

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

Brenda Myers,

*Appellant,*

v.

Case No. 2015-REC-08-0148

Department of Medicaid,  
and  
Department of Administrative Services,

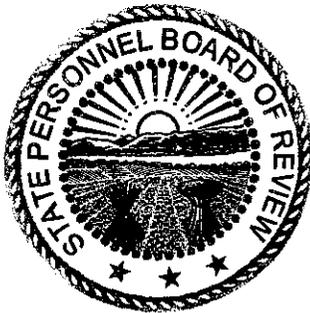
*Appellees,*

**ORDER**

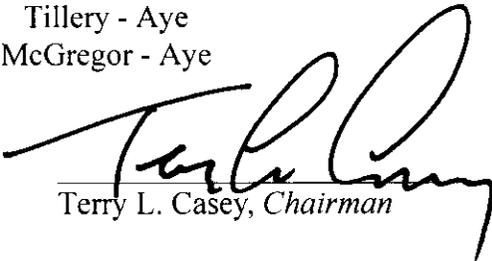
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's position be **RECLASSIFIED** as Financial Program Manager, job code number 66585, pursuant to O.R.C. §§ 124.03 and 124.14.



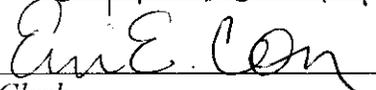
Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
\_\_\_\_\_  
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, September 22, 2016.

  
\_\_\_\_\_  
Erin E. Con  
*Clerk*

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

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

**IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD.** Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

**IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE September 29, 2016.** You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 2015-REC-08-0148

Transcript Costs: \$60.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$85.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: October 7, 2016

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

Brenda S. Myers,

Case No. 2015-REC-08-0148

*Appellant*

v.

August 3, 2016

Ohio Department of Medicaid  
and  
Ohio Department of Administrative Services,  
Human Resources Division,

*Appellees.*

Elaine K. Stevenson  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Brenda S. Myers' ("Appellant") timely filing of a notice of appeal from the results of a Fiscal Classification Project that reclassified her position with Appellee Ohio Department of Medicaid ("ODM") from a Program Administrator 2 to a Senior Sourcing Analyst. The State Personnel Board of Review ("Board") has jurisdiction to hear Appellant's appeal pursuant to Ohio Revised Code (O.R.C.) §§ 124.03(A) and 124.14(D).

A record hearing was held on May 11, 2016, during which testimonial and documentary evidence was presented. Appellant was present at record hearing and appeared *pro se*. Appellee Ohio Department of Administrative Services ("ODAS"), was present through its designee, Jeffrey Hazelton, Senior Analyst, Office of Talent Management. Appellee ODM was present through its designees, Jessica Gaston Mathews, Senior Legal Counsel, and Heather Sullivan, Deputy Legal Counsel.

**FINDINGS OF FACT**

Based upon a thorough review of the record evidence as a whole and, where relevant, witnesses' credibility determinations, I make the following Findings of Fact:

1. Appellant has been employed by ODM since April 2015. Appellant is assigned to ODM's Contract and Procurement section in Legal Services and she holds a position that was classified as Program Administrator 2. Appellant's direct supervisor is Jessica Gaston Mathews, Senior Legal Counsel. Ms. Mathews reports to Heather Sullivan, Deputy Legal Counsel. Ms. Sullivan reports to Deputy Director Brianne Brown.

