

4. A position classified at the PA-Sup 2 level performs Program Assistant functions at the PA 3 level and, in addition, functions as a supervisor over subordinate employees.

5. From some time in June of 1988 until some time in August of 1988, Ms. Siebecker was on medical leave from her PA-Sup 2 position. From October of 1988 through January of 1989, Ms. Siebecker was temporarily assigned to a position in Madison three days of week and spent the other two days in the Milwaukee Regional Office performing her office manager duties. During Ms. Siebecker's absences, appellant functioned as the office manager. This was a temporary assignment of duties and responsibilities to appellant's position.

6. In February of 1989, Ms. Siebecker received a promotion and left the Milwaukee Regional Office. Ms. Siebecker's position was not filled and appellant's position continued to function as the office manager on a temporary basis.

7. Effective July 1, 1989, there was a reorganization within DCS. Prior to this reorganization, the Milwaukee Regional Office contained seven units, i.e., Administration staff, Area Administration, Weatherization, Quality Control, Direct Services and Regulation, and Clerical Support, with a total of 41 positions, 11 of these in the Clerical Support unit. After this reorganization, the Milwaukee Regional Office contained three units, i.e., Area Administration, Regulation, and Clerical Support, with a total of 16 positions, 4 of these in the Clerical Support unit. The reorganization resulted in the redeployment of Ms. Siebecker's former position to a unit outside the Milwaukee Regional Office and to the permanent assignment of different duties and responsibilities to appellant's position. These duties and responsibilities are accurately described in a position description signed by appellant on December 12, 1989, and may be summarized, as follows:

35% A. Providing administrative assistance to the Regional Director and Staff, including participating in the development and implementation of regional administrative policies and procedures; developing and enforcing office safety standards; overseeing the operating of the regional vehicle pool; coordinating the processing of exceptional performance awards, merit and equity awards, disciplinary letters, and grievance responses; serving as regional records custodian, interpreting and applying state Open Records law and Records Management manual; developing regional employee orientation guide and

coordinating orientation sessions for new staff; functioning as the regional resource for personnel/payroll practices, procedures, and policies; maintaining log system for regional personnel actions, including auditing payroll and leave accounting.

25% B. Directing the regional office management program, including coordinating the requisition of equipment; implementing and monitoring the capital equipment inventory system; providing instruction to staff in use of communication systems and developing operating procedures; maintaining adequate office supplies, forms, space, equipment; analyzing regional telephone needs, reviewing usage, and implementing changes; coordinating the regional mailing operations.

20% C. Maintaining regional operating budget and records, including monitoring expenditures and generating a status report on a quarterly basis; authorizing purchases for office operations up to \$4999.99 and selecting vendors; authorizing payment to vendors from appropriate funding sources; managing receipt of cash/checks from service providers and the public; monitoring usage of DCS office facilities by other agencies and perform chargebacks.

20% D. Developing information/data management systems for operating budgets/expense reports, personnel, direct services tracking, regulations and licensing data systems for facilities, travel reports, fleet management, inventory, training, and Interstate Compact on the Placement of Children, including identifying and analyzing user needs and making recommendations for automated applications; acquiring appropriate hardware and software to meet regional needs; overseeing the programming of software and testing to determine if meets application requirements; overseeing the development of output reports; utilizing the network capabilities of CRN and OMC to facilitate communication between region and central office; providing or arranging for user assistance and training; evaluating current hardware and software and making recommendations for future growth and interface capabilities.

8. 45% of appellant's time after July of 1989 was devoted to performing duties and responsibilities formerly assigned to the PA-Sup 2 Office Manager (Siebecker) position. The duties and responsibilities of the PA-Sup 2 position not assumed by appellant's position were: 25%--providing program administration support to the Regional Director, including making recommendations for the development and implementation of new programs and policies; 25%--supervising the Clerical Support unit; 5%--monitoring the implementation of the regional affirmative action plan.

9. Program Assistant positions offered for comparison purposes in the hearing record include:

a. Caroline Diplaris--PA 4-Confidential--Office Manager, Southeast Region, DCS, DHSS. The Southeast Region (at the time Ms. Diplaris's PA 4-Confidential position description was signed in November of 1988) contained four units, i.e., Area Administration (consisting of two teams), Weatherization, Direct Services and Regulation, and Clerical Support, with a total of 28 positions, with 7 position in the Clerical Support Unit. This position performs each of the tasks performed by appellant's position and, in addition, makes recertification recommendations for Medical Assistance for Disabled Children Living at Home (Katie Beckett Program) (20%); and monitors the implementation of the regional affirmative action plan for staff recruitment, selection and training (5%). This position has a Confidential classification due to the assigned responsibility for reviewing and preparing confidential regional correspondence including disciplinary letters, grievance responses, and input on contract language changes and bargaining strategies; and for coordinating management staff input and response to union bargaining demands, and management bargaining proposals and bargaining strategies.

