

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JANE EISELEY (MAHER),

Appellant,

v.

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

Respondents.

Case No. 85-0192-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of respondent's decision to deny appellant's request for reclassification of her position. A hearing was held before Laurie R. McCallum, Commissioner, on March 27, 1986, and the briefing schedule was completed on June 30, 1986.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed by the Department of Health and Social Services (DHSS) in a position classified as a Program and Planning Analyst (PPA).

2. In July of 1980, appellant was appointed to a PPA 3 position in the Plans and Contracts Section, Bureau of Planning and Implementation, Division of Economic Assistance. Appellant's position was supervised by Carl Martin, Chief of the Plans and Contracts Section.

3. As the result of a reorganization which was effective in August of 1982, the Division of Economic Assistance was consolidated with the Division of Community Services and appellant's position was reallocated to the PPA 4 level effective June 12, 1983, and assigned to the Program

Implementation Unit, Planning and Implementation Section, Bureau of Economic Assistance, Division of Community Services. Appellant's position was supervised by Alan Sweet, head of the Program Implementation Unit.

4. At all times relevant to this appeal, appellant's position was assigned to the Low Income Energy Assistance Program (LIEAP). Prior to 1983, appellant's position's duties included developing and proposing policies for and evaluating this program. Prior to 1983, Carl Martin, Chief of the Plans and Contracts Unit, was responsible for policy development and program implementation and evaluation for LIEAP even though formal responsibility for this program was divided among several units within the Planning and Implementation Section headed by Mary Ann Cook.

5. Carl Martin died in January of 1983 and his position was not filled prior to the reorganization of 1985.

6. LIEAP is a federal block-grant program which provides financial assistance to low-income people for the purchase of heating energy. Program planning and operation occur annually on overlapping cycles. The program planning process begins during the previous winter (e.g., November, 1983) and concludes in the early summer (e.g., June, 1984). The program operates from late fall (e.g., October, 1984) through the following spring (e.g., May, 1985).

7. Carl Martin died during the operation of the 1982-83 LIEAP program and the 1983-84 LIEAP program planning cycle. Immediately following Mr. Martin's death, Mary Ann Cook exercised much closer oversight of the LIEAP program than she had previously. During this period, Ms. Cook frequently consulted appellant if she wanted technical information regarding LIEAP because appellant was more familiar with LIEAP than anyone else within DHSS at that time. The only significant additional duties and responsibilities assigned to appellant's position immediately following

Carl Martin's death were the staffing of the advisory committee and the completion of the 1983-84 LIEAP plan. However, at that time, appellant's advisory committee staffing duties appear to have been routine and primarily administrative in nature, e.g., preparing minutes, assuring that the agenda was prepared and followed; and to have been closely monitored by Mary Ann Cook. In addition, the draft of the 1983-84 LIEAP plan prepared by appellant did not deviate in any significant way from the outline prepared by Carl Martin prior to his death and it was carefully reviewed by both Alan Sweet and Mary Ann Cook prior to being forwarded to the chief of the Bureau of Economic Assistance. The assignment of these additional duties and responsibilities did not strengthen the appellant's position sufficiently to support a change in the classification of appellant's position from the PPA 4 to the PPA 5 level.

8. Due to the fact that, subsequent to May of 1983, appellant's position was the only non-vacant professional staff position assigned to LIEAP, appellant was assigned increasing planning, policy development, and program implementation and evaluation authority over LIEAP as she became more familiar with each aspect of the program. In November of 1983, appellant was assigned lead planning responsibility for LIEAP. Since November of 1983, LIEAP has undergone the following major changes which appellant's position has been responsible for implementing and evaluating:

- a. Integration into the DHSS joint block-grant planning process;
- b. Increased policy oversight by the Joint Finance Committee;
- c. Development of a program for the early identification of energy emergencies with the participation of the Public Service Commission, utilities and county LIEAP agencies; and
- d. Increased coordination with the weatherization program.

The addition of these duties and responsibilities in the planning, policy development and program implementation and evaluation areas strengthened appellant's position sufficiently to support a change in the classification of appellant's position from the PPA 4 to the PPA 5 level.

9. In a memorandum dated September 20, 1985, respondent DHSS, in response to appellant's request of May 10, 1985, for the reclassification of her position from the PPA 4 level to the PPA 5 level, decided that appellant's position was more appropriately classified at the PPA 5 level but, since the changes in appellant's position were logical but not gradual, appellant's position should be reallocated, not reclassified to the PPA 5 level. Appellant filed a timely appeal of such decision with the Commission.

