

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JANEEN MEYER-GROVER, et al.,
 (Janet K. Devore, Sheila M.
 Brooks-Nash, Terri Lorenzini)

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-1011, 1012, 1013, 1014-PC

* * * * *

DECISION
AND
ORDER

These matters are before the Commission as appeals from respondent's decisions reallocating the appellants' positions to the Social Worker-Senior classification rather than the Social Services Specialist 1 classification.

The appellants are all employed with the Bureau of Substance Abuse Services, Division of Community Services, Department of Health and Social Services (DHSS) and have responsibilities for implementing the "Referral and Monitoring Contract" between DHSS and the Social Security Administration for providing treatment to alcohol and other drug abuse clients who receive Supplemental Security Income (SSI) benefits. When the program was initially developed, the appellants' primary role was to serve as caseworkers for the approximately 300 individuals within the state who received such benefits. Over time, the number of recipients or clients increased until, as of October of 1994, it reached approximately 2,700. While the number of clients have increased, the appellants' role in providing direct services to those clients has decreased and greater responsibility has been placed upon the treatment providers to serve in that capacity. The appellants have spent more and more time providing information relating to policy requirements to both the treatment providers and to the various Social Security Administration field offices throughout the state. Prior to 1993, the appellants were required to have direct contact with each of their clients at least once every 6 months. The 1993 contract with SSA, which was in effect during the period in question, eliminated this requirement. The remaining client contact requirement of rele-

vance to this proceeding is that the appellants must conduct an initial client interview when the client commences coverage under the program. The appellants each conduct approximately 150 to 200 such intake interviews per year. On a daily basis, the appellants each track or monitor 100 clients through the treatment provider.

At all relevant time periods, the appellants have each been assigned to specific geographic areas of the state, and no one of them has been assigned overall statewide responsibility over the program. Each one does spend some time at statewide conferences and, under unusual circumstances, may oversee a client who is located in someone else's geographic region. However, for the purposes of this proceeding, the appellants must be viewed as being assigned to a specific geographic subunit of the state rather than having statewide responsibility.

The class specifications for the Social Worker classification provide, in relevant part, as follows:

I. INTRODUCTION

A. Purpose of This Classification Specification

.... Positions allocated to this series provide professional social work and case management services... in a state agency office that directly services or monitors a specific client group. Some positions... provide specialized case management activities (i.e. admission services, discharge services, AODA treatment services) and yet others provide special needs adoption services or disability monitoring activities....

B. Inclusions

This series encompasses professional social work positions primarily located within the Departments of Corrections, Health and Social Services, and Veterans Affairs. Wis. Stats. 457.01(9) defines "Social work" as "applying psychosocial, psychotherapeutic or counseling principles, methods or procedures in the assessment, evaluation, psychosocial or psychotherapeutic diagnosis, prevention, treatment or resolution of a social, psychological, personal, emotional or mental disorder of an individual... including the enhancement or restoration of, or the creation of societal conditions favorable to the enhancement or restoration of the capacity of an individual... or the delivery of services to a group of individuals or a community to assist the group or community in providing or improving the provision of social or health services to others." Positions allocated to this series provide profes-

sional social work and case management services to a specific client population....

* * *

II. DEFINITIONS

SOCIAL WORKER CLASSIFICATION SERIES

Positions in this classification series provide responsible, independent social work services within... a state agency office that directly serves or monitors a specific client group.... Duties include obtaining information from clients, members of their families and others to identify social, economic, emotional, health or physical problems and to determine eligibility and the need for casework or other services. Employees may provide counseling services, therapeutic intervention, and treatment services to clients and members of their families to aid them in achieving a more satisfactory adjustment of their specific problems or situation. Social Workers work in close cooperation with other social agencies, hospitals, clinics, courts and community resources in planning to meet the needs of clients, and assist the clients in utilizing these resources. Employees may perform in an advisory capacity to other professional staff in specialized areas through participation in conferences and meetings for purposes of assessment, diagnosis and plan of treatment.

* * *

SOCIAL WORKER - SENIOR

This is responsible, independent social work providing the full range of social work services in accordance with the policies, procedures and guidelines of the department.... For most caseload related activities, administrative review is on an "after the fact" basis.

