NAOMI JARVIS,

Grievant,

v. DOCKET NO. 97-HHR-318

DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

Respondent.

DECISION

Grievant Naomi Jarvis filed this grievance against Respondent, Department of Health and Human Resources ("HHR"), following her five day suspension from employment without pay, on October 8, 1996. She sought as relief, "[d]ecision reversed and any and all references expunged from record." (See footnote 1)

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. W. Va. Code § 29-6A-6; Ramey v. W. Va. Dep't of Health, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden.

Grievant is an Economic Service Worker in Calhoun County. She takes applications from county residents for benefits, determines their eligibility for benefits, and maintains a caseload of clients. She was suspended because, after her husband rented a house to someone in Grievant's caseload, J.B., (See footnote 2) **she continued to maintain that person in her caseload; and because she assisted that same client in writing a letter to the local**

newspaper editor for publication which supported Grievant's husband when he was fired by the Calhoun-Gilmer Career Center. HHR alleged Grievant used undue influence on the client in regard to the letter, and her actions with regard to both incidents, violated HHR Policy Memorandum 2108. The suspension letter also concludes that Grievant had suggested to the client that she write the letter in supportof Grievant's husband, and that this was improper.

The suspension letter states an investigation into these matters was begun after Commissioner Sue Sergi received a letter from Elizabeth Parmer, Director of the Calhoun-Gilmer Career Center. Mr. Jarvis was fired by Ms. Parmer. Ms. Parmer stated she had received a telephone call from an HHR employee who had verified her suspicion that Grievant was involved in writing two letters to the editor which were signed by a client in Grievant's caseload, and that one of the letters was written at the HHR office. She also stated she had copies of documents verifying that the identified client was a recipient of benefits and was assigned to Grievant's caseload. **(See footnote 3)**

The section of HHR Policy Memorandum 2108 (dated February 28, 1992) which HHR alleges Grievant violated provides:

> **Employees are expected to: . . . refrain from <u>any</u> type of exploitation of residents/patients/clients or their families, including but not limited to, intimate, personal, financial, emotional, sexual or business exploitations.**

> **Employees are expected to avoid conflicts of interest between their personal life and their employment. Employees shall not provide services to or make decisions concerning eligibility for Agency programs for spouses, relatives, friends, neighbors, present or former co-workers, or club or church acquaintances. Requests for services and questions regarding eligibility in these potentially conflicting situations should be referred to supervisors for reassignment. Employees should not solicit or accept any <u>monetary</u> gain for their services to residents/patients/clients, other than their salary and benefits paid by the Department. . . . Employees whose behavior conflicts with their employment are subject to discipline.**

Calhoun is a small county of about 7,800 people. Of that small population,about 1,200 receive some form of public assistance through HHR's county office. Grievant was assigned one-third to one-fourth of the cases, consisting of 300 to 400 persons whose last names fell within "A through G" or "H" of the alphabet.

Grievant admitted her husband had rented a house to J.B., and that she had continued to carry J.B. in her caseload. She stated J.B. had asked her at the HHR office about renting the

house. She stated J.B.'s rent was paid by the Department of Housing and Urban Development ("HUD"), and her husband actually received $150.00 more each month from HUD than he would have from an individual paying her own rent. She argued it was not a violation of Policy 2108 for her husband to rent the house to J.B., and produced documents to prove all the transactions were in her husband's name, not hers. As will be discussed later, she also argued her supervisor had approved her continued work on J.B.'s case.

With regard to the letter writing incident, J.B. testified Grievant had been her caseworker for years, and had encouraged her to go to college, and she felt Grievant was a good friend to her. She stated she went to the HHR office for a review, and when she and Grievant had finished the review, she asked how Grievant and her husband were doing. She stated Grievant told her about the problems Mr. Jarvis was having at work, and J.B. said someone should write a letter to the editor. She stated she said she would write a letter, but she was not good at that, and then asked Grievant if she would help her write a letter. She testified she and her daughter had attended the Career Center, and had heard good things about Mr. Jarvis, and she felt he was being treated unfairly. She did not expect to receive any benefit from Grievantfor writing the letter, nor did she receive any.