b. Barbara Arneson--PA 3--Senior Program Assistant, Section of Radiation Protection, Bureau of Environmental Health, Division of Health, DHSS. This Section contains 18 positions, 14 of which are professional or technical and 4 of which are program support positions. This position performs the same tasks as the appellant's position except that it does not develop and enforce office safety standards; oversee a vehicle pool; serve as a records custodian; or manage the receipt of cash/checks from service providers and the public. In addition, this position is responsible for developing an annual operating budget of over \$1 million for 14 funding sources; preparing annual budget estimates by line item for 14 funding sources; preparing budget estimates for future fiscal years; preparing Grants/Contract Application Detail (GAD) for new and renewing grants/contracts; tracking monthly grant/contract expenses for five accounts and submitting expenses for invoicing; organizing and maintaining the Section's library; independently preparing program reports and correspondence for Section Chief's signature; and performing special duties such as participating in Emergency Response exercises by serving as communications link between technical staff, researching project data and preparing reports as assigned, and overseeing the distribution of program literature and other materials for Section programs.

10. On June 25, 1989, appellant's supervisor, Nate Harris, the Acting Regional Director, approved a request for the reclassification of appellant's

position to PA 4-Confidential. Mr. Harris agree with the request and directed appellant to forward it to the DCS personnel unit in Madison. Appellant sent the request by courier to the DCS personnel unit in Madison. The DCS office in Madison never acknowledged receipt of this request. Charles Holton became appellant's supervisor on July 1, 1989. Appellant inquired of Mr. Holton more than once as to the status of this request but never received a specific response from him. When Mr. Harris inquired in late fall as the status of this request, he was advised that DCS had never forward such a request to respondent DHSS's Bureau of Personnel and Employment Relations (BPER) and that it was "lost in DCS somewhere." A duplicate request was never submitted to DCS. This reclassification request was based upon duties and responsibilities appellant's position assumed during the absences of Ms. Siebecker and after Ms. Siebecker's promotion. Prior to July 1, 1989, these duties and responsibilities were assigned to appellant's position on a temporary basis only.

11. As the result of the DCS reorganization, a new position description was prepared for appellant's position and appellant signed this position description on December 12, 1989. DCS sent this position description with a Position Action Request (PAR) form to BPER in March of 1990, requesting a classification review of the position. When appellant was contacted by the BPER classification specialist performing the classification review, she assumed that the review was of her June, 1989, reclassification request. When appellant received notification from BPER that the PA 3 classification was the appropriate classification for her position, she assumed that this constituted a denial of her June, 1989, reclassification request.

12. The primary distinctions between positions classified at the PA 3 level and those classified at the PA 4 level are the size and scope of the program, the independence of action, the degree of involvement in decision-making, the impact of decisions, and the judgment required to make these decisions.

13. Respondent DHSS's inaction in regard to appellant's June, 1989, reclassification request constituted a constructive denial of such request.

14. The duties and responsibilities of appellant's position described in the position description signed by appellant on December 12, 1989, are more closely comparable to those of the PA 3 position offered for comparison

purposes than those of the PA 4-Confidential position and appellant's position is more appropriately classified at the PA 3 level.

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 June, 1989, reclassification request was incorrect.
3. The appellant has failed to sustain this burden.
4. The appellant has the burden to prove that respondent's denial of the December, 1989, reclassification request was incorrect.
5. The appellant has failed to sustain this burden.
6. At all times relevant to this matter, appellant's position has been appropriately classified at the PA 3 level.

Opinion

The issues agreed to by the parties prior to hearing were:

1. Whether respondent's decision to deny appellant's request to reclassify her position from Program Assistant 3 (PR2-10) to Program Assistant 4-Confidential (PR1-11) was correct.

Subissue: Whether appellant's position is more appropriately classified as a Program Assistant 4 (PR2-11) or Program Assistant 4-Confidential.

2. If appellant's position is more appropriately classified as a Program Assistant 4 or Program Assistant 4-Confidential, should the position be reclassified or reallocated.

At the commencement of the hearing, it became apparent that the only reclassification request that appellant believed fell within the scope of the stipulated issues was the request she filed in June of 1989, but the only request that respondent believed fell within the scope of the stipulated issues was the request that precipitated the classification review based on appellant's December, 1989, position description. As a result, the hearing examiner advised the parties that the Commission would review the duties and responsibilities of appellant's position at both times and would answer the questions posed by the stipulated issues for both of these reviews. Although respondent argues that a review of the June, 1989, reclassification request would be

inappropriate since this request was never received by BPER and, as a result, never denied by respondent, the Commission disagrees. The record indicates that appellant submitted this reclassification request to her supervisor and, upon his approval, forwarded it to DCS's personnel unit in Madison; for some reason, this request was either not received or was misplaced within DCS; and that, despite repeated inquiries from appellant, neither her supervisors nor DCS ever attempted to finally resolve questions as to the location or status of this request. This failure is not attributable to appellant but to respondent and its agents and the Commission holds that respondent constructively denied appellant's June, 1989, request for the reclassification of her position.

It is apparent from the record that the changes in the duties and responsibilities which formed the basis for appellant's reclassification request in June of 1989 were those assigned on a temporary basis due to Ms. Siebecker's absences and promotion. Appellant actually prepared a series of position descriptions, each covering a six-month period, for the periods January through June of 1988, July through December of 1988, and January through June of 1989. A comparison of these position descriptions with Ms. Siebecker's PA-Sup 2 position description indicates that the worker activities that appellant added to her position descriptions were verbatim excerpts from Ms. Siebecker's PA-Sup 2 position description. These duties and responsibilities were never permanently assigned to appellant's position. The Commission has consistently held that work performed on a temporary basis does not qualify a position for reclassification, [Graham v. DILHR and DER, 84-0052-PC (4/12/85)], unless this work has been performed for a number of years and the timing of future changes cannot be predicted with any degree of certainty, [Fredisdorf et al. v. DP, 80-300-PC (3/19/82)]. We do not have a fact situation here where appellant performed these temporarily assigned duties for a number of years or where the future assignment of duties to her position is uncertain. Any uncertainty regarding the assignment of duties to appellant's position was resolved upon the effective date of the reorganization of DCS, i.e., July 1, 1989. The first of Ms. Siebecker's absences, and thus the first temporary assignment of some of her duties to appellant's position, occurred only a year prior to the reorganization, and Ms. Siebecker's promotion occurred in February of 1989, only a few months prior to the reorganization.

The Commission concludes that appellant's position should not have been reclassified pursuant to her June of 1989 reclassification request.


In order to show that her position, as described in her December, 1989, position description, merited classification at the PA 4 level, appellant would have to show that the duties and responsibilities assigned to her position were more closely comparable to those of the PA 4 position offered for comparison purposes (See Finding of Fact 9.a., above) than those of the PA 3 position (See Finding of Fact 1.b., above). The PA 4 position has support responsibilities for a larger number of positions (28 total and 7 clerical support) and a larger number of distinct program areas (4) than appellant's position (16 total and 4 clerical support positions; 3 program areas); has equivalent administrative support duties but significantly more extensive program support duties (Katie Beckett program) than appellant's position; and is significantly more involved in coordination and decision-making relating to office personnel matters, including serving as the affirmative action officer, than appellant's position. The PA 3 position has support responsibilities for a comparable number of positions (18 total and 4 clerical support); the program support duties assigned to the PA 3 position, as opposed to the administrative support duties, consume a very small percentage of time as is true for appellant's position; the PA 3 position appears to have more complex and independent responsibilities in the fiscal area than appellant's position, i.e., this PA 3 position manages an operating budget with 14 separate funding sources and is responsible for developing an annual budget and for preparing present and future budget estimates; appellant's position appears to have responsibilities for which there is no counterpart in the PA 3 position, i.e., overseeing a vehicle pool and serving as records custodian; and the PA 3 position appears to have responsibilities for which there is no counterpart in the PA 3 position, i.e., organizing and maintaining the Section's library. On balance, appellant's position appears to be more closely comparable to the PA 3 position offered for comparison purposes than to the PA 4 position. In reviewing the distinctions between appellant's position and the PA 4 position, each distinction augments the strength of the PA 4 position from a classification standpoint. In reviewing the distinctions between appellant's position and the PA 3 position, all except the budget distinction appear to counterbalance each other. The budget distinction actually renders the PA 3 position stronger from a classification standpoint than appel-

lant's position. The Commission concludes that, as of December of 1989, appellant's position was appropriately classified at the PA 3 level. This conclusion is consistent with the fact that more than a majority of appellant's position's time, as indicated in her December, 1989, position description, is devoted to performing duties and responsibilities previously assigned to Ms. Siebecker's PA-Sup 2 position. As stated above, a position classified at the PA-Sup 2 level functions at the PA 3 level and, in addition, functions as a supervisor over subordinate employees. In other words, the program and administrative support functions performed by Ms. Siebecker's PA-Sup 2 position were regarded as PA 3 level duties.

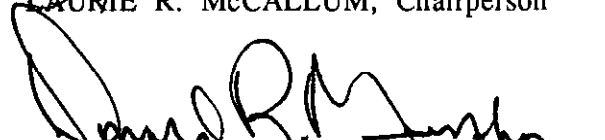
Order

The actions of respondent are affirmed and this appeal is dismissed.

Dated: May 1, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Gail M. Miller
12760 W Greenfield Ave
Brookfield WI 53005

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.