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CHARLOTTE POLLARD,

Appellant,

v.

MANUEL CARBALLO, Secretary,  
 Department of Health and  
 Social Services, and  
 VERNE KNOLL, Deputy Director,  
 State Bureau of Personnel,

Respondents.

Case No. 76-83

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**OFFICIAL**

INTERIM  
OPINION AND ORDER

Before: Percy L. Julian, Jr., Laurene DeWitt, John Serpe, Susan Steininger

OPINION

At the prehearing conference in this matter there was disagreement as to whether or not the appeal was timely filed. The parties agreed to, and have, submitted proposed statements of the substantive issues presented by this appeal.

This is an appeal of a decision of the Director pursuant to S. 16.05(1)(f), stats. Pursuant to S. 16.05(2), stats., such an appeal must be "received by the board within 15 days after the effective date of the decision or within 15 days after the appellant is notified of such decision, whichever is later." The Appellant states that she received the decision of the Director, which is contained in a letter dated April 23, 1976, on April 24, 1976. Her appeal letter was received at the Personnel Board office on May 10, 1976. Section 990.001(4), stats., provides:

"(a) The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last . . . .

(b) If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day."

In this case the 15th day following April 24, 1976, was May 9th,

which was a Sunday. Therefore, filing on May 10th was effective pursuant to this statute, and the appeal is timely.

With regard to the issue the Respondent has proposed a rather general statement and the Appellant a detailed set of 15 specific questions which, it may be considered, the Respondent's more general statement subsumes. However, based on recent changes in the administrative procedure act, chapter 227, we do not have to resolve any conflict that may exist between the parties as to the issues.

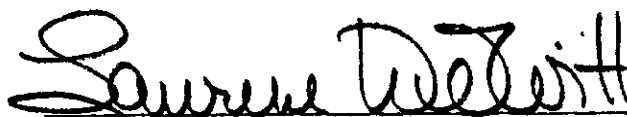
Under the prior law, S. 227.09, stats., provided: "Every party to a contested case shall be given a clear and concise statement of the issues involved." Chapter 414, Laws of 1975, Section 11, repealed this provision. New S. 227.09(1)(f), stats., provides that hearing examiners may "hold conferences for the settlement or simplification of the issues by consent of the parties." (emphasis supplied). Newly created S. 227.07(4)(a) 1. provides "In any action to be set for hearing, the agency or hearing examiner may direct the parties to appear before it for a conference to consider the clarification of issues." Finally, new S. 227.07(2)(c), stats., requires that the hearing notice contain "A short and plain statement of the matters asserted." Therefore, under the new administrative procedure act, if the parties cannot agree on a statement of issues, the agency is not required to provide this before the hearing, so long as the hearing notice contains "A short and plain statement of the matters asserted." In this case, it will be provided by reference to the statement of issues supplied by the Appellant.

ORDER

IT IS ORDERED that this matter be noticed for hearing in due course  
in a manner consistent with this decision.

Dated December 21, 1976.

STATE PERSONNEL BOARD

A handwritten signature in cursive script, reading "Laurene DeWitt", written over a horizontal line.

Laurene DeWitt, Vice Chairperson