JEANETTE HAGER,

Grievant,

v. **Docket No. 95-HHR-241**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/OFFICE OF SOCIAL SERVICES and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Jeanette Hager, is employed by the Department of Health and Human Resources ("HHR") as a Social Service Worker II ("SSW II"). She states:

[HHR] failed to recognize the job duties and responsibilities I perform as listed under SSW III and/or PSW (AFC home finder, Emergency shelter coordinator, adult protective services, conducting investigations of abuse and/or neglect, working with the court system and knowledge of community resources).

Grievant stated she is misclassified and seeks compensation as a Protective Service Worker ("PSW") or Social Service Worker III ("SSW III") "to include title upgrade and salary increase." (See footnote 1) OnMay 31, 1995, all Adult Protective Services ("APS") cases were removed from Grievant. (See footnote 2)

This grievance was waived at Levels I and II and denied at Level III. Grievant appealed to Level IV, and a hearing was held on August 8, 1995. This case became mature for decision on August 31, 1995, the deadline for the parties' proposed findings of fact and conclusions of law.

The pertinent sections of the classification specifications at issue are repeated below:

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 II provides 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 SERVICE WORKER III

Nature of Work: Under general supervision, performs advanced level professional 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 III provides these services in one or more of the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, Hartley program, Medley program, Medical Waiver Project, licensing specialist or other services at this level. This class may also be used for positions in certain geographic areas performing professional social work in a variety of program areas such as day care, generic social services, foster care and protective services, and differs from the generic Social Service Worker II in that the positions involve a significant, but not predominant, amount of protective

services work.

Examples of Work

Maintains a caseload for programs and services at this level.

Prepares social assessment of client circumstances.

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

Cooperates with the court system for foster care, adoption, juvenile delinquency and Medley program services by preparing social assessments and recommending actions to accomplish goals.

Counsels youth to correct delinquent and socially unacceptable behavior; prepares probation plans for juvenile offenders; monitors progress of probationers under the court supervision. Speaks before educational and community organizations and groups regarding services available and to develop community resources.

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

PROTECTIVE SERVICE WORKER

Nature of Work: Under limited supervision, performs advanced and complex social casework in a specialized area. Work is characterized by cases involving abuse/neglect/exploitation of children or adults. The nature of the situations require expertise and judgement to deal with problems that are potentially dangerous to the client and the worker. 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.

Examples of Work

Conducts investigations concerning allegations of abuse by talking with and visually observing affected individual; talks with immediate family, relatives, neighbors, teachers, doctors, and reviews any relevant records.

Makes initial assessment of validity of the allegation and the degree of danger that the child or adult is in; documents the results of the investigation.

Assesses family dynamics and problems that may be precipitating an abusive situation.

Prepares a complete client service plan to remedy contributing problems and stop behavior patterns of abuse/neglect/exploitation and solicits family cooperation.

Engages family in counseling to solve problems, refers them to other available resources, and monitors situation to prevent a reoccurrence of abuse.

Files petition with the court when a child is judged to be in imminent danger and testifies before the court in order to remove a child from the family; makes appropriate placement of a child with relatives, in foster homes, or in emergency shelter.

Persuades the family, relatives, or adult family care provider that it is in the best interest of the client to live elsewhere after the worker has substantiated significant abuse/neglect/ exploitation; arranges placement of the adult client in an alternative living environment.

Evaluates periodically the progress of family or living unit towards meeting objectives of the service plan, the need to modify the plan, and the eventual closing of the case.

The material facts of this grievance are not in dispute and are related below.

Findings of Fact

1. Grievant has worked for HHR in the Office of Social Services since 1984. During that time and up to May 31, 1995, Grievant carried a small caseload of APS clients. This caseload represented 10% to 15% of Grievant's total work time. Level IV Test. - Grievant; Grievant's Position Description Form.

2. Approximately 50% to 62% of Grievant's duties fall within the duties outlined for a SSW II. Id.

3. Approximately 24% of Grievant's duties fall within the job description of a SSW I. Id.

4. Grievant needs three credit hours to complete the Baccalaureate degree necessary to

qualify for a SSW III or PSW position.

Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely match another cited Personnel classification specification than the one under which she 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 constituted the "best fit" for her required duties during the time period in question. Simmons v. W. Va. Dept. of Health and Human Resources and Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Collier, et al. v. W. Va. Dept. of Health and Human Resources/Office of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-039 (Sept. 19, 1994); Broaddus v. W. Va. Div. of Human Srvcs., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule §4.04(a); Coates v. W. Va. Dept. of Health and Human Resources/Lakin Hosp. and W. Va. Div. of Personnel, Docket No. 94-HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a Grievant that does not make the job classification invalid. W. Va. Admin. Rule at §4.04(d).

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 classification with a substantial obstacle to overcome in attempting to establish that they were misclassified or that they worked out-of-classification.

Mr. Lowell Basford, Assistant Director of Classification and Compensation with Division of Personnel, testified at length about Personnel's role in writing and interpreting the class specification. Mr. Basford spoke to and interpreted W. Va. Admin. Rule §4.04 which deals with "class specifications."

(a)

> **Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.**

(b)

> **In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties,specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.**

(c)

> **A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied power of the appointing authority now or hereafter vested with the right to prescribe or alter the duties of any position.**

(d)

> **The fact that all the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.**

Mr. Basford noted employees can perform duties outside their job description as the class

specifications are to characterize the type of work to be performed, not to identify every task of the position. Class specifications are descriptive, not exhaustive, and are to give a "flavor" of the difficulties, complexities, and duties of the position. Class specifications are to follow the organization of an agency's work, not to precede it. Personnel's goal in writing the class specification is to give a general description of the duties, not to handcuff the agency in the way it conducts business.

Mr. Basford further testified the predominant duties of the position are controlling. In examining Grievant's pre-May 31, 1992 position, Mr. Basford noted the majority of Grievant's duties - 85%to 90% - were at the SSW II and SSW I level, thus he opined the SSW II classification was the "best fit" for Grievant. **(See footnote 3)**

Grievant demonstrated that before May 31, 1995, she dealt with APS clients approximately 10% to 15% of the time. Although the SSW II classification does not speak to APS cases, the "Nature of Work" section does states a SSW II "[m]ay be required to deal with situations which are potentially dangerous . . . ." Because the predominant duties of the position are class controlling, the fact Grievant performed these tasks, not specially identified in her current classification, a small portion of the time, did not invalidate her classification. Collier, supra; Coates, supra; Broaddus, supra. Grievant has not met her burden of proof and has not demonstrated Personnel's determination that her work prior to May 31, 1995, was within her classification was "clearly wrong." Francis/Sayre v. Dept. of Health and Human Resources/Office of Social Srvcs. and Div. of Personnel, Docket No. 95-HHR-077 (July 28, 1995).

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. The predominant duties of the position in question are class controlling. Collier, et al. v. W. Va. Dept. of Health and Human Resources/Off. of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-039 (Sept. 19, 1994); Broaddus v. W. Va. Div. of Human Srvcs., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

2. Personnel's interpretation of the class specifications for the position in question, as they apply to the duties Grievant performed, are not clearly erroneous and, therefore, should

be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993); Kyte v. Dept. of Health and Human Resources and Dept. of Admin./Div. of Personnel, Docket No. 94-HHR-030 (Sept. 21, 1994).

3. Although Grievant did perform some duties outside her current classification as a SSW II, this did not render her misclassified. Kyte v. Dept. of Health and Human Resources and Dept. of Admin./Div. of Personnel, Docket No. 94-HHR-030 (Sept. 21, 1994); Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991).

Accordingly, this grievance is DENIED.

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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: September 29, 1995

Footnote: 1Initially Grievant had two grievances at Level IV. At hearing Grievant abandoned her second grievance, which requested a salary increase based on "tenure, knowledge and ability."

Footnote: 2Grievant is ambivalent about this action as she enjoyed the work, but was also relieved not to perform duties for which she felt she was not properly compensated.

Footnote: 3Mr. Basford also testified that HHR could have continued to assign Grievant APS cases occasionally as this did not constitute a significant portion of her duties. HHR's action was taken as a result this Grievance Board's Decision in Toney v. W. Va. Dept. of Dept. of Health and Human Resources, Docket No. 93-HHR-460 (June 17, 1994). Since Personnel was not a party in that case and had no opportunity to interpret and explain the classification specification at issue, as Mr. Basford did here, the ruling in Toney cannot be controlling in this case. As noted in W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993), Personnel's

interpretation and explanation of its rules and regulations and the class specifications must be given great weight unless they are clearly erroneous. Grievant did not demonstrate Personnel's interpretation was "clearly wrong."