Representative Positions

* * *

Department of Health and Social Services, Division of Community Services:

Bureau of Substance Abuse Services: Under the supervision of the Program Administrator, refer clients to treatment; monitor ongoing treatment; assure treatment planning, referral and client compliance with the provision of medical and non-medical treatment services, mental health and alcohol and other drug abuse (AODA) services to alcoholic, drug dependent and dually diagnosed clients receiving Supplemental Security Income under Title XVI of the Social Security Act (SSA). Provide technical assis-

tance and clinical case consultations to AODA treatment programs, SSA field offices, county social service departments, 51.42 board and community AODA programs. (Emphasis in bold has been added.)

The class specifications for the Social Services Specialist 1 classification provide, in relevant part, as follows:

I. INTRODUCTION

A. Purpose of This Classification Specification

This classification specification is the basic authority... for making classification decisions relative to present and future professional positions located in the Department of Health and Social Services, Division of Community Services which are, for a majority of the time, involved in assuring the delivery of social services [including] alcohol and other drug abuse programs... through program development, implementation, and monitoring activities.

B. Inclusions

Positions in this classification series are professional social services positions located within the Department of Health and Social Services, Division of Community Services, providing: administration and supervision of social welfare programs directly or through county and local agencies; consultation services to the administrative staff and the community; and the maintenance of a professional staff concerned with social services operations management. Positions allocated to this series supervise county and tribal operated programs, provide consultation and assistance to private groups, and may provide direct services to clients on a limited basis.... **Consultation services are activities which are defined as "indirect" services and provide a nucleus of "experts" with specialties in a given service area, acting in an advisory, coordinative, and educative capacity to the state, county and community agencies bringing specialized knowledges to bear in resolving problems inherent in the establishment, continuation and improvement of social work program efforts. Direct services involves the administration of on-going social work programs and the oversight of casework activity.**

C. Exclusions

Excluded from this series are the following types of positions:

* * *

4. **Positions which are engaged in the direct provision of social work case management activities a ma-**

majority of the time and are more appropriately classified as Social Worker.

* * *

II. DEFINITIONS

SOCIAL SERVICES SPECIALIST CLASSIFICATION SERIES

Positions in this classification series encompass a wide range of functional activities geared toward overseeing the provision of the full spectrum of professional social services for the state. These activities include the administration and supervision of social services programs directly or through county and local agencies, the provision of expert consultative services to the administrative staff and the community.... Positions in this series usually work in one of the following social service fields: ... alcohol and other drug abuse....

SOCIAL SERVICES SPECIALIST 1

This is the first level of responsible program and/or consultative work. Positions allocated to this level function as a statewide program consultant for a limited program area....

Representative Positions

* * *

Division of Community Services, Bureau of Substance Abuse Services: Reports to a section chief and coordinates and provides leadership and direction in the statewide alcohol and other drug abuse (AODA) worker development effort. Performs program administration, manpower needs assessment, AODA career development counseling, training delivery, training event oversight, AODA course design, AODA training development advocacy, and AODA manpower strategy planning. (Emphasis in bold has been added.)

Appellants are supervised by Daniel Kerwin. Mr. Kerwin administers the Referral and Monitoring Contract. Mr. Kerwin testified the appellants spend 45% of their time on case management but their remaining time is spent performing technical assistance or other responsibilities outside of the Social Worker classification. Mr. Kerwin agreed appellants performed all of the duties described in the Social Worker - Senior representative position in the Bureau of Substance Abuse Services but contended the appellants no longer spent the majority of their time providing direct client services as was con-

templated in that representative position. Mr. Kerwin testified the appellants spent the majority of their time in consultation and training functions. Appellants established that even though position descriptions describing their positions were prepared as part of the classification survey (Resp. Exh. 4 through 7), it took so long (three years) to complete the survey, that those position descriptions were inaccurate as of the October 16, 1994, effective date of the survey.¹ Appellants, through their own testimony as well as the testimony of Mr. Kerwin, established that their duties in October of 1994 were accurately described in a position description (App. Exh. 8) that was never signed by their personnel manager. This position description includes the following language:

- 25% A. Provide policy interpretation related to AODA/MH [alcohol and other drug abuse/mental health] treatment service, SSI DA/A [Supplemental Security Income/ drug abuse and alcohol] client case load, program costs, and policy matters.
- A1. Recommend treatment policy changes and interpret SSA policy in implementing the Statewide SSA contract.
- A2. Recommend shifts in program direction based on treatment outcomes and/or changes in State/Federal policies.
- A3. Prepare materials appropriate to SSA FOs, Legal Aid of Wisconsin, and OHA including testimony or documentation in response to appeals as requested.
- A4. Provide consultation in inter-state and Regional meetings of SSA RMA programs for the purposes of providing policy and technical assistance in program improvement.
- A5. Interpret and convey SSA Program and MEDICAID policies to programs providing treatment services, family members, and payees to clients under supervision of the Program.
- A6. Participate in Division/Bureau policy formulating meetings having statewide implications....

