

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

Cynthia L. Hill,

Appellant,

v.

Case No. 08-REM-03-0073

Logan County Logan Acres Care Center,

Appellee.

ORDER

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

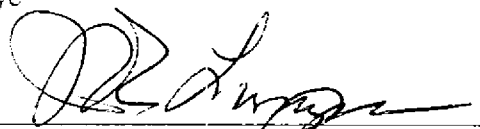
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to O.R.C. § 124.11(A)(28).

Lumpe - Aye

Booth - Aye

Sfalcin - Aye

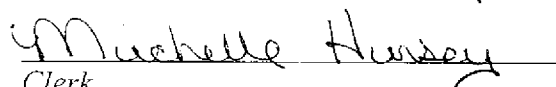


J. Richard Lumpe, *Chairman*

CERTIFICATION

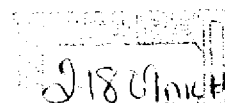
The State of Ohio, State Personnel Board of Review, ss:

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, February 18, 2009.



Michelle Hunsley
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**

CYNTHIA L. HILL,

Case No. 08-REM-03-0073

Appellant

v.

December 15, 2008

LOGAN COUNTY LOGAN ACRES CARE CENTER,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

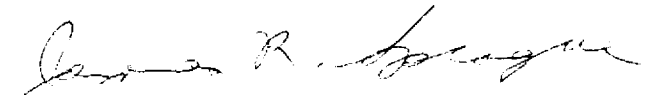
This cause comes on due to Appellee's December 1, 2008 filing of Appellee's amended motion to dismiss, accompanying documentation, and incorporating by reference its exhibits and other attachments from its May 19, 2008 filed motion to dismiss. Appellee's pleadings include the affidavit of Natalie Gilmore, Appellee's Administrator. Appellee initially cited R.C. 124.11 (A) (9) as the applicable provision barring this Board from taking jurisdiction over the subject matter of Appellant's appeal. Apparently realizing that R.C. 124.11 (A) (28) was the statutory provision that was applicable herein, Appellee has now filed the instant amended motion to dismiss based on that provision. Appellant was provided with the requisite time to file a memorandum contra but, to date, as not done so.

O.A.C. 124-11-07 governs the motions practice before this Board. O.A.C. 124-11-07 (A)(2) indicates that where a party has filed, as here, a dispositive motion, the opposing party must affirmatively show that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a 10-day time frame to respond to such dispositive motions.

By failing to file a memorandum contra, Appellant has failed to comply with the requirements set forth in O.A.C. 124-11-07. Further, there appears to be merit in Appellee's assertion that Appellant's position fell within the unclassified service; by virtue of Appellant holding a fiduciary and/or agency relationship with her principal.

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Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.11 (A) (28).

A handwritten signature in cursive script, appearing to read "James R. Sprague".

JAMES R. SPRAGUE
Administrative Law Judge

JRS: