DORA KAY GRUBB,

Grievant,

v. DOCKET NO. 95-HHR-069

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

Respondents.

D E C I S I O N

Grievant, Dora Kay Grubb, originally filed a grievance in January 1993, along with several other employees of Respondent Health and Human Resources, alleging that the reclassification of December 16, 1992, was illegal and discriminatory. (See footnote 1) Grievant also alleged in her specific grievance that she was misclassified as a Social Service Worker III ("SSW III") and asked to be reclassified as a Social Worker III ("SW III"). The original grievances were consolidated and a Level III hearing was held on April 29, 1994. A decision denying the grievance was issued on January 30, 1995. Grievant appealed the decision on the issue of misclassification only, as that issue was not addressed in the Level III decision. A Level IV hearing was held on May 4, 1995, at which time this case became mature for decision.

The classification specifications at issue are reproduced herein as follows:

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, mental health, 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.

Locates and evaluates providers for foster care, adoption, emergency shelter care and Medley home services; counsels and rains providers in effectively providing required services; conducts periodic evaluations of facilities and services.

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

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.

Knowledge, Skills and Abilities

Knowledge of theories and practices in social work.

Knowledge of federal and state laws, regulations and programs in social services.

Knowledge of emotional states and their behavioral indicators.

Ability to assess social, educational and economic circumstances of clients to determine need for social services.

Ability to develop client service plan to habilitate and rehabilitate client and assist client in attaining social, educational and vocational goals.

Ability to evaluate social service providers according to established guidelines.

Ability to work effectively with other professionals and social service agencies in providing social services.

Ability to counsel people in favor of specific actions, changes in attitude or insights.

Ability to maintain records, prepare reports and correspondence related to the work.

Ability to communicate with others, both orally and in writing.

SOCIAL WORKER III

Nature of Work

Under general supervision, responsible for the planning, development and delivery of advanced social services such as group therapy, family therapy, or other intense therapeutic techniques to the client population. Caseload will be comprised primarily of multi-program, extremely troubled clients, protective service clients, families in severe crisis, or extremely troubled individuals in out-of-home placement. Exercises considerable latitude for independent action on the formation of service plans and the delivery of therapeutic interventions. Responsible for related administrative and operational aspects of caseload. May supervise other social work 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 III is expected to exercise a large degree of autonomy in providing case assessment, case management and contacts in advanced level social work services. Caseload at this level involves complex situations with general client vulnerability.

Examples of Work

Interviews the client and family; contacts health and welfare professionals in order to assess the client's current behavior level, ego strengths and deficits, situational strengths and weaknesses, and mental status.

Prepares recommendations based on professional assessment of client's functioning level and on case history data of a social, emotional, medical, economic, and socio-cultural content.

Assumes a major role in the preparation of service/treatment plans, either alone or in collaboration with an interdisciplinary team of professionals from such areas as nursing, medicine, psychology, psychiatry, chaplaincy.

Discusses the proposed plan with the client and/or family detailing the recommendations and the reasons for them; identifies alternative interventions and methods in order to ensure that there is mutual understanding about intervention goals and the kinds of services to be rendered.

Provides, with significant autonomy, individual, group or family counseling requiring intervention skills in situations involving complex interpersonal, social, financial, legal and health dimensions.

Monitors, assesses and reports client progress, and actively participates in or instigates the modification of service plans.

Acts as a client advocate and ensures that continuing or concurrent services are received.

Maintains liaison/linkage with, and assists in the development of community resources.

Through contacts with clients, community organizations, and other social service agencies, identifies deficiencies in existing service programs, and proposes alterations to ensure continuity of care.

Attends and participates in various meetings, conferences, training sessions, and workshops in order to exchange information, discuss cases, problems, policies, and procedures.

Knowledge, Skills and Abilities

Knowledge of the techniques and principles of social work.

Knowledge of human growth and developing the dynamics of behavior.

Knowledge of the historical development, principles, techniques and practices of modern social work.

Knowledge of the social factors contributing to maladjustment and dependency.

Knowledge of federal and state programs and functions as well as the laws and regulations relating to them.

Knowledge of community resources available for utilization in various welfare programs.

Skill in diagnosing cases, applying social work principles, formulating plans for client treatment and rehabilitation and securing active cooperation of the client.

Ability to establish satisfactory working relationships with clients and their families, agency personnel, public officials and private citizens.

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 matched another cited Personnel classification specification than that 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 the Work" section of a classification specification is its most critical section. Atchison v. W. Va. Dept. 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 Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR/Division 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, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Grievant does not dispute that she performs the duties and responsibilities set forth in the classification specification for a SSW III. Rather, Grievant argues that the duties and responsibilities of a SSW III and a SW III are basically the same and she should either be classified as a SW III, or the positions should be collapsed into one specification. Grievant points to the distinguishing characteristics of a SW III, specifically, the requirement to travel in a personal automobile and being on-call, and avers that she also must use her personal automobile and is on-call as a SSW III. Grievant also contends that the pay scale under the

reclassification project is discriminatory because employees with longer service and experience are being paid at the minimum of their pay grades.

Lowell T. Basford, Assistant Director, Classification and Compensation, Division of Personnel, testified that, traditionally, the Social Service Workers were hired by the Human Resources side of the Department, and Social Workers were hired by Health. The Social Service Worker class series is three-tiered and identified by their programmatic functions. At the SSW III level, the distinguishing characteristics define those programs as including home services and adoption services, both of which Grievant hasperformed. These services are performed either within an office or out in the field. Many of Grievant's clients are hostile, abusive and potentially dangerous, and Grievant is required to go into their homes without protection.

The Social Worker class series is not programmatic in nature and is designed to apply to employees located in state health facilities. These types of employees provide therapeutic services to clients in state hospitals, and work with a team of medical personnel to provide counseling therapy in an institutional setting.

While it is clear that the two class specifications identify many similar duties and responsibilities, it is not arbitrary or capricious for Personnel to group these workers into two types of services, based on the types of services rendered, i.e., office or field vs. institutional.

Findings of Fact

1. Grievant is employed as a Social Service Worker III within the Social Services Division of the Department of Health and Human Resources.

2. Grievant works a 12-county region within the state providing professional social services to children and families, as well as assessments of family lifestyles. Grievant provides many of these services in the field and is required to travel by personal automobile to her clients' homes.

3. Grievant is a licensed social worker with the State of West Virginia.

Conclusions of Law

1. Grievant has failed to prove by a preponderance of the evidence that she is

improperly classified as a Social Service Worker III based upon a review of her duties and responsibilities.

2. Personnel's interpretation of the two classification specifications at issue in this case is not clearly wrong as applied to the facts established by the Grievant. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

3. It is not discriminatory, under the reclassification project, for individuals with differing lengths of service to be placed at the minimum salary of their pay grade. See Largent v. W. Va. Div. of Health, 452 S.E.2d 42 (W. Va. 1994); Hickman v. W. Va. Dept. of Trans., Docket No. 94-DOH-435 (Feb. 28, 1995).

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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MARY JO SWARTZ

Administrative Law Judge

Dated: May 30, 1995

Footnote: 1 ***Respondent moved to dismiss the grievance at Level IV because the original January 1993 grievance form was not signed by Grievant. She explained that all of the employees who wished to join the grievance were told to submit forms together to their representative. She never received a copy of that form from her representative, who has subsequently been discharged from the Department. Because the grievance process is not intended to be a procedural quagmire and this issue was not raised at the lower levels, Respondent's motion to dismiss is denied.***