JONATHAN TURNER, ET AL.

v. **Docket No. 94-HHR-131**

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

D E C I S I O N

Grievants, Jon Turner, Ora Yarbourgh, Jim Daniels, Bill Adamy, Vince George, Dottie Ray, Mark Lothes, and Sherry Moore (See footnote 1), are employed as Family Outreach Program Specialists in the Office of Maternal and Child Health ("OMCH"). Grievants contend their classification as Health and Human Resources Specialists ("Specialist") is incorrect, and they should be classified as either Health and Human Resources Specialists, Senior ("Specialist, Sr.") or Program Manager Is ("PM I"). (See footnote 2) Because different dates of misclassification were listed on the grievance forms, theundersigned requested clarification at the beginning of the Level IV hearing. After a lengthy discussion, the Grievants, with the exception of Ms. Moore (See footnote 3), decided to cite the dates of their misclassification as December 16, 1992, the date they received their reclassification letters from Division of Personnel ("DOP"). Level IV Trans. at 19-21. After post-hearing submissions, this case became mature for decision on September 8, 1994.

The pertinent sections of the three class specifications at issue are set forth below.

HEALTH AND HUMAN RESOURCES SPECIALIST

Nature of Work

Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based on standards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical area specific to or characteristic of the

Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operational area or a significant segment of a major statewide program oroperational area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

Examples of Work

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.

Interprets laws and regulations governing program or technical area for participants and staff.

Monitors changes in laws and regulations and advises participants and other staff.

Confers with inter- and intra-agency personnel to transact business or discuss information.

Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.

Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.

Represents the program in the area of assignment with the agency and outside entities.

Has contact with federal, state, local program representatives and participants, or technical area personnel.

Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.

May oversee the work of support staff or other specialists in relation to the completion of specific assignments.

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 complexsystems 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 [sic] 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.

Grievants are employed as Regional Coordinators in the Family Outreach Program ("FOP") within the Division of Infant and Children. The Division of Infant and Children is a part of OMCH within the Department of Health and Human Resources ("DHHR"). The FOP is a statewide program with two primary objectives. First, the program informs eligible clients and their families about the medical services available to them. These clients are children and adolescents up to the age of twenty-one, and the majority of them are eligible for services through Medicaid. Medicaid referrals receive services through the Early and Periodic Screening and Diagnostics and Treatment Program. Other individuals who are not Medicaid eligible are informed of the services available to them through the Pediatric Health Service Program. The second objective of the program is to recruit and train medical caregivers such as doctors, nurses, county health department personnel, and clinic and hospital staff to provide services to eligible clients.

This statewide program is divided into nine regions with a regional coordinator or program specialist responsible for the implementation of the program in each area. The Grievants are eight of the nine regional coordinators, and they are responsible for recruiting caregivers to participate in the program. 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 coordinators also supervisethe Family Outreach workers ("FOW"), who are aides classified as support staff, who make home visits to eligible clients and inform them of the programs and their benefits. The regional areas are divided along county lines. The number of FOWs supervised by the regional coordinators varies from four to twelve, and the number of health care providers in each area varies from approximately seventeen in Region 5 to fifty-seven in Region 3.

Grievants argue they should be classified as PM Is because they perform complex administrative and professional work at an advanced level and manage a major program component, a regional area. They contend they perform all duties expected of a PM I and thus are clearly misclassified.

Additionally, Grievants argue they were given insufficient information about how to fill out their Position Description Forms. Therefore, the information DOP based their classification on was insufficient. The original Position Description Forms were filled out in detail and closely followed their

job description. At Level III the Grievants submitted new Position Description Forms which closely followed the language used in the PM I job description. At no point in time did the Grievants testify that their job duties had significantly changed from the time of filling out the first form to the time of filling out the second.

Grievants' superior, Mr. Selbe, testified the Grievants performed all the duties of a PM I. Mr. Sterling Smith, Assistant Director of OMCH, testified that the Grievants performed most of the duties of a PM I.

Mr. Lowell Basford, Assistant Director of Compensation and Classification with DOP and a recognized expert in the field of classification, testified at Level IV that the Specialist position was the best fit for the duties performed by the Grievants. Level IV Trans. at 94. Mr. Basford clarified the FOWs were support staff, not professionals or paraprofessional personnel. Further, he testified the regional areas are not a major program component. Level IV Trans. at 98-99. He also indicated he received no feedback from the Department of Health and Human Resources during the reclassification project that the Grievants were misclassified. He stressed the Specialist position was a responsible position involving consultation and complex problem solving situations, development of training programs, providing program development as well as policy and procedure interpretation based on standards and regulation, latitude in problem solving, and evaluation of the components they supervise and coordinate. Mr. Basford stressed that coordinating a statewide program was a much more complex task than coordinating a regional program.

Discussion

In order for 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 DOP 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). DOP 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 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, DOP'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.

