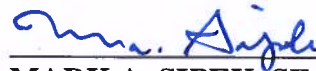


CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **ADRIENNE ALLEN MASON V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2020-038)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 17th day of April, 2024.



**MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-038

ADRIENNE ALLEN MASON

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES
and
PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 28, 2024, and being duly advised,

IT IS ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer are approved, adopted, and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED to the extent therein**.

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 17th day of April, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:
Hon. Joseph Bowman
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-038**

ADRIENNE ALLEN MASON

APPELLANT

VS.

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

CABINET FOR HEALTH & FAMILY SERVICES

and

PERSONNEL CABINET

APPELLEES

*** * * * ***

This matter came on for an in-person evidentiary hearing on March 1 and 2, 2023, at 9:30 a.m. (ET) at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Hearing Officer Stafford Easterling. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Adrienne Allen Mason, was present and represented by Hon. Joseph Bowman. The Cabinet for Health and Family Services (CHFS) was present and represented by Hon. Olivia Peterson. Appearing for CHFS as Agency representative and appointing authority was Missy Jones, Assistant Director, Office of Human Resource Management, Division of Human Resource Administration. The Personnel Cabinet was present and represented by the Hon. Catherine Stevens. Appearing for the Personnel Cabinet as Agency representative was Rebecca Ogden, Personnel Program Manager, Department of Human Resources Administration, Division of Employee Management, Classification, Compensation, and Organizational Management Branch.

Per the Interim Order entered on August 3, 2022:

The issue for the evidentiary hearing shall be the Appellant's appeal from her reallocation. The burden of proof shall be upon the Appellee to establish just cause for the Appellant's reallocation. This shall include all statutory and regulatory requirements, including demonstrating that appropriate notice of this action was given to the Appellant. If the Appellant alleges that she should have been reclassified to a particular classification and requests that, as a form of relief, the burden of proof on this issue shall be upon the Appellant. Burdens of proof shall be by a preponderance of the evidence. The Appellees shall proceed first in the presentation of proof.

Following the evidentiary hearing, the parties submitted Proposed Findings of Fact, Conclusions of Law, and Recommended Order. This appeal has been reassigned to Hearing Officer Mark A. Sipek for the Findings of Fact, Conclusions of Law, and Recommended Order.

BACKGROUND

1. The Appellant, Adrienne Mason (“Mason”) filed Appeal No. 2020-038¹ with the Personnel Board on February 7, 2020, challenging her reallocation from Internal Policy Analyst III (grade 15) to Budget Support Specialist (grade 12), effective June 16, 2019. Mason asserted that her position should be classified as Federal Program Specialist (grade 16).

2. Mason is a long-time state merit employee, with status, and has been employed by CHFS since 1999. Her position was classified as an Internal Policy Analyst III in the Department for Income Support, Division of Child Support Enforcement since 2010, when she began working with processing the county attorney invoices for reimbursement for the Division of Child Support Enforcement. County attorneys are considered sub-recipients of the federal grant to CHFS for child support enforcement. Participating county attorneys were under contract with CHFS each fiscal year. In a nutshell, contracted county attorneys are paid with federal dollars to collect child support.

3. “Reallocation” means “the correction of the classification of an existing position by the placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform.” KRS 18A.005(29).

4. “Position” means “an office or employment in an agency ... involving the duties requiring the services of one (1) person.” KRS 18A.005(25).

5. “Class” means “a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group.” KRS 18A.005(6).

6. The General Assembly delegated the authority and discretion to the Personnel Cabinet to prepare, maintain, review, evaluate, and revise the system of job classification for those in the classified service and to allocate positions in the classified service to the appropriate job classification. KRS 18A.025(3)(b); KRS 18A.110(1)(c) and (7)(a); 101 KAR 2:020, Section 1(7).