2. In 2013, ODAS conducted a review of the state's fiscal and procurement classifications (Fiscal Classification Project). The following three areas were reviewed: Accounting, Budget, and Sourcing (also known as Procurement). The review resulted in changes to the state's Class Plan. Sourcing, Financial Manager, and Financial Analyst classification series were added to the State's Class Plan in July 2015.
3. Appellant is assigned to the ODM's Contract and Procurement section in Legal Services. The evidence in the record establishes that the primary function of Appellant's position is to evaluate purchasing/procurement and contracting documents and provide guidance to staff regarding the appropriate processes for purchasing goods and services. Appellant is responsible for determining whether staff follow appropriate procurement methods and processes and she has the authority to approve or deny procurement requests based on her review.
4. Appellant has significant autonomy to manage and coordinate purchasing/procurement activities for ODM's Contract and Procurement program. Appellant reviews and approves proposals through ODM's requisition and contract processes. Appellant monitors supplier performance. Appellant provides direction to staff regarding use of the automated contract/purchasing request system ("ARTS"), a system Appellant helped to develop. Appellant uses ARTS to create reports for budget/fiscal and evaluation purposes that are used by fiscal staff and office administration. After information technology ("IT") was added to ARTS, Appellant became responsible for distributing IT purchase requests to a contract drafter through the ARTS system. Appellant is also the contract reviewer in the ARTS system. Appellant also works with IT staff to modify and update the ARTS system. Appellant reviews requisitions to ensure appropriate fiscal coding is used in the Ohio Administrative Knowledge System ("OAKS"). Appellant determines if each requisition is correctly completed using the appropriate category numbers and if each contains the required supporting documentation. Appellant evaluates purchasing mediums and ensures that agency requestors use the appropriate channels to acquire funding. Appellant is responsible for verifying products and services are available, priced appropriately, and contracts are active. Appellant spends approximately fifty percent of her work time performing the aforementioned duties.
5. The Minority Business Enterprise ("MBE") and Encouraging Diversity, Growth and Equity ("EDGE") are state procurement preference programs for socially and economically disadvantaged businesses.
6. Appellant serves as ODM's MBE program officer. Appellant spends approximately ten to fifteen percent of her work time performing duties related to ODM's MBE program. Appellant prepares and submits ODM's MBE Projection Plan. The MBE Projection Plan involves budget information from each ODM

office/area/service to determine which purchases should be MBE set aside purchases, which purchases should contain a second-tier (subcontractor) MBE requirement, and which purchases are exempt from inclusion. The MBE Projection Plan for ODM involves over \$180,000,000.00 and Appellant provides projected quarterly spending from both open market and MBE vendors. Appellant attends ODAS' MBE meetings and events. Additionally, Appellant serves as ODM's MBE program planning committee chairperson. Appellant schedules meetings and prepares meeting agendas regarding the status of the agency's MBE spending, upcoming events, and MBE requirements.

7. Appellant acts as a liaison between ODM and the Controlling Board. Appellant spends approximately ten percent of her work time preparing documents and providing technical assistance to agency staff regarding the Controlling Board process. Appellant determines the type of Controlling Board action for contract amendments. Appellant prepares and submits requests to the Controlling Board. Appellant is the point of contact for the electronic routing system which is used for Controlling Board requests. Appellant writes the "Explanation of Requests" in response to the Controlling Board's required information.
8. Prior to July 2015, Appellant spent approximately fifteen percent of her work time developing a number of internal policies and procedures for the Ohio Department of Job and Family Services ("OJFS") and ODM. The policies Appellant developed were related to the ODJFS' Contract and Acquisition section and ODM's Contract and Procurement section. Appellant has not formulated any new policies since approximately July 2015.
9. Appellant does act as a lead worker (i.e., provide work direction and training). Appellant does not perform duties that qualify her as a "supervisor" pursuant to Ohio Administrative Code 123:1-7-15.
10. Appellant does not research, evaluate, and plan a comprehensive portfolio of contracts and purchasing based on past performance, future needs and strategic direction. Appellant does not supervise sourcing staff, lead systematic continuous improvement and assure the performance of ODM's supply base.

