

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-053

STEPHANIE HODGES

APPELLANT

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board at its regular March 2016 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 3, 2016, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 16th day of March, 2016.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jennifer Wolsing
Stephanie Hodges
Jay Klein

**COMMONWEALTH OF KENTUCKY
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APPEAL NO. 2015-053**

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**FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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This matter came on for evidentiary hearing on November 30 and December 16, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Stephanie Hodges, was present and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Jennifer Wolsing. Appearing as Agency representative was Leeana Trainer.

This matter involves the Appellant's appeal from a denial of a reclassification which she sought from Medicaid Services Specialist II to Medicaid Services Specialist III. As such, the burden of proof was placed upon the Appellant by a preponderance of the evidence to show she was entitled to the reclassification.

Another issue was the claim of retaliation by the Appellant, asserting that the denial of the reclassification was in retaliation for various reasons. At the beginning of the hearing, the Appellee renewed its motion for a partial summary judgment as to the points of retaliation cited. After hearing argument, the Hearing Officer **GRANTED** the motion. Therefore, the only remaining issue is whether the Appellant is entitled to a reclassification.

BACKGROUND

1. On the first day of hearing, November 30, 2015, although the Appellant was assigned the burden of proof, by agreement of the parties, Appellee's witness **Cliff Robey** was called out of order. Robey has been an Assistant Director in the Department of Medicaid Services (DMS) for five and a half years. Specifically, he is in the Division of Provider and Membership Services.

2. His duties include monitoring the call centers, which is one part of his division. His division also consists of processors, who take various reports from various Managed Care Organizations (MCOs).

3. The witness went on to explain that his office receives both daily and monthly MCO reports. The daily reports generally consist of demographic and eligibility details, while the monthly reports contain information regarding newborns and their mothers' names. Another report which his office is involved with is the Capitation report, which deals with the amount of money which is paid monthly to the various MCOs for care. He went on to detail that the Medicaid Services Specialist IIIs (MSS IIIs) are the ones responsible for completing the MCO reports. He added that the Appellant as an MSS II does not track any of these. He also added that she had not shown the capability to do that, when she previously was "shopping" for answers from her supervisors.

4. He cited Appellee's Exhibit 1, February 11, 2015 and June 23, 2014 e-mails from him to the Appellant and her response to him after she had gone "shopping" for answers from two other persons. This exhibit was his explanation to her of what she was and was not able to do with the MCO reports.

5. Appellee's Exhibit 2 was a series of MCO report descriptions. The witness detailed that these formerly were six descriptions of codes used in the summer of 2014, but have now been combined into only four reports. He added that these report descriptions were used by MSIIIs.

6. The witness testified as to Appellee's Exhibit 3, a 200 Report sent by Anthem. This report was only handled by MSS IIIs. One part of it dealt with "invalid program status," which means that a computer program sent by an MCO was checked by the MSS IIIs to see if the information was currently in the system. If not, the MSS IIIs' responsibility was to cross-check against three other systems to ensure accuracy.

7. He added that from these reports, the MSS IIIs also dealt with problems involving incorrect addresses and ensuring that the names and addresses were consistent with the reports. He explained that handling these issues might involve the MSS IIIs having to reach out to the Department of Community Based Services (DCBS), an outside agency for information. He explained that only the MSIIIs could contact an outside agency for verification of information.

8. Robey then explained Appellee's Exhibit 4, the 220 Report from the MCOs. These reports involved newborn and mother and child names. He explained that the MSS IIIs were to go to the claim system and find the mother by the number in the system. After checking the date of birth of the baby, if the mother had no Medicaid, then the baby was assigned to a random MCO. If the mother did have Medicaid, the MSS III was to put the newborn with her in the system. He explained that this procedure was not performed by MSS IIs.

9. Appellee's Exhibit 5 was a Coventry Care 230 Report. This has previously been referred to as the Capitation Report, which is used to determine the amount of money paid monthly to an MCO for the care they provide. This is used to differentiate between rates which may be owed to various MCOs.

10. The 121 code in this report means that the client is under state guardianship. The duties of the MSS IIIs are to see if the 121 code applies to the date referenced in the report and this is used to cross-check with the three other systems used by the division. The result of the research as to proper codes could result in having to change the county code or other codes used in the reports. That process is not similar to the current job duties held by the Appellant as an MSS II. In summary, the MSS IIIs are supposed to make sure that all the codes are correct or are changed to a correct code to ensure the proper payments to the correct MCOs.

11. Lastly, the witness explained Appellee's Exhibit 6, the Coventry Care 250 report. This report shows the MCOs which were coded to the wrong assignment and this report is meant to be an adjustment report to give the MCOs more money if they were shorted.

