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ANN E. JESSE,

 Appellant,

v.

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

 Respondents.

Case No. 92-0036-PC

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INTERIM
DECISION
AND
ORDER

Nature of the Case

This is an appeal of a denial of a request for reclassification. A hearing was held on May 26, 1992, before Laurie R. McCallum, Chairperson.

Findings of Fact

- At all times relevant to this matter, appellant has been employed in a position classified at the Therapy Assistant 2 (TA 2) level and located at the Central Wisconsin Center (CWC), an institution for the developmentally disabled administered by the Division of Care and Treatment Facilities of the Department of Health and Social Services. In August of 1989, appellant requested the reclassification of her position from TA 2 to TA 3. Respondents denied this request and appellant filed a timely appeal of this denial with the Commission.
- Appellant's position is responsible for coordinating and implementing the Therapeutic Recreation Program on Living Unit 1 North/South. In carrying out this responsibility, appellant's position functions as a lead worker in relation to limited term employees (LTEs) and Resident Care Technicians (RCTs), and participates as a member of the transdisciplinary team which is responsible for developing and monitoring the total treatment program for each unit resident. Appellant's position reports to the Unit Coordinator of Living Unit 1 North/South.

3. Prior to 1987, a Recreation Therapist position was assigned to Living Unit 1 North/South. Since, 1987, Living Unit 1 North/South is the only living unit at CWC to which a Recreation Therapist has not been assigned. In these other units, the Therapeutic Recreation Program is the responsibility of this Recreation Therapist with the assistance of a Therapy Assistant 2.

4. The CWC Therapeutic Recreation Program is supervised by a Therapist 3. Subprograms include Arts and Crafts, Sensory Awareness/Stimulation, Leisure Activities, Physical Activities, and Music Therapy, among others.

5. Appellant developed a sensory awareness/stimulation program which has been adopted by other living units. Appellant trains new employees and volunteers on 1 North/South and other living units to use the techniques of this program. The only other recreational staff positions performing a similar function are Recreation Therapist positions.

6. Since 1982, appellant's position has changed by the removal of the Recreation Therapist from Living Unit 1 North/South; the addition of responsibility for scheduling LTE's, students, and volunteers assigned to the Therapeutic Recreation Program on 1 North/South; providing Therapeutic Recreation Program training to volunteers, students, LTEs, RCTs, and new employees on 1 North/South; providing sensory awareness/stimulation training to new employees, students, and volunteers on all living units; updating and completing active treatment lesson plans for leisure time activities of certain residents; and planning and carrying out the yearly CWC holiday party for residents.

7. Positions offered for comparison purposes include:

a. TA 3--Delores Reese--this position coordinates the CWC Developmental Arts and Crafts program and implements this program on Living Units 5, 6, 7, and 8. This position supervises volunteers, students, and a Therapy Assistant position and reports to the Unit Coordinator of Living Unit 8.

b. TA 3--Jerin Robertson--this position is responsible for the development and implementation of the CWC Food Preparation Training Program, a subprogram of the CWC Vocational Training Program. This position reports to the CWC Director of Vocational Services and serves as a lead worker for other staff.

c. TA 3--Donald Brereton--this position is responsible for the development and implementation of the CWC program which pre-

pares CWC residents for employment in the community, locates such employment, and monitors such employment. This position reports to the CWC Director of Vocational Services and serves as a lead worker for other staff.

d. TA 3--Nancy Bernander--this position assists a Registered Occupational Therapist in providing occupational therapy services on a living unit; and shares responsibility with another TA 3 for coordinating the CWC adaptive feeding equipment and splinting clinic program (45%)

8. The position standard for the TA 2 classification states as follows, in pertinent part:

Class Description

Definition:

This is the objective level class of the Therapy Assistant series. Employees engage in therapy, rehabilitative, education and related programs with a minimum amount of direct supervision and guidance. Professional staff members or advanced level therapy assistants provide program guidelines and the individual employee is expected to carry through using his own skills and abilities. Work of this nature may be found in a state institution, or as an adjunct to professional social work or community service projects. Persons in this class supervise and instruct patients or clients in specified activities which are of therapeutic or educational value or participate in a service in a community service program.

9. The position standard for the TA 3 classification states as follows, in pertinent part:

Class Description

Definition:

This is advanced semi-professional work, involving program responsibility for therapy, rehabilitation, and related programs. Employees guide a complete section or area of the therapeutic, rehabilitation, treatment, or training program. In addition employees in this class function as group leaders assisting professional staff members in implementing programs and teaching new techniques to less

advanced assistants as well as participants of community action or service projects. Work is performed under the general supervision of a professional staff member.

10. The duties and responsibilities of appellant's position are more closely comparable to those of the TA 3 positions offered for comparison purposes than to those of the TA 2 positions performing recreational duties on the other living units.

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 show that respondents' decision denying the request for the reclassification of appellant's position from TA 2 to TA 3 was incorrect.
3. The appellant has sustained this burden.
4. Respondents' decision denying the subject reclassification request was incorrect and appellant's position is more appropriately classified at the TA 3 level.

Opinion

In determining the appropriate classification of a position, the primary tool is the position standards for the classifications under consideration. In the instant case, the position standard for the Therapy Assistant series does not provide much guidance, primarily because the duties and responsibilities of appellant's position are described by the language of the definition sections of both the TA 2 and the TA 3 classification specifications, i.e., appellant's position is engaged "in therapy, rehabilitative, education and related programs with a minimum amount of direct supervision and guidance" and "professional staff members . . . provide program guidelines and the individual employe is expected to carry through using his own skills and abilities" as specified in the TA 2 specifications; and appellant's position involves "program responsibility for therapy, rehabilitation, and related programs" and "guides a complete section or area of the therapeutic, treatment, or training program" as specified in the TA 3 specifications.

In contrast with the other Therapy Assistant positions in the therapeutic recreation program which are classified at the TA 2 level, appellant's position functions without the program oversight provided by a Recreation Therapist on the living unit. Therefore, the only "program guidelines" provided to appellant are those general therapeutic recreation program guidelines provided to the recreation staff on the living units by CWC's recreation coordinator and the program guidelines provided to the living unit staff in general by the living unit coordinator and the members of the transdisciplinary team. This is a significant distinction.

Respondent argues that the duties and responsibilities of appellant's position do not satisfy the TA 3 requirements that a position "guide a complete section or area of the therapeutic . . . program." Respondents failed to adequately or consistently define the meaning of "complete section or area," however. Respondents' classification expert testified that the therapeutic recreation program on Living Unit 1 North/South should be considered a subsection, not a section, of CWC's total therapeutic recreation program or of Living Unit 1 North/South's total therapeutic program. However, respondent would like us to believe that CWC's Developmental Arts and Crafts program is a complete section or area within CWC's Therapeutic Recreation Program. Not only have respondents failed to explain how this conclusion was reached or what the logic behind this conclusion is but the Commission does not find this conclusion inherently logical or sensible based on the record before it. The Commission does not find that respondents have shown a meaningful distinction for classification purposes between the oversight of a part of a larger program on an institution-wide basis and the oversight of the entire program for a part of the institution. It appears here that the increased complexity of tailoring a part of a program for the variety of residents at CWC as a whole is counterbalanced by the increased complexity of coordinating each facet of the larger program for the more homogeneous population of a living unit.

Respondents have also argued that the TA 3 classification is only appropriate for those TA positions which spend a majority of their time carrying out CWC-wide responsibilities of a significant program nature. However, DHSS's own allocation pattern belies this statement. For example, the TA 3 Bernander position not only does not spend a majority of her time on the adaptive feeding equipment/splinting clinic assignments but such assignments are not CWC-

wide but are shared with another TA 3. It should also be noted in regard to the classification issue in general that this position, in carrying out the other duties of the position, i.e., those related to the delivery of occupational therapy services to residents on a particular living unit, does so under the program guidance of an Occupational Therapist.

Respondents further argue that the duties and responsibilities of appellant's position have not changed sufficiently since 1982. However, the record shows that appellant's position has changed and those changes are summarized in Finding of Fact 6, above. It is not required that a certain percentage change be shown, only such change that would take a position's classification from one level to another.

Respondents argue that appellant's position should not be regarded as a lead worker and, if it is, competition should be required. Both appellant's first and second line supervisors characterize her position in their testimony as a lead worker. In addition, the record shows that appellant guides, schedules, and trains LTEs and permanent RCTs. The Commission concludes that appellant's position is functioning as a lead worker consistent with the expectations and assignments of her supervisors and should be given credit for these lead work responsibilities. The Commission also notes that it is not a foregone conclusion that a position assigned lead work responsibilities must be opened for competition, particularly if the addition of such responsibilities to the position was logical.

Finally, respondents point to the Commission's decision in Schrock v. DHSS and DER, 88-0146-PC (1/10/90) to uphold the classification decision under consideration here. However, respondents failed to show how the duties and responsibilities of the positions reviewed in Schrock compared to those of appellant's position, particularly in regard to independence of decision-making, extent of program discretion, or area of specialization and the results of such a comparison are not obvious from a reading of the Schrock decision and a review of the instant record. As a result, the Schrock decision is of limited utility in reaching a determination of the issue under consideration here.

The Commission concludes that appellant's position is stronger from a classification standpoint than the TA 2 positions assigned to the therapeutic recreation program on the other living units and that appellant's position is as strong from a classification standpoint as at least two of the TA 3 positions of-

ferred for comparison purposes, i.e., the Reese (See Finding of Fact 7. a., above) position and the Bernander (See Finding of Fact 7. d., above) position. On this basis, the Commission concludes that appellant's position is more appropriately classified at the TA 3 level.

Order

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

Dated: September 18, 1992 STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt



GERALD F. HODDINOTT, Commissioner