### CONCLUSIONS OF LAW

O.R.C. § 124.03(A) empowers this Board to hear appeals of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to, *inter alia*, the reclassification of an employee's position, with or without a job audit under O.R.C. § 124.14(D). After the Board conducts a hearing in a reclassification appeal, the Board is to consider anew the reclassification

and may order the reclassification of an employee's position to such appropriate classification as the facts and evidence warrant. (See O.R.C. § 124.14(D)(2))

The primary criteria for the Board to consider when determining the most proper classification for a position are the relevant classification specifications, including the class concepts, the job duties outlined, and the percentages of time devoted to each job duty. The Board's decision must be consistent with the applicable classification specifications. *Klug v. Dept. of Admin. Services*, No. 87Ap-306, slip op. (Ohio Ct. App. 10<sup>th</sup> Dist., May 19, 1988). See also, *Ohio Dept. of Mental Retardation & Dev. Disability v. Ohio Dept. of Adm. Serv.* (1988), 44 Ohio App.3d 144.

Ohio Administrative Code Rule 123:1-7-15 provides the class concept shall set forth the mandatory duties which must be satisfied at least twenty percent of the time, unless otherwise stated in the class concept.

In this case, Appellant's position was reclassified pursuant to ODAS' Fiscal Classification Project. ODAS reviewed Appellant's job duties and determined that Appellant's position is most appropriately classified as Senior Sourcing Analyst. Appellant asserts that her position should remain classified as Program Administrator 2. The classifications considered in this appeal were Senior Sourcing Analyst, Program Administrator 2, and Financial Program Manager.

The series purpose for the Sourcing occupation is to analyze the agency's needs and plan, find, evaluate, and contract with suppliers of goods and services and ensure supplier performance. At the entry level classification, incumbents work under immediate supervision and support the agency's sourcing function by soliciting quotes, placing orders, and tracking the status of orders. At the first full performance level classification, incumbents work under general supervision and solicit and evaluate proposals, make recommendations, and monitor supplier performance for a range of routine, established, and customary requirements. At the second full performance level classification, incumbents work under general direction and solicit and evaluate proposals, make recommendations and monitor supplier performance where the need is not customary and the specifications must be developed where none exist. At the advanced level classification, incumbents act independently or as a lead worker (i.e., provide work direction and training) to research, evaluate, and plan a comprehensive portfolio of contracts and purchasing based on past performance, future needs, and strategic direction. The supervisory level classification works under general direction and supervises sourcing staff, leads systematic continuous improvement, and assures the performance of the supply base.

Appellant is assigned to the ODM's Contract and Procurement section in Legal Services. The evidence in the record establishes that Appellant evaluates purchasing/procurement and contracting documents and provides guidance to staff regarding the appropriate processes for purchasing goods and services. Appellant is responsible for determining whether staff follow appropriate procurement methods and

processes and she has the authority to approve or deny procurement requests based on her review. Appellant serves as the contact person for questions regarding requisition and contract processes in OAKS and ARTS. Appellant provides guidance to agency staff regarding required documentation. Appellant creates reports from the ARTS system for budget/fiscal and evaluation purposes that are used by fiscal staff and office administration. Appellant reviews and approves ARTS requests, authorizes purchases in OAKS, and shows other employees how to properly use these systems according to agency policies.

Appellant acts as a liaison between ODM and the Controlling Board. Appellant assesses the need for Controlling Board approval of agency contracts and developing Controlling Board requested documentation for submissions to the Office of Budget and Management. Appellant writes justifications for contracts, responds to Controlling Board questions, and provides technical assistance to agency staff on the Controlling Board process and deadlines.

Appellant serves as ODM's MBE officer for the agency's MBE program. Appellant prepares and submits ODM's biennial MBE Projection Plan to ODAS and updates the plan as needed. The MBE Projection Plan involves budget information from each ODM office/area/service to determine which purchases should be MBE set aside purchases, which purchases should contain a second-tier (subcontractor) MBE requirement, and which purchases are exempt from inclusion. The MBE Projection Plan for ODM involves over \$180,000,000.00 and Appellant provides projected quarterly spending from both open market and MBE vendors. Appellant attends ODAS' MBE meetings and events. Additionally, Appellant serves as ODM's MBE program planning committee chairperson. Appellant schedules meetings and prepares meeting agendas regarding the status of the agency's MBE spending, upcoming events, and MBE requirements. Given the scope and nature of Appellant's MBE officer duties, I find that Appellant's is responsible for managing and coordinating ODM's MBE program.

