

RUTH MURPHY,
Appellant,

v.

**Secretary, DEPARTMENT OF HEALTH
AND FAMILY SERVICES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

**DECISION AND
ORDER**

Case No. 98-0013-PC

This is an appeal of a decision to deny appellant's request for the reclassification of her position from Social Services Specialist 1 (SSS 1) to SSS 2. A hearing was held on September 3 and November 5, 1998, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the schedule for doing so was completed on January 25, 1999. The following findings are derived from the hearing record:

1. Since 1989, appellant's position has been assigned to the Youth Independent Living Program in respondent DHFS's Child Welfare Services Section. In 1994, appellant's position was reallocated to the SSS 1 level as the result of a classification survey.

2. The Youth Independent Living Program provides federal grant monies to qualifying counties, tribes, and correctional programs serving children exiting from the foster care system. This program has not involved controversial or complex policy or legislative issues or litigation, and its scope and requirements have varied little from year to year since its inception. The challenge to those staffing this program has decreased over time as the program has become more established, as the requirements

have become more familiar, and as less education about and marketing of the program has become necessary.

3. In 1995, the responsibility for determining how to direct Independent Living monies to counties, tribes, and correctional programs which did not have funded Independent Living programs was assigned to a position held by a Mr. Hebert, which was classified at the SSS 2 level. The classification of this position was based on its Runaway Program responsibilities which consumed a majority of Mr. Hebert's time. Some time after 1995, Mr. Hebert's position was eliminated as part of a reorganization. Since then, appellant's position has worked with unfunded programs upon request in areas such as providing information on available resources and advising of training opportunities.

4. Appellant requested a reclassification of her position to the SSS 2 level in or around November of 1997. The goals and worker activities of appellant's position at that time may be summarized as follows:

40% A. Contract Administration—develop and provide informational materials on requirements for federal funding of youth independent living programs to eligible entities; review funding requests to determine whether federal funding requirements have been met; recommend funding approval to supervisors; tailor standard funding contract for individual grantees; develop reporting guidelines and forms based on federal reporting requirements; use information reported by grantees to develop annual report to the federal government (since 1992); monitor the status of each funded project by reviewing the on-site visit reports submitted by Assistant Area Administrators; and develop proposals for the use of excess independent living funds.

30% B. Information and Testing—as one member of a committee, plans statewide conference annually for foster parents, residential facility staff, social workers, staff from grantee agencies, other service providers, and youth; provide technical assistance regarding the independent living program directly to agencies or individuals or through presentations at regional conferences; compile and disseminate information relating to other available resources; and share information relating to successes and failures of curricula, program assessment tools, and program initiatives with agencies and individuals.

15% C. Policy Development—make policy recommendations regarding changes in the processes or protocols of the state independent living program; develop draft standards for the state independent living program as a member of a committee; and develop and compile results of surveys of grantees.

5% D. Network Coordination—enlist the support of other private and public entities for funding of employment-related services components of independent living program; and assist in the coordination of independent living program with other DHFS programs such as out-of-home care and family-based services.

10% E. Other Assignments—draft responses to correspondence for signature of supervisors; prepare informational materials relating to independent living program; and carry out other duties as assigned.

5. The staff responsible for other programs in the Child Welfare Services Section are classified at the SSS 2 level. These other programs, in comparison to the Youth Independent Living Program: are significantly more complex, i.e., are governed by federal regulations of greater scope and complexity requiring continuing policy interpretations, and by extensive judicial case law; generally require a program in every county (except the Teen Pregnancy and Parenting Program), as opposed to the Youth Independent Living Program which has programs in 40 out of the 72 counties; require difficult and contentious negotiations with county officials and staff and with private providers, e.g., appellant may ask for information on how the computers for which funding was requested will be used, while staff in the Out-of-Home Care/Child Abuse programs, in reviewing the circumstances of the death of a youth in foster care or in challenging how a failed foster care placement has been handled by a county department, may have to deal with the county corporation counsel or district attorney, among others; involve monitoring legislation and legislative proposals and testifying at legislative hearings; have significantly larger budgets, many derived from multiple funding sources; serve significantly larger populations; involve controversial and emotional issues, e.g., the Teen Pregnancy and Parenting Program has dealt with the issues of public funding of religious entities, abortion and birth control for minors, and

numerous funding appeals; involve a variety of types of grantees, not just counties or tribes; have a grant administration program such as the Youth Independent Living Program as a small component of the overall program, e.g., Abstinence Program; and involve significant policy and program development responsibility at the state level which the Youth Independent Living Program does not.