Grievant helped J.B. write two letters to the editor, both regarding the Career Center. Only one of the letters mentioned Mr. Jarvis. J.B. explained she had talked to Grievant on the telephone regarding what she wanted in the letters, and Grievant helped her with the wording and typed the letters.

Grievant explained J.B. had said something should be done about the way Mr. Jarvis was being treated, and she had responded that she could not do anything, because, as his wife, it would carry no weight. She stated J.B. then said someone should write a letter, and she responded, "`well, if you want to write a letter you write a letter.'" She testified J.B. said she was not good at writing letters, but if Grievant would help her word it, she would write a letter, "`and put it in the paper,'" and Grievant agreed to do so. She stated J.B. called her at home, and she sat at her home computer and listened to J.B., and they composed the letter. She stated J.B. told her what she wanted to say, and she would suggest how to word it. She also advised J.B. to be cautious not to say anything which would be libelous, and suggested she omit some of the comments she had proposed, which J.B. agreed to. She finalized the letter,

brought it to the office, and J.B. read it, signed it, and took it to the newspaper.

When Grievant's husband rented to J.B., this was a violation of Policy 2108, even though what occurred here is not specifically within the technical language of the policy. It was a conflict of interest, which employees are "expected to avoid," and it was a business relationship with a client, regardless of whether the business wasconducted by Grievant or her husband. J.B. asked Grievant about renting the house, indicating both of them acknowledged Grievant had a role in the renting of the house. Had Mr. Jarvis owned a store, and J.B. entered the store and bargained with Mr. Jarvis about the purchase price of an item, that would not be a violation of Policy 2108, as Grievant would not have any involvement in the transaction. That is not the case here. Grievant was not sufficiently removed from the transaction to warrant a finding that she was not involved in it. While there is no indication that J.B. was exploited by Grievant or her husband in the business relationship, as is prohibited by the policy, it is reasonable to read the policy to prohibit this type of landlord/tenant relationship with a client. Grievant knew this, as she talked to her supervisor about the propriety of renting to J.B., as will be discussed shortly.

When Grievant assisted J.B. in writing a letter in support of Mr. Jarvis, this was not strictly prohibited by the policy, but was also a conflict of interest, which is to be avoided.

Respondent asserted Grievant had abused her relationship with J.B., and had exercised her influence over J.B. to cause her to write the letter. Respondent failed to prove this. It is clear from the testimony of Grievant and J.B. that the two had developed a close relationship, and J.B. was upset that Grievant's husband had been fired. J.B. freely expressed her appreciation of Grievant's efforts on her behalf. She testified it was Grievant who had gotten her to go to college, and who had offered her support and encouragement when she wanted to quit school. She credited Grievant with causing her to complete her education. She also testified Grievant hadencouraged other clients to complete their education. She stated Grievant is "a very good person who has her clients' interests at heart. She doesn't make you feel like you're lower than her."

Patty Cottrell, a former HHR employee in the Calhoun County office, testified that although employees had worked on their own relatives' files from time to time, an employee in that office would not have been permitted to use her influence over a client. Although Ms. Cottrell

was generally a hostile witness with regard to testifying about whether she had ever worked on her own relatives' cases, she testified with clarity regarding this point.

At the time of the two incidents which resulted in Grievant's suspension, Arliss Miller was Grievant's supervisor. Mr. Miller retired January 28, 1997. Grievant argued she should not have been disciplined for the house rental incident, because Mr. Miller had approved her continued work on J.B.'s case. Mr. Miller denied he knew J.B. was renting from Grievant's husband.

The testimony presented by Respondent varied widely as to whether a supervisor, or anyone else, could allow an employee to continue to work on a case file if Policy 2108 prohibited it. Mike McCabe, HHR's Director of Personnel, testified that if an employee reports a relationship with an assigned client to a supervisor, which relationship is prohibited by Policy 2108, and the supervisor approves the continued assignment of the client to the employee's caseload and the employee's continued work on the case, both the employee and the supervisor should be disciplined, as this approval does not relieve the employee of her responsibility to follow agency policy. He testified a supervisor, a Community Service Manager, or a Regional Director has no authority to supersede Policy 2108, and an employee who is told by her supervisor she can continue to work on the case of a relative or friend should refuse to do so, go over her supervisor's head to his supervisor, or call human resources for advice. No doubt, Mr. McCabe's first suggestion, if followed by an employee, would result in discipline for insubordination.