A comparison of Grievants' duties with the Position Description of the PM I will be discussed first. The "Nature of Work" section of the PM classification requires an employee to perform complex administrative and professional work at an advancedlevel in "a major program component" of DHHR. While Grievants do perform some complex administrative and professional work, they do so only in a regional area of a program component. Additionally, while Grievants contribute to planning and policy development, as well as direction and coordination of their area, Mr. Selbe, the Director of FOP, is charged with the total responsibility for these areas and the program in its entirety. Further, while Grievants may be involved in controversial and complex problem solving areas, Mr. Selbe is the individual who guides these Grievants and is responsible for the final decisions.

Grievants do not meet the "Distinguishing Characteristics" listed by the PM I job description. They are not in charge of an organizational unit similar to those identified in this section. Again, Grievants are only in charge of a regional program.

Under examples of work it is very clear that Grievants do not supervise professional or clerical staff. They do supervise support staff (See footnote 4), the individuals who contact the eligible clients. This supervision includes recruitment, staff development, and some disciplinary matters. Final decisions on selection and long-term suspensions or discharges are made by Mr. Smith. Level IV Trans. at 145-146. The other examples of work listed do describe much of the work the Grievants do, but it is limited to a regional area and does not encompass the entire FOP. Further, although Grievantstestified they are responsible for the total monitoring of the health care providers, this testimony is in direct disagreement with testimony previously received by this Board in prior cases.

See, Selbe v. Dept. of Health and Human Resources/Office of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-050 (Oct. 31, 1994); Flanagan v. Department of Health and Human Resources/Office of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-028 (Sept. 29, 1994). Although Grievants do perform many administrative tasks, they perform these duties only in a regional area, not within a major program component. Further, Grievants do not supervise individuals who are professionals or paraprofessionals but supervise support staff. Clearly, the regional coordinator position is not on par with the programs identified in the PM I job description. Accordingly, the PM I job description is not the best fit for the Grievants' job duties.

A comparison of the Specialist job description with a Specialist, Sr. job description reveals the Grievants do perform some of the tasks identified in the Specialist, Sr. category. The two major distinguishing characteristics which differentiate a Specialist from a Specialist, Sr. are 1) the type of individual supervised (See footnote 5) and 2) type of program for which the individual is responsible. A Specialist, Sr. may supervise professional andparaprofessional people. A Specialist supervises only clerical and support staff. Grievants supervise only support staff. In terms of program responsibilities, a Specialist, Sr. has responsibility for the conceptual development of a major complex program and a Specialist is responsible for a statewide program or operational area, or a significant segment of a major statewide program or operational area. The Grievants have responsibility for a significant segment of the statewide FOP Program, not total responsibility for a major complex program.

In terms of other information described under the "Nature of Work" section of the two job descriptions, the Specialist more closely defines the work of the Grievants as they are only in charge of a regional area and are directly supervised by Mr. Selbe. Multiple memos submitted by the Grievants confirm Mr. Selbe's role in giving guidance to the Grievants, coordinating the program and its policies, delegating tasks to Grievants, and clarifying and coordinating communication between the regions and other program components. Of all three positions, the Specialist job description is the "best fit" for the duties performed by the Grievants.

Given the foregoing discussion it is clear the Grievants have not met their burden of proving that either the PM I or Specialist, Sr. job description is the "best fit" for their job duties. While it is clear Grievants perform important and essential duties, these duties are as coordinators of regional areas under the direct supervision of Mr. Selbe, not as managers of a major programcomponent. The above discussion will be supplemented by the following finding of fact and conclusion of law.

Finding of Fact

Grievants are regional coordinators for the FOP within OMCH. They supervise FOWs, support staff who contact eligible clients. They also recruit and train health care personnel to care for eligible children and adolescents.

Conclusion of Law

Grievants have not met their burden of proving by a preponderance of the evidence that the position classifications of PM I or Specialist, Sr. are the best fit for their duties.

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: November 28, 1994

Footnote: 1Ms. Moore was allowed to join this grievance at Level IV with the proviso that any relief granted her would date from the filing of her grievance. Level IV Trans. at 9.

Footnote: 2A lengthy discussion was held at the beginning of the Level IV hearing to clarify the grievance and the relief sought as the statement of grievance and requested relief had been changed without objection, during the course of the grievance. The final result of this discussion was that the Grievants decided to request the undersigned to examine both classifications, with emphasis on the PM I classification. Level IV Trans. at 23.

Footnote: 3See note 1.

Footnote: 4Grievants argued they supervise the health care professionals because they train and monitor them. This argument must fail, as the Grievants have no control over these providers, nor are these providers state employees.

Footnote: 5Grievants appear to think that the terms "lead worker" and "supervisor" are the same and are interchangeable even though Grievants' Exhibit Number 98, a list of DOP's definitions for "key words," clearly differentiates between the two.