KENNETH SELBE, JR.

v. **Docket No. 94-HHR-050**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/OFFICE OF MATERNAL AND CHILD HEALTH and DIVISION OF PERSONNEL

D E C I S I O N

Mr. Kenneth Selbe, Grievant, is the Director of the Family Outreach Program ("FOP") in the Division of Infant and Child Health. The Division of Infant and Child Health is a part of the Office of Maternal and Child Health ("OMCH") within the Department of Health and Human Resources. Grievant grieves his classification as a Health and Human Resources Specialist, Senior ("Specialist, Sr.") and states "I do not feel my classification as a DHHR Specialist, Sr., is consistent with the other DHHR Specialist, Sr. who have less responsibility and authority." Grievant seeks to be reclassified as a Health and Human Resources Program Manager I ("PM I"). This grievance was waived at Levels I and II and denied at Level III. Grievant appealed his case to Level IV and a hearing was held on July 11, 1994. The case became mature for decision on August 22, 1994.

The pertinent sections of the classification specifications at issue are written below.

HEALTH AND HUMAN RESOURCES SPECIALIST, SENIOR

Nature of Work: Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, a statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi-program operations. May consult on highly complex individual situations that potentially have significant impact on systems or

involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics: The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides others in developing and utilizing plans and recommends methods of improvement.

Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or delivery of service.

Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long-range work plans.

May lead or supervise professional and support staff.

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I

Nature of Work: Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human services. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics: Positions representative of the kind and level of work intended for the class include program areas such as Health Statistics, Health Promotion, Mental Retardation/ Developmental Disabilities, Alcohol and Drug Abuse, Government Donated Foods, and other organizational units with similar size, scope and complexity.

Examples of Work

Supervises professional, technical and clerical staff; make assignments and reviews and approves plans of operation.

Provides administrative and program direction; enforces agency objectives, policies and procedures.

Responsible for management of recruitment/selection process, staff development, disciplinary matters, and other related actions in assigned area.

Responsible for developing collaborative efforts among health or human services agencies.

Performs research and analysis of legislation, work activities or other issues to develop policies, standards and procedures.

Monitors and evaluates program administration, and the delivery to (sic) services to clients.

Provides technical consultation and policy interpretation to staff, supervisor, public officials, and advocacy groups.

Plans and implements programs for the training of professional, technical and clerical staff.

Grievant is the Director of the FOP. This program recruits and trains medical care givers such as doctors, nurses, county health department personnel, and clinic and hospital staff to provide services to Medicaid eligible referrals through the Early and Periodic Screening Diagnostic and Treatment ("EPSDT") Program. FOP also informs the eligible clients of the services available to them through this program. Additionally, individuals who are not Medicaid eligible are informed of the services available to them through the Pediatric Health Services ("PHS") Program. The clients served by these programs are children and adolescents up to the age of twenty-one.

This state-wide program is divided into nine regions with a regional administrator responsible for the implementation of the program in each area. These regional

administrators are responsible for recruiting care givers to participate in theprogram. After recruitment, the regional administrators train these participants and their staff about the types of screening and care required by the program and explain the multiple forms that must be filled out to obtain reimbursement. The regional administrators also supervise the Family Outreach Workers who are the paraprofessionals who make the home visits to eligible clients and inform them of the programs and their benefits. Additionally, the regional administrators, in consultation with Grievant, are responsible for following up with the care givers on the information received by the monitoring division of OMCH. This information concerns the care givers' compliance or noncompliance with the required procedures and policies.

Grievant directly supervises ten individuals, the nine professional regional administrators, and one clerical person. He indirectly supervises another sixty individuals, the Family Outreach Workers. There are over 350 health care providers enrolled in the program and over 150,000 eligible clients for Fiscal Year 1993.

Grievant testified he works under general direction and performs complex administrative and professional duties for a major program component. He demonstrated his work included planning and policy development, and submitted several manuals which indicated the complexity and detail required to meet all state and federal guidelines.

Grievant also testified that the regional administrators were charged with carrying out the program's goals in the regions, butthat he was responsible for the final decisions in all areas. Further, if problems arise with care givers or agency personnel, the regional administrators are to consult with Grievant and be guided by him. Additionally, Grievant provides administrative and program direction to ensure his supervisees follow the agency's objectives, policies, and procedures. Grievant is responsible for both the supervision of approximately 70 professionals, paraprofessionals and clerical staff and for the conceptualization and development of a major complex program.

Mr. Sterling Smith, Associate Director of OMCH, testified on Mr. Selbe's behalf. He stated Mr. Selbe's program was a major program component and required Grievant to develop policy, plan programs, coordinate the regional areas, and to perform complex, and at times, controversial problem-solving. He stated Grievant's position was as responsible and complex as the Director of Handicap Services who is classified as a PM I. He noted that this Director

had significantly fewer supervisees.

Testimony from Ms. Virginia Fitzwater, Senior Personnel Specialist with the Division of Personnel ("DOP"), revealed the Grievant had been classified as a Specialist, Sr. based on an old position description form completed when he was in another position. The major function of that position was to act as a Medicaid liaison. When Grievant appealed his classification to DOP, he attached a copy of his current duties. DOP denied this appeal.

Ms. Fitzwater testified Grievant was appropriately classified as a Specialist, Sr. She stated one of the keys to classification of Personnel was to use the organizational chart and to see if people in similar positions were in a like class. Additional factors are the scope, level and complexity of the position.

The other individuals in the same position as the Grievant on the organizational chart are classified as listed below:

Director of ESDT/PHS program - Joan Faris - Nurse IV.

Director of Adolescent Health - Nelson Parker - Health and Human Resources Specialist.

Director of Handicap Services - Pat Kent - Program Manager I.

Director of Early Intervention - formerly Pam Rousch - Health and Human Resources Specialist.

Ms. Fitzwater did not indicate why these above-named individuals were classified as they were. Grievant presented some evidence on two of these positions. Ms. Faris supervises five employees and works extensively with the computer system. She also runs the lead screening program and tracks eligible client visits. Ms. Kent supervises about 50 employees and, of course, deals with handicap children. As previously stated, Mr. Smith, the Assistant Director of OMCH, views Mr. Selbe's position as more complex than Ms. Kent's or, at the very least, equal to Ms. Kent's in responsibilities. Ms. Fitzwater gave no rationale for Grievant's

classification, other than to say it was the best fit for his position.

Discussion

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than the one under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991); see generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether the Grievant's current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the foregoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees, contesting their current classification, with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. In this case the Grievant was originally classified based on the two-year-old job description of his former position. His current position involves considerably more responsibility, complexity, and authority. Although DOP denied his appeal based on his current job description, the determination it made was clearly wrong. Obviously, the Grievant does perform some duties listed under the Specialist, Sr. as the two position descriptions overlap extensively. However, a review of the complete evidence before the Board, including all exhibits and testimony prove the "best fit" for his required duties is as a PM I.

The Grievant supervises 70 employees who are professionals, paraprofessionals, and clerical individuals, and has responsibility for the development of a major complex program. The Specialist, Sr. position description contemplates the employee performing only one of these tasks. The PM I position description contemplates the employee performing both functions. Both the Grievant and his supervisor testified that his responsibility is of the higher level described in the Nature of Work and Examples of Work sections of the PM I position description. Examples of this responsibility were given. This unrebutted information, combined with the fact that another individual on the same level of the organizationalchart with fewer supervisees is a PM I, demonstrates that Grievant has meet his burden of proof and has established he is misclassified as a Specialist, Sr.

Finding of Fact

Grievant is responsible for a state-wide program which recruits and trains health care personnel to provide care for eligible children and adolescents. This program is also responsible for Outreach to inform eligible clients of their options for health care. This program has 70 employees, over 350 providers, and over 150,000 eligible clients. Grievant performs complex administrative and professional work at an advanced level. His duties include supervising multiple individuals, planning, developing, and coordinating the FOP's directives, and intervening into problem areas and controversial issues.

Conclusion of Law

Grievant has met his burden of proving by a preponderance of the evidence that the position classification of PM I is the best fit for his normal duties.

Accordingly, this grievance is GRANTED.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record

can be prepared and transmitted to the appropriate court.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 31, 1994