The testimony of Louis Palma, the Regional Director who decided to suspend Grievant, contradicted Mr. McCabe's testimony on this point. He testified Policy 2108 replaced a Memorandum dated May 1, 1990, which had stated the intent behind 2108. That Memorandum states the employee is to notify the supervisor of the prohibited relationship with a client, "for a decision whether a work assignment to another employee is appropriate. It is understood that an employee could be friends and acquaintances with many people but the spirit of this policy is to classify as friends and acquaintances any individual where the relationship to the employee, in the eye of a prudent person, could be interpreted as a conflict if a decision about the receipt or denial of services was involved." Mr. Palma stated Policy 2108 is applied with this intent in mind. He explained if a determination is made that the employee can be

objective, it is not a Policy 2108 violation to work on a case, even though it is a prohibited relationship per the policy. Mr. Palma did not address why this language of intent was not included in Policy 2108.

This is, in fact, what HHR did in Grievant's region following the filing of the grievance, and allegations by Grievant that other employees were working on thecases of friends and relatives. Respondent sent a survey to all employees in the area where Grievant works, asking them to list any friends, relatives, neighbors, club or church acquaintances, co-workers, or spouses whose cases they had ever worked on. Several employees responded with a list of names, although some of the information related to events which occurred more than 15 years ago. Mr. Palma had someone review these situations to determine whether he believed the employees could be objective in working on the cases. Grievant cannot be treated differently with regard to the application of Policy 2108.

Mr. Palma did not believe Grievant could be objective when working on J.B.'s case, although he testified a supervisor can determine whether an employee can work on an acquaintance's case and be objective. He did not state how he arrived at the conclusion Grievant could not be objective in working on J.B.'s case, but he just decided it was wrong. He was not aware of J.B. receiving any benefits to which she was not entitled. He testified he became aware the day before the first Level IV hearing that Mr. Miller had worked on a close relative's case, but that was different, as he went to his supervisor, who decided he could be objective, while Grievant did not go to her supervisor.

Jim Morford, Community Service Manager for Calhoun, Gilmer and Wirt Counties, testified this policy placed the burden upon the employee to notify the supervisor if her relationship with a client was prohibited by the policy. Mr. Morford also testified that it is not a violation of the policy to work on the case of any person with whom the employee has a relationship listed in the policy, if the supervisor ismade aware of the relationship, and gives approval to the employee to work on the case.

Grievant's testimony regarding whether she received approval from Mr. Miller to continue to work on J.B.'s case after J.B. had inquired about renting from her, conflicts with that of Mr. Miller, requiring a determination as to which testimony is truthful. In assessing the credibility of witnesses,

> some factors to be considered . . . are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Harold J. Asher and William C. Jackson. Representing the Agency before the United States Merit Systems Protection Board 152-153 (1984). Additionally, the ALJ should consider: 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. Id.

Burchell v. Bd. of Trustees, Marshall Univ., Docket No. 97-BOT-011 (Aug. 29, 1997).

Grievant testified she thought it was common practice for employees to carry their friends and relatives in their caseloads if they fell within the assigned area of the alphabet, contrary to the directives of Policy 2108. She explained many people in the small county of 7,800 are related. This comment was also made by Ms. Cottrell, who said "practically everyone in the county is related," and Mr. Miller, who said about 90% of the county population is related. Grievant testified she was aware a co-worker had been working on her niece's case, as the niece called Grievant and asked her to take her case because her aunt had been mean to her. She testified a co-worker worked on a relative's case which was assigned to Grievant, and Mr. Miller worked on a close relative's case. HHR records reflect that both Ms. Cottrell and Mr. Millerperformed work on relatives' cases, and that this occurred through 1996. Grievant testified she believed a relative was a closer relationship than a landlord/tenant relationship.

Grievant testified Mr. Miller had approved her to work on any relative's file, unless she felt she could not be impartial. Grievant is related to many of HHR's clients in the county. She testified when she began working for HHR she talked to Mr. Miller about this, indicating to him that her husband was one of 15 children, and she was related by marriage to many county residents. She stated Mr. Miller asked her if she had any problem working on relatives' cases, and she told him she did not.

Grievant stated the same day J.B. asked her about renting her husband's house, she talked to Mr. Miller about it, telling him she was thinking of renting to J.B. She testified he did not indicate any problem with her continuing to work on J.B.'s case, and she believed she could be objective in evaluating J.B.'s eligibility for benefits. She stated quite candidly that she did not recall whether she had specifically told Mr. Miller at that time that J.B. was in her caseload, but she knew he was aware of this as he knew J.B. from his previous work with her, and J.B. had been at Grievant's desk frequently for reviews. She stated Mr. Miller told her to be careful

who she rented to, which she took to mean that J.B. was not good enough to live in that neighborhood, and this upset her.

Mr. Miller was a case worker in Calhoun County from 1963 to 1970. From 1970 until his retirement in 1997, he was a supervisor in HHR's Calhoun County office. He acknowledged that he knows a lot of people in the county, and is awareof who is on public assistance. He denied that he was aware J.B. was renting from the Jarvis', but he did know her, and knew she was a client. He also knew the house J.B. was renting was owned by the Jarvis', although he denied knowing J.B. lived in the house.

Mr. Miller testified he did not recall Grievant talking to him about J.B. renting the house. Mr. Miller could not recall many things. He testified at Level III he did not work on particular close relatives' cases, however, HHR records showed this to be untrue. At Level IV he testified he could not recall that he had ever worked on his own relatives' cases. Then when asked later whether his supervisor had approved him working on his own relatives' cases, he said his supervisor never told him not to. In response to questions about whether Ms. Cottrell had ever worked on her relatives' cases, he was evasive, and changed his responses, indicating at first he did not know whether she had, and later indicating she had done so. Thus, although Respondent argued Mr. Miller had no incentive to lie as he is no longer an employee, it is clear he did so. One point on which he was clear, however, was, "in a small county with four people, you do what you have to do to get benefits to people."

Joyce Underwood, an Economic Service Worker in the Calhoun County office, testified everyone in her unit knew J.B. rented from the Jarvis', and that J.B. was one of Grievant's clients. She also testified she was aware of a co-worker who had been assigned and worked on a relative's case.

The undersigned concludes that Mr. Miller knew J.B. was planning to rent a house from Grievant, and gave his tacit approval to Grievant to continue to work onJ.B.'s case after her husband rented to J.B., knowing Grievant would not take advantage of the relationship. According to Mr. Palma, by doing so, Mr. Miller took responsibility for Grievant's continued work on J.B.'s case, and excepted her from the provisions of Policy 2108. **(See footnote 4)** **Regardless of whether Mr. Miller in fact knew J.B. was renting the house, however, Grievant thought Mr. Miller knew, and had approved her continued work on J.B.'s case. Grievant did**

not possess the intent to violate Policy 2108 - she thought she had Mr. Miller's approval.

Certainly it was poor judgment for Grievant to continue to work on J.B.'s case, as Grievant's family was receiving a financial benefit from J.B.'s continued receipt of HUD rent benefits. The same can be said of an employee's involvement with a close relative's case, however.

The penalty of a five day suspension for the letter writing incident alone is clearly excessive. The undersigned may mitigate the discipline imposed if the penalty assessed is clearly excessive or clearly disproportionate to the offense. Factors to be considered in this analysis include the employee's past disciplinary record, the clarity of notice to the employee of the rule violated, whether the employee was warned about the conduct, and mitigating circumstances. Stewart v. W. Va. Alcohol Beverage Control Comm'n, Docket No. 91-ABCC-137 (Sept. 19, 1991).

Mr. Morford believed Grievant's act of assisting J.B. in writing a letter in supportof Mr. Jarvis was more damaging than working on the case of a relative or a close acquaintance, because Grievant received a benefit from a customer who may not have been in a position to deny the request due to the fact that Grievant controlled her economic and housing benefits. The undersigned disagrees. First, Grievant did not ask J.B. to write the letter. Second, any benefit to Grievant from a letter to the editor was de minimis. Third, while theoretically this is not a desirable practice and is an area where abuse could occur, there is no evidence that Grievant did, in fact, abuse her position.