¹These position descriptions, prepared in January of 1991, showed the appellants then spent 75% of their time providing treatment referral and monitoring responsibilities for services to clients.

25% B. Provide leadership in developing, coordinating, and implementing training programs, statewide, for SSA FO [Social Security Administration field office] staff, other individuals (or agencies) serving as representative payees for SSI DA/A recipients, and/or treatment providers.

B1. Provide training, technical assistance, policy interpretation, and clinical case consultation to... treatment programs; county departments of social services... and community programs....

* * *

45% C. Monitor agencies providing medical, non-medical, psychiatric, alcohol and/or other drug abuse services in implementing the DHSS-SSA statewide contract for DA/A clients receiving SSI.

5% D. Development of responses to controlled assignments and general correspondence.

One issue raised by these appeals is whether the majority of the appellants' time is spent performing "consultative services" as that term is defined in the "Inclusions" statement for the Social Services Specialist classification, or whether the appellants spend a majority of their time directly providing case management activities, in which case the appellants' positions would be specifically excluded from the Social Services Specialist series. Mr. Kerwin agreed that appellants' case management responsibilities were identified solely as goal C (45%). Respondent contended that in addition to this goal, activities found in other goals also fall within case management. Leann White, a personnel specialist with respondent who was responsible for the classification survey, testified that the appeals referenced in activity A3 are generated by the caseload of clients being served by the appellants, that activity A5 is also specific to the caseload being managed by appellants and that the reference in activity B1 to "clinical case consultation" should be interpreted to be case specific rather than a general consultation. The Commission agrees these activities include duties which relate to individual clients within each of the appellants' geographic areas and are within the scope of "social work and case management services" described in the Social Worker classification specifications. Ms. White acknowledged that she did not know how much time the appellants spent on any of these particular activities. While the question of whether the appellants spend a majority of their time on "direct" provision of

services or "indirect" services is of interest, the result of this question is not crucial to the determination of these appeals.

The appellants have the burden of establishing that the respondent's decisions not to reallocate their positions to the Social Services Specialist 1 classification was incorrect. Miller v. DHSS & DER, 92-0840-PC, 1/25/94; Bluhm v. DER, 92-0303-PC, 6/21/94. In the case of Vranes v. DER, 83-0122-PC, 7/19/84, the Commission held that the burden of proof in a reallocation case was on the appellant to show he should be reallocated as requested. In Svensson v. DER, 86-0136-PC, 7/22/87, the Commission held it was appellant's burden to show that her position was correctly classified at the higher level rather than merely showing that the decision to classify her position at the lower level was incorrect.

The language of the SSS 1 classification requires the positions at that level to provide consultation on a statewide basis: "Positions allocated to this level function as a statewide program consultant for a limited program area." Both of the witnesses called by respondent testified that all of the positions classified at the SSS 1 level have statewide responsibility. All five of the representative positions have responsibilities which are statewide. None of the representative positions suggest that regional responsibilities satisfy the definition. Although the specifications could have been written to more clearly identify statewide responsibilities as a prerequisite to classification at the SSS 1 level, the Commission concludes that the specifications do establish such a requirement.²

The Bureau of Substance Abuse is organized so that the appellants are assigned a geographic subunit of the state. Despite the references to "statewide" in their position descriptions, they do not have the statewide responsibility for the program or for any aspect of the program. The appellants merely share the role of providing information about the program during the training programs their unit provides throughout the state. The representative position in the Bureau of Substance Abuse that is identified at the SSS 1 level specifically has statewide responsibility in terms of coordinating and providing leadership and direction in the statewide worker development effort

²The appellants have not contested the respondent's position that statewide responsibilities are required for classification at the SSS 1 level. Appellants contend that they perform the necessary statewide responsibilities.

in the AODA program. None of the appellants have been assigned this or any comparable statewide responsibility in the Referral and Monitoring unit.

The appellants do not have statewide responsibilities required by the SSS 1 classification and they spend more than 45% of their time performing duties which fall within the Social Worker classification. Under these circumstances, the Social Worker classification better describes the appellants' duties than does the SSS 1 classification. The appellants have not sustained their burden of establishing their positions are correctly classified at the SSS 1 level.



ORDER

Respondent's reallocation decisions are affirmed and these matters are dismissed.

Dated: January 23, 1996

STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-reall (Meyer-Grover et al.)


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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95