6. The classification specifications for the Social Services Specialist series state as follows, as relevant here:

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. Limited program area responsibility is identified and defined in the following ways: (1) the range and scope of the program responsibilities performed does not constitute the full range of activities, e.g., program development, establishment of program policies and procedures, program implementation, consultation, monitoring program activities, and training local and/or state staff; (2) the program does not affect the majority of the state's population or it affects the majority of the population in an indirect manner minimizing the impact; or (3) the accountability for the program is limited by the assignment of program responsibilities to other staff along functional lines (i.e. more than one position carries responsibility for the program). Positions provide consultative services and perform program activities in a specialized service area, such as developmental disabilities, mental retardation, alternate care, child behavior and development, alcohol and other drug abuse, juvenile delinquency, etc.

REPRESENTATIVE POSITIONS:

. . . Division of Community Services, Bureau for Children, Youth, and Families: Reports to a section chief and assists in the implementation of an initiative to focus on transitional programming for youth in the community alternative care system under the lead worker of the Youth Independent Living Project. Performs contract administration and monitoring, on-site training, technical assistance and consultation to organizations and agencies as well as maintenance of program data and fiscal reporting systems.

Division of Community Services, Bureau of Community Mental Health: Reports to a section chief and administers Wisconsin Projects for Assistance in Transition from Homelessness, including monitoring federal funds, provision of consultation, technical assistance, and specialized program training to mental health homeless services providers, human services departments, mental health advocates, homeless shelters, and other professional groups to ensure provision of mental health services to persons who are homeless and mentally ill.

SOCIAL SERVICES SPECIALIST 2

Positions at this level report to a section chief or bureau director and have primary responsibility for providing statewide program development and consultative work in a specialized statewide program area which affects one of the largest segments of the state's population or affects a narrower segment of the population in substantial ways (e.g., services for persons with multiple impairment). Positions at this level are responsible for performing the full range of activities (i.e., program development, establishment of program policies and procedures, program implementation, consultation, monitoring program activities, and training local and/or state staff) necessary to administer the program on a statewide basis under the direction of higher level program staff or managers. A limited number of positions may provide consultative services in selected program areas which require highly specialized training and skills. Positions at this level may also have responsibility for managing grants or leading lower level specialists in the performance of program activities but these activities do not comprise a majority of the position's time and are not determinative of the position's classification.

REPRESENTATIVE POSITIONS

. . . Division of Community Services, Bureau for Children, Youth and Families: Reports to a section chief and is responsible for identification of issues, development of adoption program policy, budgets, and department guidelines on adoption and post adoption services in interstate and inter-county adoptive placements of children involving the State of Wisconsin. Provides program consultation to agencies and individuals to ensure adoptive placements involve good practice and meet requirements of Wisconsin law and department policy and procedures.

Section ER 3.01(3), Wis. Adm. Code, requires that a position undergo a “logical and gradual change” in order to qualify for reclassification. The record here shows that there has essentially been no substantive change which would serve to strengthen appellant’s position from a classification standpoint since it was reallocated to the SSS 1 classification in 1994.

Appellant cites to the elimination of the lead worker position in the Independent Living program in support of her contention that her position has undergone logical and gradual change. However, if appellant had been assigned the Independent Living responsibilities of this lead worker position when it was eliminated and if such responsibilities had resulted in a substantive and significant change in appellant’s position, this assignment would not have been gradual and would not, as a result, have qualified appellant’s position for reclassification. In addition, the record shows that the elimination of this lead worker position did not result in significant change in or strengthening of appellant’s position. It appears instead that the responsibility of this position to work with unfunded Independent Living programs has been minimized to such an extent that it now involves little more than including such programs on mailing lists for such things as newsletters/informational mailings or training opportunities.