Appellant has not developed or formulated any policies since the reclassification of her position to Senior Sourcing Analyst in July 2015. Although Appellant may be called upon to develop policies and procedures in the future, at present, Appellant does not spend any of her work time performing this function.

The second classification considered was Program Administrator 2. The series purpose for the Program Administrator occupation is to provide program direction by relieving a superior of administrative duties. At the first level classification, incumbents relieve a superior of non-routine administrative duties while also formulating and implementing program policy. At the second level classification, incumbents relieve a superior of a variety of difficult administrative duties while also formulating and implementing program policy, or do all of the preceding and supervise assigned staff. At the highest level classification, incumbents relieve a superior of the most difficult administrative duties and formulate and implement program policy. It is noted that the Series Purpose section of this classification series states: "This classification series may

not be used to cover any functions currently described by another existing classification specifically designed for the function.”

In this case, the evidence indicates that Appellant does relieve her supervisor of certain administrative tasks. Appellant serves as liaison between administrator and staff and prepares important documents. Appellant assumes authority in her supervisor's absence. Although the duties performed by Appellant fall generally within the scope of the duties outlined by the Program Administrator 2 classification specification, this classification does not reflect the more specialized nature of Appellant's procurement and contract responsibilities. More important, the evidence demonstrates that Appellant does not formulate and implement program policy as required by the class concept for the Program Administrator 2 classification. Therefore, Appellant's position may not properly be placed in this classification pursuant to Ohio Administrative Code Rule 123:1-7-15.

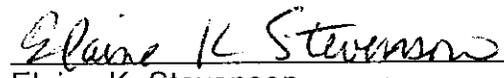
The final classification considered was that of Financial Program Manager. The purpose of the Financial Manager occupation is to manage and direct agency financial planning, budgeting and/or sourcing activities. The administrative level classification works under direction to manage and coordinate a budget, financial and/or sourcing program and have significant autonomy to formulate, develop, enforce and/or implement program policy. Since the term “program” is not defined within the Program Administrator classification series, the Board may apply the plain and ordinary meaning of this term, which may be defined generally as a plan or system under which action may be taken toward a goal. (“Program” Def. 3. *Merriam Webster Online*, Merriam Webster, n.d. Web. 12 Aug. 2014.) In reviewing the evidence and relevant classification specifications, I find that ODM's Contract and Procurement activities constitute a program.

The evidence demonstrates that Appellant spends more than fifty percent of her work time managing and coordinating procurement and contract activities for ODM's Procurement and Contract program. Appellant evaluates all purchasing/procurement and contracting documents and provides direction to staff regarding the appropriate processes for purchasing goods and services. Appellant also has significant autonomy to enforce program policies. Appellant is responsible for determining whether staff follow appropriate procurement methods and processes and she has the authority to approve or deny procurement requests based on her review.

The evidence also demonstrates that Appellant performs a significant number of the illustrative duties set forth in the Financial Program Manager classification specification. Specifically, Appellant implements procedures and provides technical advice for use in decision making and the delivery of programmatic goals related to the procurement of goods and services. Appellant assigns IT purchase requests to a contract drafter through the ARTS system. Appellant is also the contract reviewer in the ARTS system. Further, Appellant responds to programmatic issues and prepares reports in ARTS. Appellant coordinates communication activities related to purchasing/

procurement and contract functions. Appellant researches and responds to inquiries and issues. As noted above, Appellant also serves as ODM's MBE program officer. In addition to all of the job duties described, *supra*, Appellant's supervisor confirmed that Appellant acts as her back up whenever she is unavailable. I find that Appellant's job responsibilities are best described by the Financial Program Manager classification specification.

Therefore, I respectfully **RECOMMEND** that Appellant's position be **RECLASSIFIED** as Financial Program Manager, Job Code Number 66585, pursuant to O.R.C. §§ 124.03 and 124.14.

  
Elaine K. Stevenson  
Administrative Law Judge