee statewide guidance to counties &/or providers to ensure compliance with state & federal laws, rules & regulations (e.g., development of business requirements & processes that meet client & provider needs to facilitate statewide program delivery; monitoring statewide system &/or program usage & issues to ensure consistent application within all counties &/or adherence to performance expectations; programmatic & related fiscal requirements under partnership & other agency agreements for allowable program reimbursements & serves as liaison with the Office of Fiscal Services in management or program funds; compliance reviews, enforcement actions & development of corrective action plans) & supervises assigned staff.

The Class Concept for the ODJFS Program Administrator 1 (64291) Class reads:

The first administrative level class works under administrative direction & requires thorough knowledge of employment services management & administration in order to serve as assistant program administrator & assist higher-level program administrator in planning & developing program activities & to evaluate & coordinate activities of assigned program area, or to do all of preceding & supervise staff.

Given the time constraint as well as the number of reclassifications DAS has been required to complete, it is understandable how DAS would have reclassified Appellant's position to the Human Services Program Administrator 3 Classification. Although DAS made major modifications to the HSPA 3 Classification, it does not provide much clarification as to Appellant's job function or sufficiently define the duties she performs. DAS stated the management designee's feedback was incorporated and became effective December 30, 2012, prior to the Appellant being placed into that Classification. However, the management designee's response does not state that the HSPA 3 Classification was a good fit for Appellant. The management designee's response states that "an option needs to be added for a level that is responsible for statewide program performance management ... with an option to supervise. ODJFS plans to submit an update to the existing class plan to correct this plan." (Joint Exhibit D1)

Based on the information added to the HSPA 3 Classification, it does not appear the management designee's changes were wholly incorporated into the Series. The only changes made to the Human Services Program Series were to the HSPA 3, not to the other Classifications. The changes made to the HSPA 3 Class could likely result in a myriad of positions being classified as HSPA 3 when those positions could otherwise be classified under a more specific job-related Specification. Utilizing the more job-related Specification is consistent with DAS's long-standing practices.

The Human Services Program Series Purpose states, "At the higher levels, incumbents supervise or administer human services programs & formulate & direct implementation of human services program policies, procedures, goals, & objectives." (emphasis added) As an HSPA 3, Appellant would fall into the higher level Classification. Appellant and her supervisor stated she does not formulate or develop policy. This would mean that Appellant does not fit into the HSPA 3 Classification in accordance with the requirements of the Series Purpose. On the other hand, the ODJFS PA 1 Specification states, "Advises

program administrator on policy issues; recommends changes in states &/or federal law & agency policies & procedures." Appellant's supervisor testified that while Appellant does not formulate policy, she does provide input to the policy writers within the Bureau.

The rationale provided by DAS for not placing Appellant into the ODJFS Program Administrator 1 position was that the Series Purpose states the individuals direct and administer an assigned program. However, the Series Purpose goes on to state, "At the first level incumbents serve as assistant program administrator in assigned area of program/division." It appears that while Appellant may not manage or direct a specific program, she does, as identified in the ODJFS PA 1 Specification "assist higher-level program administrator in planning and developing program activities & evaluates & coordinates activities of assigned program area, direct implementation of policies & procedures & serves as liaison & coordinates information." (Appellant Exhibit T1)

DAS's interpretation that Appellant does not manage or direct a program and therefore could not meet the Series Purpose/Class Concept does not appear to coincide with the description provided for an incumbent at the first level within the ODJFS program administrator occupation. It states the incumbent serves as assistant program administrator and assists higher-level program administrator. Appellant's supervisor testified that Appellant is responsible and in charge of the Bureau in his absence. Additionally, he stated that Appellant attends upper-level management meetings in his stead where she serves as the Bureau representative. This task is also described in the ODJFS PA 1 Class Concept under "attends &/or represents program administrator at meetings & conferences."

In addition to the duties mentioned above, the ODJFS PA 1 Class Concept calls for the incumbent to monitor the progress of employment services offices in meeting established performance standards, recommend corrective steps and coordinate technical assistance or other resources as needed. This aspect is also a portion of Appellant's job duties. Appellant acts as a liaison for audits and works with county directors on corrective action plans as needed.

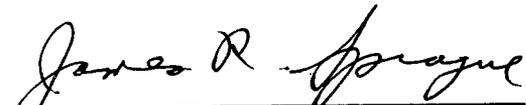
While Appellant's duties may meet the 20 percent threshold for the HSPA 3 Classification, it appears the ODJFS PA 1 Classification more closely mirrors the duties performed by Appellant. In accordance with DAS's long-standing practice

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to classify employees in the more job-related Specification, it appears the ODJFS PA 1 is the appropriate Classification for Appellant's current position.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **MODIFY** the **CLASS PLAN REVIEW DETERMINATION** of the Department of Administrative Services and reclassify Appellant's position to ODJFS Program Administrator 1 (64291), pursuant to R.C. 124.03 and R.C. 124.14.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: