JAMES BRADLEY,

Grievant,

v. **Docket No. 03-HHR-150**

DEPARTMENT OF HEALTH and HUMAN SERVICES/BUREAU OF MEDICAL SERVICES and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, James Bradley, employed by the Department of Health and Human Resources ("HHR" or "Agency"), grieves his classification as Health and Human Resources Specialist, Senior, and asserts he should be reallocated as a Program Manager I because he performs the duties of that classification. The Division of Personnel ("DOP") argues Grievant is correctly classified, and the Health and Human Resources Specialist, Senior classification is the "best fit" for his duties. HHR defers to DOP in matters dealing with classification.

This grievance was waived at Levels I and II and denied at Level III. Grievant appealed to Level IV on May 29, 2003, and a Level IV hearing was held on August 12, 2003. This case became mature for decision on August 29, 2003, when the transcript for the hearing at Level III was received by the Grievance Board, as the parties elected not to submit proposed findings of fact and conclusions of law. (See footnote 1)

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed as a Health and Human Resources Specialist, Senior by the Department of Health and Human Resources in the Bureau for Medical Services.

2. Grievant sought reallocation, and to support his request he completed a Position Description Form on August 20, 2002, and submitted it to his supervisors for approval, which was given.

3. This Position Description Form was sent to the Division of Personnel to review for reallocation to a Program Manager I.

4. The Division of Personnel determined Grievant was properly classified as a Health and Human Resources Specialist, Senior. Grievant's supervisor, Barbara White, requested a justification of that reallocation denial, and she requested reconsideration of that decision.

5. On April 16, 2003, the Division of Personnel Director Nichelle Perkins affirmed the prior decision and stated the position should remain classified as a Health and Human Resources Specialist, Senior because Grievant did not have any supervisory duties.

6. Several days before the Level III hearing, Grievant was assigned the responsibility to supervise one employee.

7. The Division of Personnel defines a supervisor for the purposes of classification as an employee "formally delegated responsibility for planning, assigning, reviewing and approving the work of three or more full-time employees which also includes initiating disciplinary actions, approving sick and annual leave requests, conduct[ing]performance evaluations, recommend[ing] salary increases, and is a step in the grievance process." (Emphasis added).

8. Grievant administratively oversees and coordinates approximately 13 programs. His role is to work as liaison with Medicaid providers, practitioners, and recipients to ensure that services are received, policies are understood and followed, and bills are correctly completed and paid. See Resp. DOP's Ex. No. 1, at Level III.

9. Grievant frequently answers questions about billing from providers, approves some billing requests, and regularly writes and reviews policies for others to evaluate and assess. Grievant also interprets these policies to agencies, providers, and recipients.

10. Grievant's duties consist of performing the work himself, rather than directing and supervising others to perform tasks and assignments, with the exception of the one employee who assists him in several programs. Grievant does not supervise these providers, Agency employees, and/or contractors.

11. Grievant's Position Description Form indicates he spends: 80% of his time supervising, directing, reviewing, and administering the programs he is assigned; 10% of his time answering

questions and instructing providers, recipients, and other interested parties regarding Medicaid policy reimbursement of services and statistical data as requested; and the remaining 10% of his time attending meetings and writing reports. Resp. DOP's Ex. No. 1, at Level III.

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 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.

(Emphasis added).

Discussion

W. Va. Code § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR which utilize such positions, must adhere to that plan in making their employees' assignments. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR-460 (June 17, 1994).

Grievant asserts his position is misclassified, and he has requested his position be reallocated. DOP's Rule 3.78 defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in

number of duties and the number of employees supervised does not necessarily establish a need for reallocation. Kuntz/Wilford v. Dep't of Health and Human Resources, Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." Id.

Additionally, 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 match another cited Personnel classification specification than the one under whichhe is currently assigned. See generally, Hayes v. W. Va. Dep't 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. Dep't 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. Dep't of Health and Human Resources/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 Serv., 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. Dep't of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the forgoing 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.

Grievant's position is clearly very important and complex. A review of the "Nature of Work" Section of the Health and Human Resources Specialist, Senior class specificationaccurately describes Grievant's duties. Grievant "[a]cts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing [various] program[s]." He "[h]as primary responsibility for developing standards for major systems and

for monitoring and/or evaluation of major complex systems or multi program operations," . . . and he "[h]as 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 [sic] assigned responsibility."

By contrast the Program Manager I "Nature of Work" Section states the employee classified in that position "manag[es] a major program component within an office or organizational unit in the Department of Health and Human Resources,". . . and his/her "[r]esponsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human services." Additionally, the first Example of Work in the Program Manager I class specification is "[s]upervises professional, technical and clerical staff; make assignments and reviews and approves plans of operation." Grievant only supervises one employee, and this one employee does not meet the Division of Personnel's definition for a supervisor. Further, Grievant does not manage a program; he works as a liaison with program managers, gives them guidance and policy interpretation, answers questions on billing, and ensures the policies and guidelines are understood and followed. This review of Grievant's Position Description Form indicates he is correctly classified, and Health and Human Resources Specialist, Senior classification is the best fit for his duties.

Further, Mr. Basford, Assistant Director of Classification and Compensation with the Division of Personnel, is regarded as an expert in the area of classification, and he testified at Levels III and IV that Grievant was correctly classified. He interprets the language in the Program Manager I class specification to mean that employees in this class specification are in charge of a program, like the ones identified in the class specification's Distinguishing Characteristics, and they supervise the work force that carries out the goals, objectives, and responsibilities of these programs. The review of the class specifications as discussed above demonstrates Mr. Basford's interpretations are not arbitrary and capricious or clearly wrong. Thus, according to Blankenship, supra, this decision cannot be reversed. Grievant has failed to demonstrate DOP was “clearly wrong” in its interpretation of the duties and differences between the two class specifications at issue.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (2000); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. In order for a 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 match another cited Personnel classification specification than the one under which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. 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. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

4. 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. Dep't of Health and Human Resources/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). 5. The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). 6. The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

7. Grievant has not demonstrated by a preponderance of the evidence that he is misclassified, or that the position of Program Manager I is the "best fit" for his duties.

Accordingly, this grievance is **DENIED**.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of thisdecision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

_____ **JANIS I. REYNOLDS**

Administrative Law Judge

Dated: September 29, 2003

Footnote: 1

Grievant represented himself, HHR was represented by B. Allen Campbell, Esquire, Assistant Attorney General, and the Division of Personnel was represented by Karen O'Sullivan Thornton, Esquire.