10. The changes in the duties and responsibilities of appellant's position which support the change in the classification of appellant's position from the PPA 4 level to the PPA 5 level were gradual changes.

11. Pursuant to a 1985 reorganization, the responsibilities the addition of which had supported the change in the classification of appellant's position to the PPA 5 level, were assigned to a newly created PPA 5 position. This position was assigned lead responsibility for LIEAP. It is not clear from the record when such assignment took effect. However, it is clear from the record that the newly created PPA 5 position was filled by the appointment of Steven Tryon to the position effective May 13, 1985.

12. The parties have stipulated that, as of the date of appellant's request for the reclassification of her position, the appropriate classification of appellant's position is PPA 5; that the changes in the duties and responsibilities of appellant's position which support the change in the classification of the position from the PPA 4 level to the PPA 5 level

were logical changes; and that the effective date of the change in the classification of appellant's position to the PPA 5 level should be May 12, 1985.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden to prove that respondent's denial of her request for the reclassification of her position was incorrect.
3. Appellant has met her burden.
4. Appellant's position should have been reclassified, not reallocated from PPA 4 to PPA 5 effective May 12, 1985.

OPINION

Section ER Pers 3.01(3), Wis. Admin. Code, provides that:

Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09(2), Stats., based upon a logical and gradual change to the duties and responsibilities of a position or the attainment of specified education or experience by the incumbent.

In the instant appeal, it is not alleged that the reclassification of appellant's position should be granted because appellant has attained certain specified education or experience. As a result, appellant must show that the changes in the duties and responsibilities of her position which support the change in the classification of her position from the PPA 4 level to the PPA 5 level have been logical and gradual in order for her to prevail.

Respondent has stipulated that the subject changes in the duties and responsibilities of appellant's position have been logical. Respondent disputes, however, that they have been gradual. Respondent contends that, upon the death of Carl Martin, the major LIEAP policy development,

planning, and program implementation and evaluation duties and responsibilities were assigned to appellant's position. This contention, however, is not consistent with the record in this appeal which indicates that the only significant changes in the duties and responsibilities of appellant's position immediately following Carl Martin's death did not involve the addition of authority to make major policy, planning, or program decisions regarding LIEAP (see Finding of Fact 7). Only after appellant acquired greater familiarity with each aspect of LIEAP, was such policy, planning and program authority assigned to her position (See Finding of Fact 8). Respondent based its contention on discussions held with appellant and Mary Ann Cook during respondent's review of appellant's reclassification request. However, the testimony of both the appellant and Mary Ann Cook at the hearing indicates that most of the authority over LIEAP previously exercised by Carl Martin was exercised by Mary Ann Cook immediately following Mr. Martin's death. At that time, Ms. Cook assigned some new duties and responsibilities to appellant's position but these did not involve the type of independent authority necessary for the classification of appellant's position at the PPA 5 level.

Respondent further contends that the higher level duties and responsibilities assigned to appellant's position which support the classification of her position at the PPA 5 level were, as the result of the 1985 reorganization, no longer permanently assigned to appellant's position but to a newly created PPA 5 position. Respondent further contends that these duties and responsibilities were temporarily assigned to appellant's position during the reorganization until such newly created PPA 5 position could be filled. However, it is not possible to conclude from

the record to any degree of certainty when such temporary assignment took place. The only conclusion which can be drawn is that it occurred on or before May 13, 1985, the date that the newly created PPA 5 position was filled. Furthermore, respondent has stipulated that appellant's position should be reallocated to the PPA 5 level effective May 12, 1985, as the result of the assignment to appellant's position of the higher level duties and responsibilities discussed above. It is true, as respondent contends, that a reclassification may not be based on a temporary assignment of duties and responsibilities to a position. However, such is also true of a reallocation and, by stipulating that appellant's position should be reallocated to the PPA 5 level effective May 12, 1985, respondent has impliedly acknowledged that, as of May 10, 1985, (the date of appellant's request) the higher level duties and responsibilities upon which the classification of appellant's position at the PPA 5 level are based, were permanently assigned to appellant's position.


ORDER

The action of respondent is rejected and this matter is remanded to respondent for action in accordance with this decision.

Dated: Sept 4., 1986 STATE PERSONNEL COMMISSION

LRM:jmf
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DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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Parties:

Jane Eiseley
2201 West Lawn Avenue
Madison, WI 53711

Linda Reivitz
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707

Howard Fuller
Secretary, DER
P. O. Box 7855
Madison, WI 53707