HHR's Guide to Progressive Discipline, Policy 2104, states that progressive discipline begins with a verbal warning, then a written warning, then suspension, demotion, and finally dismissal; although "[d]ue to the sensitive and essential nature of services the Department must provide the public, and the standards of service required in many program areas, there may be instances where more severe levels of discipline are initially imposed for some infractions." It states that a verbal reprimand/warning "may be issued when the deficiency or misconduct is not of a serious or repetitious nature." A written reprimand/warning "may be issued when minor infractions/deficiencies continue or when a more serious infraction/deficiency is discovered." (See footnote 5) **Grievant had no prior disciplinary record. The parties stipulated that a supervisor was given a written reprimand, sometime after**

this grievance was filed, for exercising poor judgment in authorizing an employee to breach Policy 2108. Grievant's acts with regard to assisting J.B. in writing the letter in support of Grievant's husband were likewise poor judgment. Grievant pointed out that a supervisor, however, "may be held to a higher standard of conduct, because he is properly expected to set an example for those employees under his supervision, and to enforce the employer's proper rules and regulations, as well as implement the directives of his supervisors." Wiley v. W. Va. Div. of Natural Resources, Parks and Recreation, Docket No. 96-DNR- 515 (Mar. 26, 1988). A verbal warning is suggested by the Progressive Discipline Policy, and is appropriate in this case.

The following Findings of Fact are made based upon the evidence presented at Levels III and IV.

Findings of Fact

1. Grievant has been employed by HHR as an Economic Service Worker in Calhoun County since 1988. She has been assigned one-third to one-fourth of the caseload, consisting of persons whose last names fall within letters "A through G" or "H" of the alphabet.

2. Grievant's husband rented a house to a client in Grievant's caseload, J.B., after J.B. asked Grievant if she would rent to her. J.B.'s rent was paid by the Department of Housing and Urban Development, which paid Mr. Jarvis more rent than he would have otherwise received from J.B. 3. Grievant's supervisor, Arliss Miller, told Grievant when she began her employment that if any of her relatives were ever in her caseload, she should go ahead and maintain them in her caseload, unless she believed it would be a problem for her. Mr. Miller never told Grievant to operate in a different manner.

4. Grievant told Mr. Miller J.B. was going to rent a house from her. Mr. Miller knew J.B., and he knew she was one of Grievant's clients. Mr. Miller did not tell Grievant she should not continue to work on J.B.'s case.

5. In applying HHR Policy 2108 to employees in the same region as Grievant, Louis Palma, Regional Director, excuses the employee from the requirements of the policy if a determination is made that the employee can be objective, or if the employee's supervisor has approved the employee's continued work on a case.

6. Grievant edited and typed a letter to the local newspaper editor for J.B. at Grievant's home, which supported Grievant's husband after he was fired Calhoun- Gilmer Career Center. Grievant also edited and typed a letter to the editor for J.B. at Grievant's home, which criticized the Career Center administrators, but did not mention Mr. Jarvis' situation. Grievant did not ask J.B. to write either of these letters.

7. One of Grievant's co-workers told Elizabeth Parmer, Director of the Calhoun-Gilmer Career Center, that Grievant had helped J.B. write the letter, and that J.B. was a client of Grievant's. The co-worker also gave Ms. Parmer a list of benefit recipients which showed J.B. was a client of Grievant's.

8. Ms. Parmer sent a letter to Commissioner Sue Sergi complaining of Grievant's action, and an investigation was conducted, resulting in Grievant'ssuspension.

9. Grievant did not exercise undue influence over J.B., or otherwise abuse her position as J.B.'s caseworker to cause J.B. to take any action to help Grievant.

10. Any benefit to Grievant from J.B.'s letter to the editor was de minimis.

11. Grievant had no prior disciplinary record.

12. Grievant's evaluations have rated her performance as satisfactory to very good.

13. A supervisor was given a written reprimand, sometime after this grievance was filed, for exercising poor judgment in authorizing an employee to breach Policy 2108.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W. Va. Dep't of Health, Docket No. H-88-005 (Dec. 6, 1988).