Appellant also argues that, since her position was primarily a clerical one when she first began working in it, the increasing emphasis on non-clerical duties over the years supports her contention that there has been a logical and gradual change in the duties and responsibilities of her position. First of all, such a change from clerical to program duties would not be considered logical. Moreover, the argument that strengthening such original duties supports reclassification to the SSS 2 level is not persuasive since such clerical duties could not support classification of the position at the SSS 1 level in the first place. Finally, the nature of appellant’s duties and responsibilities when she was first appointed to the subject position are essentially irrelevant for the purposes of this appeal since the relevant change would be that

between the duties of her position at the time of the 1994 reallocation and such duties at the time of the 1997 reclassification request.¹

Even if appellant's position had undergone a qualifying logical and gradual change, the duties and responsibilities of this position do not meet the requirements for classification at the SSS 2 level. The duties and responsibilities do not satisfy the SSS 2 requirements that the program affect a large segment of the state's population, or that the position perform the full range of activities, i.e., appellant's position performs little, if any, program development, program monitoring, program policy establishment, or consultation. Appellant points to her proposal and implementation of initiatives utilizing excess Independent Living funds as a program development responsibility. Such initiatives are not department programs, however, as that term is utilized in the SSS classification specifications. The record here shows that Independent Living program monitoring is typically done at the local (grantee) level, and activity at the state level is limited to collating and summarizing program results, determining whether grant proposals meet federal funding requirements, and disseminating information on the Independent Living program and other resources through training or otherwise. Although appellant has responsibility for establishing certain program procedures, program policy is established by her superiors or by the federal government. The advice given by appellant to grantees, potential grantees, or others typically does not rise to the level of consulting, but is more accurately characterized as technical assistance, i.e., providing information on the requirements of the Independent Living program or identifying informational resources and training opportunities.

In contrast, the SSS 1 specifications describe a position serving a program of narrow scope performing less than a full range of activities. The record here establishes that the Youth Independent Living Program is limited in scope not only by the fact that it serves only 40 out of 72 counties (plus certain tribes and juvenile corrections clients) but also by the fact that it serves only a small subset of the state's population, i.e., those youth transitioning out of out-of-home care (usually foster care).

¹ This sentence was added by the Commission to the Proposed Decision and Order

The limited range of activities performed by appellant's position is described in the preceding paragraph. Based on the applicable language, appellant's position is better described by the specifications for the SSS 1 classification.

In addition, appellant's position is listed as a representative position at the SSS 1 level which is further support for classification at that level. Although the description of the duties and responsibilities of appellant's position in the SSS 1 specifications refers to an "assisting" role, it appears to be in the context of assisting the Section Chief in implementing the programs of the section. Such a role would be consistent with classification at the SSS 1 level.²

The SSS 2 positions offered for comparison purposes in the hearing record do not compare favorably to appellant's position for classification purposes (see finding # 5, above), either in regard to the attributes of the respective programs or the scope of the positions' duties and responsibilities. In addition, the program coordinated by the representative SSS 2 position set forth in finding #6, above, not only serves a larger segment of the state's population, but the position's policy development, budget development, and more extensive consulting responsibilities render it, given the criteria set forth in the SSS specifications, a significantly stronger position than appellant's from a classification standpoint.

² This paragraph was modified from that included in the Proposed Decision and Order to reflect the Commission's opinion that the "assist" language in the SSS 1 specification referred to assisting the Section Chief in implementing the programs of the section and not to assisting the lead worker of the Youth Independent Living Program

ORDER

The action of respondents is affirmed and this case is dismissed.

Dated: March 24, 1999

STATE PERSONNEL COMMISSION

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980013Adec1


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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.)

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