BEVERLY COLLIER, ET AL., .

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Grievants, .

.

v. . DOCKET NO. 94-HHR-039

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES, OFFICE OF .

MATERNAL AND CHILD HEALTH, BUREAU .

OF PUBLIC HEALTH AND DEPARTMENT OF .

ADMINISTRATION/DIVISION OF PERSONNEL, .

.

Respondents. .

D E C I S I O N

This is a grievance by Beverly Collier, Sylvia L. Boggs, Adelaid Ann W. Burge, Laura H. Goodman, Barry D. Hammer and Elizabeth A. Purvis (Grievants), employees of the Respondent Department of Health and Human Resources in the Office of Maternal and Child Health, Bureau of Public Health (DHHR), challenging their reclassification as Social Service Worker II's on December 16, 1992. Each of the Grievants contend they should be classified as a Social Worker II. Their grievances were initiated at Level I on July 30, 1993 and immediately waived to Level III where an evidentiary hearing was held on December 20, 1993. Following receipt of an adverse decision by Dr. William T. Wallace, Commissioner of the Bureau of Public Health, on or about January 31, 1994, Grievants appealed to Level IV on February 7, 1994. The WestVirginia Department of Administration/Division of Personnel was joined as a Respondent pursuant to Rule 4.11 of this Board's Procedural Rules on February 9, 1994, and a Level IV hearing was held in this Board's office in Charleston, West Virginia, on April 12, 1994. Upon receipt of post-hearing submissions from the parties, this matter became mature for decision on May 2, 1994.

Background

The record in this matter, as developed through hearings at Levels III and IV, reveals that Grievants work as part of a multi-disciplinary health care team which provides a wide range of medical and related services to children and their families through clinics located around the state. In particular, Grievants are employed in the Handicapped Children's Services section of the Maternal Child Health division of the Bureau of Public Health. Grievants work with physicians, nurses, dieticians, therapists and other medical professionals to provide a comprehensive program of specialized medical assistance to children suffering from complex medical disorders.

In general, Grievants function as a liaison between the family and the physician. They routinely perform certain counseling functions in regard to the stressful situations encountered by families with children facing significant medical problems. They are required to know a great deal about various medical conditions which commonly affect children in order to effectively communicate with the families and assess their needs. In particular, they are knowledgeable in the areas of child growth and development withemphasis on matching families with the appropriate social and medical support required to alleviate their situation.

While Grievants represented that they each perform substantially similar functions, it is noted that each of their official position descriptions describes their duties in differing terms, and each of the Grievants spend differing percentages of their time performing the various duties listed. For example, Grievant Boggs spends approximately 25 per cent of her time attending various monthly clinics and 40 per cent performing case management responsibilities while spending only 6.5 per cent of her time on duties where the word "counsel" is used to describe the primary emphasis of the duties involved. R Ex 1. Grievant Hammer's position description indicates that he devotes approximately 10 per cent of his time to duties which include patient "counseling" in the narrative. R Ex 5.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Social Service Worker II and Social Worker II positions at issue in this case are reproduced herein as follow:

SOCIAL SERVICE WORKER II

Nature of Work

Under general supervision performs full-performance level social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal

automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

Distinguishing Characteristics

All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker IIprovides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

Examples of Work

Maintains a caseload for programs and services at this level.

Takes, evaluates and approves client applications for services; explains services and eligibility criteria.

Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of provider facilities and services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education and counseling and guidance to assess client's needs and provide appropriate services.

Counsels clients/families in achieving goals of client service plan.

Speaks before community organizations and groups regarding services available and to develop community resources.

Writes report on case findings and summaries of client social and financial circumstances.

SOCIAL WORKER II

Nature of Work

Under general supervision, performs professional social work at the full-performance level in the delivery of social services to clients requiring therapeutic interventions. Responsibility includes planning for and delivery of needed services as well as indicated administrative and reporting requirements. The social services at this level are those requiring knowledge of social and family dynamics, and skill in providing therapeutic interventions. Responsible for overseeing the work of aides and support staff. Work requires the use of personal automobile for local travel. Employee is subject to being on-call during non-business hours. Performs related work as required.

Distinguishing Characteristics

The Social Worker II provides full-performance level social work services. Work involves managing client caseloads and assessing and documenting client progress. Work may also involve specialized, individual or group counseling or the coordination of placement or discharge activities.

Examples of Work

Provides counseling and other support services to clients.

Writes a history for each case; keeps it current with all treatments and programs administered.

Investigates all reports of abuse or neglect filed against parents, or employees of state institutions given charge of patients.

Makes referrals to other agencies, mental health centers, state hospitals, or other sources of assistance.

Interviews patients newly admitted to a state hospital advising them of social services available to patients and their families.

Participates in staff meetings pertaining to diagnosis and treatment.

Discussion

In order for the Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited Personnel classification specification than the one under which they are 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 Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position inquestion are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket No. 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). See Evans v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-511 (June 30, 1994); Propst v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-351 (Dec. 3, 1993).

DOP takes the position that the classification of Social Service Worker II is the "best fit" for Grievants' duties. The West Virginia Supreme Court of Appeals has held that DOP's determination on such matters is entitled to great weight unless it is "clearly wrong." W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993). Blankenship creates a heavy burden for state employees seeking to contest their classification. It requires Grievants to establish substantially more than a simple logical argument that they could be classified under another classification specification. Based upon the testimony of Mr. Basford from DOP at the Level IV hearing, the undersigned cannot find that DOP's application of the respective classification standards to Grievants is clearly wrong.

