

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

Sara Sherman,

Appellant,

v.

Case No. 07-REC-01-0042

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

Appellees.

ORDER

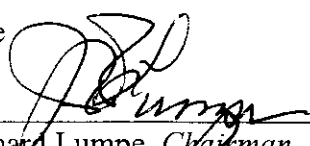
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and 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 job audit determination of the Department of Administrative Services be **MODIFIED** and Appellant's position be **RECLASSIFIED** to Medicaid Health Systems Administrator 3, classification number 65293, effective the first day of the first pay period following Appellee's receipt of the pertinent job audit request, pursuant to O.R.C. § 124.14.



Lumpe – Aye
Booth – Aye
Sfalcin – Aye

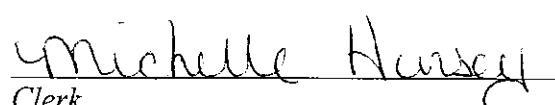


J. Richard Lumpe, *Chairman*

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 constitute ~~(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, January 31, 2008.



Michelle Hursey
Clerk

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

1-31-08

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

SARA SHERMAN,

Case No. 07-REC-01-0042

Appellant

v.

November 30, 2007

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 on October 26, 2007. Present at the hearing was Appellant, who appeared *pro se*. Appellee Department of Job and Family Services (DJFS) was present through its designee, Michelle McMillon, Human Capital Manager. Appellee Department of Administrative Services (DAS) was present through its designee, Dwight Clark, Human Resources Manager. Thereafter, the parties submitted their respective closing statements to this Board on or before November 13, 2007 and the record was then closed.

Appellant's position is currently classified as a Medicaid Health Systems Administrator (MHSA) 2, 65296 and, following its conducting of a job audit upon Appellant's position, DAS found this to be the proper classification and issued a "no change" determination. Appellant thereafter timely filed her appeal with this Board and asserts that the Medicaid Health Systems Administrator 3, 65293 classification better describes her duties performed during the period from the date the audit was requested to the date of record hearing in this matter.

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

11-30-07

STATEMENT OF THE CASE

At hearing, three witnesses testified. First to testify was Appellant, Sara Sherman. Appellant's position, as noted above, is currently classified as MHSA 2. Appellant serves as the Manager or Chief of the Consumer Standards and Services Section. In this capacity, Appellant oversees case management for the Ohio Home Care Waiver, the Transitions MR/DD waiver, and the Transitions Carve-Out Waiver.

Appellant oversees the Quality Assurance Unit, the Technical Assistance Unit, and the Private Duty Nursing Team. Appellant's duties include oversight of statewide quality control, statewide care access determinations, and statewide administrative appeals in these areas, including rules drafting.

Appellant now essentially reports directly to Sara Abbott, a MHSA 4 and Bureau Chief of the Bureau of Home and Community Services (BHCS) with the Office of Ohio Health Plans. This is the Office that comprises a substantial piece of Ohio's "Medicaid" program. Appellant had previously reported to Roger Fouts, a MHSA 3 and Assistant Bureau Chief of BHCS. It is interesting to note that at least one of Appellant's direct reports encumbers a position that is assigned the same classification as Appellant's position, namely MHSA 2.

Next to testify at hearing was Roger Fouts, as noted, BHCS' Assistant Chief and a MHSA 3. Mr. Fouts averred that the entire Bureau [collectively] is responsible for community based activities and that the word "program" might be considered sufficiently amorphous so that Medicaid is the program overall. Mr. Fouts agreed that Appellant's duties could be said to include oversight of access to health services through Appellant's role as an administrative and adjudicatory gatekeeper to access to health systems.

Last to testify was Dwight Clark, Human Resources Manager, and the designee for DAS in this matter. Mr. Clark emphasized that DAS determined that the MHSA 2 classification was more appropriate than was the MHSA 3 classification principally because Appellant did not perform her duties over all activities related to one Medicaid health services program and did not perform her duties over all activities related to across program support services. Mr. Clark conceded that several reorganizations had transpired since the pertinent classification specifications in this matter were written and that no current organizational unit within the Office of Ohio Health Plans lined up squarely with the units and structure contemplated in the pertinent specifications.