12. This process, performed by the MSS IIIs, is to make sure that the codes and information does get corrected and to show who the correct MCO is, going back a period of ninety (90) days.

13. The witness added that this process involving the 250 report is in no way similar to the Appellant's current job duties as an MSS II. He explained that there could be as many as one to twenty entries on the daily MCO 250 report, and that the monthly 250 report could contain as many as 1200 entries. He explained that dealing with this number of entries on reports required a high level of policy and program knowledge.

14. On cross-examination, the witness testified that he was aware that some of the Appellant's duties in July 2014 involving being on the call center and taking client calls daily. He confirmed that some of the Appellant's duties probably involved dealing with Medicaid reports of different sorts, when such example might have been a Medicaid Part A Weekly Report, which contains some mismatches of the correct numbers to be used. The MSS II could be expected to sort these out, but the witness indicated this process was not as complicated as a regular MCO report.

15. Asked why the Appellant was chosen to primarily work at the call center, the witness replied that every Medicaid Specialist did before becoming a Processor (MSS III).

16. The witness also confirmed that when taking calls, the worker would have to possibly do some preliminary research before sending the case onto the MSS III Processors. He added that any research done by the call center workers was not the final research because that was to be done and the decisions made by the Processors.

17. Referred back to Appellee's Exhibit 1, the June 23, 2014 e-mail, the witness confirmed that this e-mail confirmed that the MSS IIs were not to change the MCO reports. When asked about the importance of the call center job, the witness explained that this was an important job as these calls from clients which were taken were the first contact which the clients experienced with the Agency. The call center people were expected to have a basic knowledge of the policy and systems and to be able to research various reports heretofore detailed.

18. On redirect, the witness confirmed that the MSS IIs were not expected to have the extensive knowledge possessed by the MSS IIIs.

19. On December 16, 2015, the second day of evidentiary hearing, Appellant called as her first witness, **Leanna Trainer**. She is employed with the Department of Medicaid Services (DMS) as Administrative Supervisor. She has been detailed to special duty to that position for the past ten months. She supervises Section B of the call center and has been the Appellant's supervisor for the past ten months. She was previously a Medicaid Specialist II.

20. Referred to a document dealing with prior authorization (PA) which had been handled by the Appellant, the witness explained that the Appellant had mishandled the issues therein as that was a basic inquiry and there had been no further need for referral to a call center for additional research.

21. On cross-examination, the witness testified that in her prior duties as a MSS II, she had been responsible for taking some calls at the call center, for resolving eligibility issues, dealing with reports from covered organizations, providing outreach to various outside agencies and dealing with billing concerns. The witness added that even though these were MSS III duties, she, even though performing those, was not reclassified to an MSS III.

22. The witness went on to explain that in early 2014, her request for reclassification to an MSS III was delayed, along with several others in the pipeline. She explained that these requests, including hers, were stopped because of an ongoing reorganization. This delay then led to the witness being detailed to special duty as an Administrative Supervisor.

23. The witness then examined Appellee's Exhibits 7 and 8, Job Specifications for an MSS II and an MSS III respectively.

Medicaid Services Specialist II – Job Specifications:

Performs various Medicaid program specific functions to include two of the following: providing specialized assistance to Medicaid program providers, professional association of providers, recipients and government agencies by responding to inquiries; researching, reviewing and analyzing health care information, legislation and/or regulations; identifying cases of potential Medicaid program fraud and abuse; or performing complex provider enrollment functions; and performs other duties as required.

Medicaid Services Specialist III – Job Specifications:

Performs multi-faceted functions of the Medicaid program which includes two or more of the following: performing advanced enrollment functions; or, serving as a resource person and trainer for staff; or, drafting administrative regulations to assure compliance with changes in federal or state Medicaid legislation; or, providing expert assistance to recipients, providers, professional association of providers and government agencies in complex Medicaid cases involving two or more of the provider, recipient or program categories; or, performing in-depth research, review and analysis of health care information, legislation and/or regulations; or, identifying and referring potential Medicaid program fraud and abuse incidents; and performs other duties as required.

24. The witness then explained that the difference between the two jobs specifications is that the MSS III must have an expert level of knowledge of the programs and policies; must be able to serve as a team leader and backup to the supervisor; and must be able to do outreach with outside agencies.

25. The witness then stated that the Appellant's duties involved primarily taking calls at the call center and explaining basic policy to the clients. Along with this, she documents the concerns of the callers and does basic research. In addition, the Appellant possesses six of the eight skills needed in the skill set of that job.

26. Contrasting the Appellant's duties with those of an MSS III, the witness explained that the Appellant does not do the MCO report; does no testing of the systems, provides no outreach to agencies, and does not function as a team leader or backup to the supervisor. In addition, the Appellant does not possess the knowledge base required of an MSS III.