Although Grievants established that the nature of their work is more complex and demanding than generally contemplated by thegeneric Social Service Worker II classification specification, (See footnote 1) they did not meet their burden of showing that the position of Social Worker II was the "best fit" for the duties they perform. Blankenship, supra. See Moody v. W. Va. Dept. of Employment Programs, Docket No. 92-BEP-423 (Apr. 16, 1993). Review of Grievants' position descriptions does not indicate that the predominant duties they perform more closely match the classification specification for Social Worker II. See Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-

88-038 (Mar. 28, 1989). The Nature of Work section of the Social Worker II classification specification summarizes their duties as: "performs professional social work at the full-performance level in the delivery of social services to clients requiring therapeutic interventions." Moreover, the "Distinguishing Characteristics" section of the Social Worker II classification specification specifies:

> The Social Worker II provides full-performance level social work services. Work involves managing client caseloads and assessing and documenting client progress. Work may also involve specialized, individual or group counseling or the coordination of placement or discharge activities.

Grievants presented a written statement from their immediate supervisor, Ellen O'Farrell, Social Service Supervisor, supporting Grievants' argument as follows:

> A therapeutic intervention relates to or deals with healing and especially with remedies (medicines or treatments that cure or relieve) for disease. Therapeutic interventions are done routinely by social workers in Maternal and Child Health's Handicapped Children's Program. The social services provided do not cure disease but they do relieve some secondary aspects of disease and do enable patients and families to access appropriate medical, social, educational and vocational treatments, therapies and programs.

Lowell Basford, DOP's Director of Classification, acknowledged in his testimony that there is some similarity and overlap between the Social Service Worker and Social Worker classifications. However, Mr. Basford noted there are some distinct differences between the classifications, despite their similar medical orientation. In particular, the Social Worker II classification was intended to apply to social workers in state hospitals performing psychotherapy. Grievants' counseling of patients and their families does not ordinarily extend to psychotherapy. Mr. Basford's testimony emphasized the direct therapeutic intervention of Social Worker II's in a hospital setting dealing directly with patients, as distinguished from Grievants' activities in relieving "secondary aspects of disease" through counseling clients and their families as described by Ms. O'Farrell.

Mr. Basford testified that "therapeutic intervention" was intended to distinguish employees providing direct therapeutic counseling, to include psychotherapy, from employees who provide social services, such as obtaining medical and other benefits. Even if Grievants do perform certain counseling functions which are outside the position classification specification for Social Service Worker II, that fact, standing alone, does not render themmisclassified. Dooley v. W. Va. Dept. of

Health & Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). The evidence of record does not show that such counseling constitutes Grievants' predominant duties.

Grievants also claimed that the actions of DHHR and/or DOP in fixing their pay at less than the mid-range of Pay Grade 10 was improper given their tenure, experience and qualifications. However, Grievants did not demonstrate how this action was contrary to any particular law, rule or regulation, nor under the factual circumstances present here, constituted an abuse of discretion. Accordingly, Grievants cannot prevail on this contention. See Howell v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-101 (Sept. 21, 1993).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievants are employed by the Respondent Department of Health and Human Resources (DHHR) in the Bureau of Public Health in support of the Handicapped Children's Services program conducted by the Office of Maternal and Child Health.

2. On December 16, 1992, Grievants were classified as Social Service Worker II's and assigned to Pay Grade 9 by the Division of Personnel (DOP) in conjunction with a statewide reclassification project.

3. Grievants work as part of a multi-disciplinary team including nurses, physicians, dieticians, therapists and other medical professionals who provide a comprehensive program of medical and related social services to children suffering from complex medical disorders.

4. Grievants' duties are primarily focused upon case management responsibilities in regard to their assigned clients, coordinating medical services for their clients, and attending specialized medical clinics.

5. Grievants spend approximately 10 to 20 per cent of their time counseling clients and their families on various matters; however, this counseling does not extend to psychotherapy and is not directed toward curing any diagnosed medical or psychiatric condition.

CONCLUSIONS OF LAW

1. Grievants have not proven by a preponderance of the evidence that the classification of Social

Worker II constitutes the "best fit" for the duties they perform. See Simmons v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievants are performing some duties that are outside their current classification as Social Service Worker II's, this does not render them misclassified. Dooley v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See W. Va. Div. of Personnel Administrative Rules, Series I (Amended) §4.04(d) (1993).

3. The Division of Personnel's interpretations of the classification specifications for the positions of Social Service Worker II and Social Worker II, as they apply to the duties being performed by Grievants, are not clearly erroneous and, therefore, are accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

4. Grievants' job duties, as demonstrated by a preponderance of the evidence, best fit with the classification specification for Social Service Worker II.

5. Grievants failed to demonstrate that the actions of DHHR and/or DOP in fixing their pay at less than the mid-range of Pay Grade 10, despite their tenure and experience, was contrary to any law, rule or regulation or, under the circumstances present here, constituted an abuse of discretion. See Howell v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-101 (Sept. 21, 1993).

Accordingly, the grievance is **DENIED**.

Any party 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.

LEWIS G. BREWER

Administrative Law Judge

Dated: September 19, 1994

Footnote: 1Grievants' position ultimately involves a "comparable worth" argument, essentially suggesting that the type of

work which they perform is just as demanding as that expected of employees performing traditional social work in a clinical setting. However, evidence that Grievants' work may be undervalued by their current classification does not necessarily render them misclassified.