Mr. Clark noted that the MHSA class series, in the Series Purpose section, contains a dispositive definition for “program” as follows: “a set of well-defined functions organized to accomplish objectives for specific targeted populations/groups or geographical region.”

Mr. Clark contends that the former organizational component of community based services lines up the closest with “Medicaid Health Systems program”. Mr. Fouts noted that he has held the MHSA 3 class since the end of 2004. He averred that he began employment after the Bureau was named Home and Community Services. He stated that he thought, even before that time, the Bureau was named the Bureau of Community Services. He declared that, now, the functions have been re-distributed and the structure reflects the Bureau of Home and Community Services and the Bureau of Community Access.

Appellant contends that the Bureau Chief, an MHSA 4, is the only employee in the Bureau of Home and Community Services (Appellant’s Bureau) with responsibility over all activities as defined in the MHSA class series and that the MHSA 3 employees perform duties over programs within each respective area under the activities umbrella of the MHSA 4. Accordingly, Appellant asserts, while she performs duties over one or more programs utilizing the dispositive definition set forth in the Series Purpose section, no MHSA 3 under the current scheme could meet the requirement to oversee all activities of a program when the bar to qualify as a “program” is set artificially high and not, she asserts, in conformance with the dispositive language in the Series Purpose section.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at hearing and upon the closing statements submitted by the parties, I make the following Findings:

I incorporate herein Appellant's analysis and breakdown of the components of her job duties, including the three principal areas of duties reviewed above. Further, I find that Appellant's viewpoint as to what constitutes a "program" and what constitutes "all activities" is sound, internally consistent, and constructively reflects the current organizational scheme utilized by the Bureau of Home and Community Services.

CONCLUSIONS OF LAW

This case presents this Board with two questions. First, is it reasonable and legally permissible to place an Appellant into a class whose requirements she constructively or actually meets? Secondly, and conversely, is it reasonable and legally permissible to refuse to place an Appellant into a higher class, where ambiguous and dated language has been applied in an artificially narrow manner and where such application may effectively foreclose any employee in a particular Bureau (including those whose positions are already so classified) from qualifying under the higher level specification?

Based on the findings above, and for reasons set forth herein, we should answer the first question presented in the affirmative and the second in the negative. Accordingly, this Board should modify DAS' job audit determination and reclassify Appellant's position to MHSA 3.

Appellant's activities qualify her duties to be considered to constitute one or more programs under the definition set forth in the Series Purpose language. Furthermore, since there no longer is a program that would squarely line up with the term "community based services" set forth in the MHSA 3 Class Concept, Appellant's duties regarding health care access, which include quality control, determination of access, and adjudicatory control of decisions in this regard, could well be said to constitute a sufficient level of responsibility for it to also be said that Appellant oversees all activities related to health care access for her pertinent and rather broad subject matter areas.

At bottom, a majority of Appellant's duties constructively qualify under the MHS 3 specification and her reporting responsibilities have essentially transitioned into directly reporting to the Bureau Chief, a MHS 4. What is more, to deny Appellant access to this classification due to utilizing an overly narrow interpretation of its language causes considerable mischief; since utilizing such an interpretation could effectively bar any BHCS employee from seeking or even retaining the Medicaid Health Systems Administrator 3 classification.

It is axiomatic that the policies and processes that encompass Medicaid offer a continually changing panorama. It is also understandable that DJFS believes it necessary and prudent to continue to utilize the current version of the MHS class series, even in this rapidly changing environment. It is equally understandable that DAS feels constrained to utilize this class series under the present circumstances. Yet, while this Board must apply the same specifications as DJFS and DAS and be bound by the general parameters set forth therein, this Board also enjoys some latitude in interpreting those specifications, taking into consideration a broader perspective as this Board builds its administrative record.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **MODIFY** the job audit determination of the Department of Administrative Services and reclassify Appellant's position to Medicaid Health Systems Administrator 3, 65293, effective the first day of the first pay period following DAS' receipt of the pertinent job audit request, pursuant to R.C. 124.14.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: