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MARY JO BRINK,

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES,  
and Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 91-0061-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission as an appeal from a reclassification decision. The parties agreed to the following issue for hearing:

Whether respondents' decision to deny appellants' request for reclassification from Nursing Consultant 1 to Nursing Consultant 2 was correct.

After the hearing was completed, the parties filed briefs.

FINDINGS OF FACT

1. For all relevant times since November of 1985, the appellant has been employed by respondent DHSS as a Health Facility Surveyor.

2. During that period, the appellant worked as a member of a health facility surveyor team in the Madison District of the Long Term Care Section of the Bureau of Quality Compliance, Division of Health. Her immediate supervisor was the Field Operations Manager for the Madison District.

3. The Madison District is one of four regions in the state. The other three district offices are located in Green Bay, Milwaukee and Eau Claire. There are a total of 6 health facility surveyor teams in the four regions.

4. The teams assigned to a particular region are responsible for conducting inspections of nursing homes (long term care facilities or LTC's) and facilities for the developmentally disabled (intermediate care facilities for the mentally retarded or ICF/MRs) located in that region, to ensure that the facili-

ties are in compliance with state and federal regulations and to ensure the residents are receiving adequate care.

5. Each of the 6 surveyor teams are set up to include nurses, social workers and public health sanitarians.

6. The appellant is a registered nurse (RN).

7. Most of the members of the team are only assigned to survey nursing homes. However, certain team members possess a designation of Qualified Mental Retardation Professional (QMRP) and are the only team members who are assigned to conduct surveys of the facilities for the developmentally disabled.

8. A surveyor can only receive the QMRP designation if the surveyor has a certain level of experience in the area of service to the developmentally disabled.

9. QMRP surveyors conduct surveys of both nursing homes and facilities for the developmentally disabled in their region. As a consequence, QMRP surveyors must have a thorough knowledge of the separate regulations which apply to the two different groups of facilities.

10. The appellant's position description includes the following position summary:

Under the supervision of the Field Operations Manager, the Health Facility Surveyor-R N. functions as a member of IOC - Inspection of Care Review Team, reviewing Title XIX residents onsite in certified facilities. This position also serves as a Team Member conducting surveys and licensure and certification surveys in Long-Term Care facilities to determine compliance with state licensure rules and federal certification regulations. As a qualified Mental Retardation Professional (QMRP) this position participates in the IoC process and surveys of Title XIX certified Mental Retardation Facilities and provides special consultation to residents and staff in such facilities.

11. The appellant spent somewhere between 30% and in excess of 50% of her time performing activities related to facilities for the developmentally disabled.

12. The Long Term Care Section seeks to have 12 of its 64 nurse surveyor positions designated as QMRP's.

13. All 64 nurse surveyors are classified as Nursing Consultant 1's, regardless of whether they have the QMRP designation.

14. The Health Facility Surveyor - R.N. (QMRP) positions located in the various regions have substantially similar position descriptions and duties.

15. While surveyors are generally assigned to perform surveys of facilities within their region, all surveyors may occasionally be required to assist with surveying facilities in other regions. In addition, along with other nurse surveyor QMRP's, the appellant assisted with the surveys both Southern Wisconsin Center and Northern Wisconsin Center, both of which are large state-run facilities for the developmentally disabled, located outside of the Madison region.

16. If a dispute arises between a surveyor and a facility, the dispute is submitted to the central office of the Bureau of Quality Compliance to a person with expertise in the subject area. The central office resource persons are considered to be the subject area experts and insure consistent application of the applicable standards on a statewide basis.

17. The class specifications for the Nursing Consultant 1 classification provide, in part:

Definition:

This is responsible nursing consultative work. Employees in this class serve as 1) district or regional consultants providing program review and assistance to health care facilities, or 2) the statewide consultant in a single specialty program such as tuberculosis control or cytology. The work of the statewide specialist involves extensive contacts with hospital personnel, local health staffs and the public for purposes of program information and coordination. The district consultant works primarily with providers of health services, either directly or through program monitoring, in assuring compliance with federal and state codes, standards and guidelines in order to obtain licensure, program certification and/or eligibility for participation in Medicare and Medicaid programs. The work is performed under the general direction of program supervisors in the central office.

18. The class specifications for the Nursing Consultant 2 classification provides, in part:

Definition:

This is very responsible statewide consultative work, providing broad program review and technical assistance to health care facilities. Program review and consultation at this level differs

from that identified at the Nursing Consultant 1 level by the comprehensiveness of the review and the extent of the consultant's involvement in effecting program change and improvement. The review encompasses all aspects of the facility's operation, including an assessment of administrative and clinical program capabilities, performance and deficiencies in terms of established program models and/or regulatory standards and criteria. Based on this review, effective recommendations and plans of action are developed, and continuing technical assistance is provided to insure their implementation. Employees in this class have latitude for making independent judgments and decisions within the framework of administrative and program policies and procedures. Supervision is accomplished through review of program reports and staff conferences.

19. The appellant's position is not comparable, from a classification standpoint, to the following central office Nursing Consultant 2 positions in the Special Resources Section of the Bureau of Quality Compliance.

a. The position description for the Bonnie Landgraf position indicates this position spends 90% of its time on the following goals:

A. Development, implementation and maintenance of standards for patient care in health care facilities through obtaining code interpretations, compiling written guidelines and training materials with persons within and outside the Bureau.

B. Provision of specialized consultation through the development of educational activities and application of patient care standard in health care facilities on a state-wide basis.

b. The position description for the Jacqueline Miller position indicates this position spends 85% of its time on the following goals:

A. Development, implementation and maintenance of standards for resident care in Intermediate Care Facilities for the Mentally Retarded (ICF/MR) utilizing code interpretations, written guidelines and training materials for persons within and outside the Bureau.

B. Provision of specialized consultation through the development of appropriate educational activities on an individual facility or state-wide basis.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of proving by a preponderance of the evidence that respondents erred in denying the request to classify her position to the Nursing Consultant 2 level

3. Appellant has not sustained her burden of proof and the Commission concludes that respondents did not err in denying the request to reclassify the appellant's position.

#### OPINION

This appeal is premised on the fact that the appellant, who holds the QMRP designation and therefore has responsibilities for an additional category of health care facilities, was at the same classification level as nurse surveyors who do not have, and therefore need not apply, the very significant base of knowledge relating to facilities for the developmentally disabled. The Commission's task is to determine whether this additional group of responsibilities qualifies the appellant for classification at the Nursing Consultant 2 level. The clear answer is that it does not. The appellant is only one of a number of nurse surveyors with the QMRP designation who are assigned to any of four regions of the state. These surveyors do not have statewide responsibilities. They perform survey and related responsibilities for the facilities within their region. Occasionally, they are required by their superiors to survey facilities outside their region. These assignments are based on work load. They do not alter the underlying regional, rather than statewide, responsibility of the nurse surveyor QMRP's.

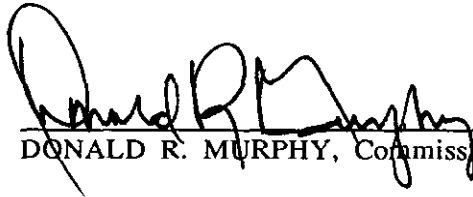
The only two Nursing Consultant 2 position descriptions that are part of the record in this matter clearly identify statewide responsibilities. These are the central office positions described in findings of fact 16 which resolve disputes between surveyors and facilities and insure uniform application of standards on a statewide basis. The appellant has failed to present evidence sufficient to establish that the responsibilities regularly assigned to her meet the requirements of the Nursing Consultant 2 classification. The nurse surveyor positions, both with and without the QMRP designation, fall within the first allocation set forth in the Nursing Consultant 1 definition. Therefore, the respondents' decision must be affirmed.

ORDER

Respondent's decision denying the appellant's request to reclassify her position is affirmed and this appeal is dismissed.

Dated: August 26, 1992 STATE PERSONNEL COMMISSION

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

Parties:

Mary Jo Brink  
DHSS Rm 272  
1 W Wilson St  
Madison WI 53702

Gerald Whitburn  
Secretary DHSS  
1 W Wilson St  
P O Box 7850  
Madison WI 53707

Jon E Litscher  
Secretary DER  
137 E Wilson St  
P O Box 7855  
Madison WI 53707

NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served

and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation