ELBERT FLANAGAN

v. **Docket No. 94-HHR-028**

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

D E C I S I O N

Grievant, Mr. Elbert Flanagan, works as a Director of Monitoring for the Office of Maternal and Child Health ("OMCH"). He grieves his classification as a Health and Human Resources Specialist, Senior ("Specialist, Senior"). He states that given the complexity of his position he should be classified as a Program Manager I ("PM I"). This grievance was waived at Levels I and II and denied at Level III. Grievant appealed this grievance to Level IV, a hearing was held on April 18, 1994, and the case became mature for decision on May 25, 1994.

The pertinent sections of the two classification specifications at issue are repeated 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 Healthand Human Resources. Acts as a 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.

As Director of Monitoring, Grievant monitors approximately 1,300 health care providers who have contracts with OMCH to see if these providers are meeting the required federal and state guidelines. Grievant supervises approximately eight employees with a variety of backgrounds and professions who actually go into hospitals, clinics, public health facilities, and private doctor's offices to observe the actual care being given and to assess the follow-up plans. These individuals also assess the facilities to see if basic safety standards and requirements are being met.

The information received through this monitoring is then placed into reports and given to the departments or agencies who work with the facilities. Grievant was very clear that these assessments include both positive and negative aspects and were not evaluations; only a gathering of information in correlation with the stated guidelines. Grievant also testified that his office had no enforcement capabilities, and it was up to the program directors to decide what action should be taken.

Grievant developed this program, which is apparently one-of-a-kind in the United States, and has been in charge of it since approximately 1981. He has an active role in the hiring, training, and disciplining of his subordinate employees.

On the organizational chart Grievant's position is connected by a dotted line to Mr. Sterling Smith the Associate Director. He is clearly not in charge of a client service program, but does provide essential feedback to the individuals who are in charge of these programs.

Grievant also testified that because the job descriptions overlap he performs some of the duties described in the Specialist, Senior job description, but the PM I job description was the best fit because he is involved in policy development, works under general direction not general supervision, reports only to the assistant director or director, and manages a program which affects the delivery of health care services throughout the State.

Mr. Lowell Basford, Assistant Director of Classification and Compensation, testified that while Grievant's position is an important one, it could not be classified as a PM I because the Grievant did not perform a programmatic function and did not serve in a "missional" role, i.e., one dealing with the agency's purpose. When OMCH was reclassified there was an agreement that the people who provide direct service would be "top dogs", not the support staff. Since Grievant is not directly involved in client care, his position is not "missional", but falls into the administrative support or technical assistance category. Mr. Basford also testified that the complexity and difficulty of Grievant's position was "diluted" because he served only as a fact-finder in a self-directed, highly-structured manner, and he was not involved inevaluating the data he receives or making decisions about what to do if there are serious errors.

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 weightunless 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. Grievant has not met his burden in proving that the PM I constitutes the "best fit" for his required duties. While it is obvious the Grievant and his staff perform important functions, this function is more in the area of support as opposed to program management. A review of the two position description forms and the testimony and exhibits at the hearing demonstrate the Grievant is correctly classified as a Specialist, Senior.

Finding of Fact

Grievant monitors most of the health care providers who have contracts with OMCH. He does not evaluate these health care providers or take part in any enforcement activities.

Conclusion of Law

The Grievant has not 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 **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, 1994