27. She further contrasted the duties expected of an MSS III which the Appellant does not perform as being:

- Makes decisions about coverage including how far back to pay claims;
- examines claims information and compares various policies;
- obtains and analyzes information from five different systems, which sometimes includes determining when one policy may override another policy.

28. She then testified that the Appellant is limited to basic research, and again reiterated her knowledge is not comparable to that of an MSS III. She also added that at least on one occasion, it was evident that the Appellant needed to be re-educated on basic policies regarding backdating of MCO reports.

29. The witness then addressed Appellee's Exhibit 9, a January 27, 2015 memo from the Appellant to her prior supervisor, Gwen Sharp. The witness explained that in this memo, which the Appellant asked for certain information to be distributed, there were various errors, which the witness claimed reflected the Appellant's lack of certain knowledge involved in doing her job.

30. Likewise, the witness addressed Appellee's Exhibits 10, 11 and 12, various e-mails in 2015, which again indicated the need to correct certain errors of the Appellant and again addressed her lack of knowledge in her job.

31. The Appellant, **Stephanie Hodges**, then called herself. She explained that she is employed by the Department of Medicaid Services (DMS) in the Provider and Member Services Section. She has been employed as an MSS II for the past three years, and prior to that was an MSS I for two years. Her prior supervisor was Gwen Sharp, with the prior Director being Jill Hunter.

32. The Appellant then addressed her 2014 year-end evaluation, wherein she was evaluated by Gwen Sharp. She received a score of 294 "Good" on that evaluation. (Appellant's Exhibit 1.)

33. In an attempt to contrast or to deflect the testimony of Leeana Trainer regarding her job performance, the Appellant pointed out that the ratings she received based on a scale of 1 through 5 should indicate that she met or exceeded several of the duties expected in 2014 in her job as an MSS II. That in fourteen of the job duties delineated, the Appellant received a rating of "4" in ten of those and a rating of "3" in the other four.

34. However, the Hearing Officer notes that the evaluation ratings for 2014 have no bearing on whether the Appellant is performing MSS III duties, which is the issue in this matter.

35. Although the Hearing Officer ruled at the beginning of the hearing that retaliation would not be an issue, the Appellant attempted to give testimony showing that she had been retaliated against in various ways. Although the Hearing Officer would not consider that testimony regarding the Appellant's desire of reclassification, he does note the Appellant expressed concern she was slighted because she expressed concerns about various reports that were not being worked; that after going over the heads of her superiors to have a meeting with the Commissioner, she was cited for doing that.

36. The Appellant also expressed as another reason she felt she was relegated to the sidelines, is because she expressed concerns about a website being out-of-date. Appellant also admitted that she was aware that Assistant Director Cliff Robey was not the one who denied her reclassification request, although she seems to have felt that she was not particularly liked by Robey.

37. On cross-examination, the Appellant was again directed to her 2014 evaluation and admitted that she had never performed Managed Care reports. Also, she admitted that in 2015, she had never served as a backup to the supervisor or had performed outreach to various agencies.

38. The Appellant then closed her case.

39. The Appellee then called **Alisha Clark**. She has been employed with DMS as a Branch Manager over the Medicaid and Member Services Branch since 2014. Prior to that time she was a Nurse Consultant.

40. She testified that the Appellant works primarily at the call center and, as an MSS II, does basic research. She makes no final decisions and does not work with the MCO reports.

41. In contrast, the witness stated that MSS III job duties involve more complex research issues, more policy issues, and involve working with management staff.

42. According to denial of the Appellant's request for reclassification in January 2015, the witness testified that former Director Jill Hunter had made the final decision.

43. Appellant also commented on Appellee's Exhibit 1, a February 11, 2015 memo from the Appellant to this witness, demonstrating the Appellant's lack of policy knowledge, in that it was pointed out to the Appellant that she was not allowed to make MCO changes as a part of her duties.

44. The Appellee rested.

FINDINGS OF FACT

1. The testimony of Robey and Clark clearly establishes that the Appellant does not possess the knowledge or skills to perform the job duties of a Medicaid Services Specialist III. In fact, the evidence presented indicates the Appellant lacks knowledge in certain aspects of the job duties of a Medicaid Services Specialist II.

2. The Appellant presented no convincing evidence that she performs any of the duties expected of a Medicaid Services Specialist III.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellant failed to carry her burden of proof to show she was entitled to reclassification to a Medicaid Services Specialist III.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STEPHANIE HODGES VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-053)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer R. Hanson Williams** this 3rd day of February, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Stephanie Hodges