

M. JEAN FAULKNER

v. Docket No. 95-HHR-537

WEST VIRGINIA DIVISION OF HEALTH & HUMAN RESOURCES and
WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant M. Jean Faulkner filed a grievance in August 1995, against her employer, Respondent Division of Health and Human Resources (HHR), alleging she was misclassified as a Social Service Worker III (SSW3) and that she should be reclassified as a Social Worker III (SW3). Following adverse decisions at the lower grievance levels, she appealed to level four. The parties agreed that a level four decision could be based on the record below, and the case became mature for decision on December 28, 1995, upon receipt of the transcript and exhibits of the level three hearing.¹

¹Of record are the pleadings, adverse lower level decisions and the transcript and exhibits of the October 30, 1995, level three hearing. Background

There is no dispute about the underlying facts which gave rise to the grievance. Grievant works in HHR's Office of Social Services as an adoption worker. Her duties involve working in her office or in the field with children who must be placed for adoption, including those whose parents' parental rights have been terminated and who may suffer emotional or physical problems. Grievant also works with prospective adoptive parents as well as existing biological parents and with various profession

al and support persons necessarily involved in the adoption process. In order to match adoptive children with prospective parents in the pre-adoption phase, Grievant performs various assessments, in conjunction with other appropriate professionals when necessary; prepares and presents reports of her findings; and ultimately makes placement recommendations to various groups and committees.

Grievant also assists in the post-adoption stage, offering parenting training to the adoptive parents and/or follow-up counseling to the adopted children. Grievant does not perform intensive counseling with adoptive/adopted children or otherwise offer services to them in a state institution; rather, she effects the placement of these children in other types of residential care when needed. By regulation, Grievant's case load is restricted to fifteen children. The West Virginia Division of Personnel's (DOP or Personnel) classification specifications at issue are reproduced 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 trains 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, extreme, 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 contact in advanced level social work services. Caseload at this level involves complex situations with general client vulnerability.

Examples of Work

Interview 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 context.

tent.

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.

Monitor, 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. 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 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. Atchinson 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, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if 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 has not met her burden of proof in this case.

Grievant does not offer a legal theory as to why she should be a SW3 instead of a SSW3. Rather, she expresses the belief that her twenty plus years in social work must count for something in this situation. She also argues that her educational background, experience and skills are those required of a social worker. According to Grievant, HHR's social workers and social service workers perform essentially the same duties as professional social workers, and it is unreasonable to differentiate between them simply because they have different work environments.

HHR maintains that the primary issue raised by Grievant was settled in Grubb v. Dept. of Health and Human Resources, Docket No. 95-HHR-069 (May 30, 1995), and that Grubb must be applied to this case. HHR also draws on the testimony offered by DOP's Assistant Director of Classification and Compensation, Lowell T. Basford, in the Grubb case. Mr. Basford established that, traditionally, Social Service Workers were hired by the Human Resources segment of HHR while Social Workers were hired by

Health. He explained that the Social Service Worker class series is three-tiered and identified by its programmatic functions. SSW3's distinguishing characteristics include work in programs such as adoption services and related services, and the work is performed either within an agency's office or out in the field. On the other hand, 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.

HHR is correct that the outcome in Grubb controls this case as the underlying issue is identical. Clearly, Grievant performs adoption services within an HHR office or out in the field, and does not perform therapy in a state institution.

Granted, the two class series and/or specifications in question, social worker and social service worker, identify many similar duties and responsibilities. However, it is not arbitrary or capricious for DOP to group these workers into two classifications, based on the types of services rendered, i.e., office or field versus institutional. Grubb.

In addition to the foregoing, the following findings and conclusions are appropriate.

Findings of Fact

1. Grievant is employed by HHR in its Office of Social Services, and is classified as a SSW3.
2. Grievant's primary function as an adoption worker includes facilitating the placement of eligible children in adoptive homes and offering needed follow-up care.
3. Grievant is a licensed social worker with the State of West Virginia.

4. Grievant's work as an adoption worker is programmatic rather than therapeutic in nature, and she performs her duties either within her own office or other agency facilities or out in the field.

5. Grievant is not involved with the intensive therapy of clients within one of West Virginia's hospitals or other institutions.

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 interpretations of the two classification specifications at issue are not clearly wrong as applied to the facts in this case. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

3. It is not arbitrary or capricious or otherwise unlawful for Personnel to group HHR's social service workers and social workers into two different classifications, based upon the nature, type and setting of the services rendered, i.e., the performance of relevant, routine assessments and counseling or related work in office or field versus the delivery of intensive therapy in a state hospital or other state institution. Grubb v. Dept. of Health and Human Resources, Docket No. 95-HHR-069 (May 30, 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 Employ

ees 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

NEDRA KOVAL

Administrative Law Judge

Date: January 10, 1996