2. Respondent proved Grievant's actions violated HHR Policy 2108.

3. Grievant proved her supervisor had approved her to continue working on a client's file while Grievant's husband was renting a house to the client, excepting her from the provisions of Policy 2108.

4. The undersigned may mitigate the discipline imposed if the penalty assessed is

clearly excessive or clearly disproportionate to the offense. Factors to beconsidered in this analysis include the employee's past disciplinary record, the clarity of notice to the employee of the rule violated, whether the employee was warned about the conduct, and mitigating circumstances. Stewart v. W. Va. Alcohol Beverage Control Comm'n, Docket No. 91-ABCC-137 (Sept. 19, 1991).

5. The penalty imposed for assisting a client in writing a letter to the newspaper editor in support of Grievant's husband, a de minimis benefit, was clearly disproportionate to the offense.

6. HHR's Guide to Progressive Discipline, Policy 2104, states that progressive discipline begins with a verbal warning, then a written warning, then suspension, demotion, and finally dismissal; although "[d]ue to the sensitive and essential nature of services the Department must provide the public, and the standards of service required in many program areas, there may be instances where more severe levels of discipline are initially imposed for some infractions." It states that a verbal reprimand/warning "may be issued when the deficiency or misconduct is not of a serious or repetitious nature." A written reprimand/warning "may be issued when minor infractions/deficiencies continue or when a more serious infraction/deficiency is discovered."

7. A supervisor "may be held to a higher standard of conduct, because he is properly expected to set an example for those employees under his supervision, and to enforce the employer's proper rules and regulations, as well as implement the directives of his supervisors." Wiley v. W. Va. Div. of Natural Resources, Parks and Recreation, Docket No. 96-DNR-515 (Mar. 26, 1988).

Accordingly, this grievance is GRANTED. Respondent is ORDERED to remove the suspension letter from Grievant's personnel file and replace it with a notation that she received a verbal warning, in accordance with the progressive discipline policy, for assisting a client in writing a letter in support of Mr. Jarvis; to pay her five days' backpay, and fully restore any and all other benefits she lost as a result of the suspension. No interest will be awarded as Grievant did not specifically request it.

Any party or the Division of Personnel may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such

appeal must be filed within thirty (30) days of receipt of this Decision. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Date: July 22, 1999

Footnote: 1

This grievance was filed on October 16, 1996, and was denied by Grievant's supervisor on October 17, 1996. Grievant appealed to Level II on October 18, 1996, and the grievance was denied at Level II on November 6, 1996. Grievant appealed the Level II decision to Level III on November 12, 1996. A hearing was held at Level III on May 15, 1997, and a decision denying the grievance was issued on July 2, 1997. Grievant appealed to Level IV on July 11, 1997. Two days of hearing were held at Level IV, on February 10, 1998, and May 4, 1999. Grievant was represented by Kevin D. Church, and HHR was represented at the first hearing by Michelle T. Mensore, Esquire, and at the second hearing by Dennise Smith, Esquire. Several continuances were requested by both parties, and were granted for good cause shown. Further, the second day of hearing was originally scheduled for October 29, 1998. The parties appeared for the hearing and represented that this matter had been settled. Thereafter, Grievant's representative asked that this matter be reopened, as Grievant believed misrepresentations were made by Respondent's representatives during the settlement negotiations, and this request was granted. This matter becamemature for decision on June 28, 1999, upon receipt of the parties' written arguments.

Footnote: 2

This client is identified in the record by her initials in an effort to maintain the confidentiality of the recipient of benefits.

Footnote: 3

HHR indicated such records are confidential agency records.

Footnote: 4

Grievant argued she had been discriminated against. Respondent had argued Grievant's case was different, in part, because she did not have her supervisor's approval to continue to work on J.B.'s case. Due to the finding that Grievant did have her supervisor's approval, the discrimination argument need not be addressed.

Footnote: 5

This Grievance Board has found this policy "does not create a mandatory duty to follow a progressive disciplinary approach." Artrip v. W. Va. Dep't of Health and Human Services/Huntington State SAU, Docket No. 94-HHR-146 (Sept. 13, 1994); See also, Thompson v. W. Va. Dep't of Health and Human Resources/Welch Emergency Hosp., Docket No. 94-HHR-254 (Jan. 20, 1995).