7. The main function of Mason’s position as stated on her Position Description (PD) is as follows:

Conducts financial analysis for Child Support Enforcement’s approved financial agreements with third parties. Develops, implements, and

¹ Appellees’ Joint Exhibit 12.

monitors agreements for select Child Support Enforcement program services. Monitors, reviews, and documents financial information for select functional areas for use by management. Performs other duties as assigned. [Appellees' Joint Exhibit 1]

8. The primary tasks of the position as stated on the PD are as follows:

Task No. 1: Analyzes, monitors, & reviews contractor invoices &/or requests for reimbursement for compliance with approved contracts and agency policies & procedures. Makes recommendation to management for approval &/or recommends solutions for issues of non-compliance or insufficient supporting documentation. Acts as a liaison between contractor & CSE. Provides guidance to less experienced staff. (40%)

Task No. 2: Serves as the subject matter expert in managing all functional aspects of preparing non-contract account payables. Analyzes, monitors, & reviews non-contract invoices for compliance with agency policy & procedures. Allows/Disallows costs as appropriate. Serves as a liaison between CSE & third-parties. Determines accounting codes necessary for processing payment. Makes recommendations to management. (40%)

9. **Appellees' Case-In-Chief.** To open the evidentiary hearing, the Appellee Personnel Cabinet called **Rebecca Ogden**. Ogden was also called to testify in the Mason's case-in-chief. The summary of Ogden's testimony to follow reflects her combined testimony. Ogden is the Personnel Program Manager of the Classification, Compensation, and Organizational Management Branch ("Class & Comp") of the Division of Employee Management, Department of Human Resources Administration, Personnel Cabinet. Class & Comp consists of Ogden and four (4) Personnel Program Consultants/Analysts whom she supervises. Before she was the Branch Manager, Ogden served as a Personnel Program Consultant in Class & Comp, beginning in 2016. Class & Comp manages the classification of all positions in state government, including all three (3) branches of government.

10. The Executive Branch currently has approximately 27,000 classified employees. Each one of these employees is appointed to a specific position that is assigned a position number. The position number is assigned to the position, rather than to the individual currently filling it.

11. Each position has a PD. A PD includes the statement of duties and responsibilities, level of accountability, supervisory responsibilities, organizational location, and other particular aspects of a position that are needed to determine proper job classification. The section titled "Statement of Duties" sets out the main functions of the job and is all-encompassing of what the job is meant to do. The list of tasks is supposed to break down exactly how the Statement of Duties will be performed, including percentages reflecting the amount of overall time the employee will spend on each task.

12. The Statement of Duties and the list of tasks contained on the PD are used by Class & Comp to allocate each position to a “job classification.” Currently, there are approximately 1,100 job classifications in the merit system. There is a document entitled “Job Class Specification” for each job class, as required by KRS Chapter 18A. The Hearing Officer admitted into evidence Appellees’ Joint Exhibit 2, the Job Class Specification for a “Budget Support Specialist.” Job class specifications contain such information as title, salary minimum and midpoint, probationary period, characteristics of the job, minimum requirements for education and experience, special requirements, and examples of duties.

13. The information contained on the job class specifications comes about through research and discussion with the user agencies. Class & Comp get information through surveys of similar jobs in sister state governments, consultation with executive branch agencies, and historical information in their archives. If the job classification is new, Class & Comp work with the agencies to determine what skills are needed to perform particular tasks.

14. Pay grades are only determined after a job class specification has been completed. As required by KRS Chapter 18A, the Personnel Cabinet contracts with a nationally recognized organization² to use scientific methodology to “factor” the job with a point scoring system based on such categories as knowledge/know-how, accountability, level of responsibility, level of discretion, and problem solving. The total points will fall into a range equating with a pay grade. Pay grade does not come into play when determining the proper allocation of a position to a job classification.

15. Class & Comp is constantly reviewing and revising job class specifications. Often a review is initiated based on an agency request that a job class specification be revised, consolidated, created, or abolished. Class & Comp also conduct reviews on their own initiative due to agency usage or retention and recruitment issues. At present, by direction of the General Assembly, the Personnel Cabinet is involved in a project to review and revise, where necessary, all job classifications used by the merit system.

16. Ogden explained that there are several reasons why a job classification might be abolished. Some classifications have not been used for many years. Class & Comp reaches out to the agencies to find out why the job classification is not being used and if they foresee a need for it in the future. A job classification series such as the Internal Policy Analyst (IPA) series was abolished because there is no longer a clear distinction between the duties that are being performed in those levels, making the series no longer viable. The project of examining the viability of the IPA job series began as far back as 2016.

17. Ogden testified that Class & Comp had been working on a project to create new and modify existing jobs to represent the job duties that had been performed by the IPA job series (IPA I, II, III, and IV). The project resulted in the creation of six (6) new classifications and the revision of three (3) existing classifications to represent the job duties performed by IPA positions: Budget Manager; Budget Specialist I, II, and III; Budget Support Specialist; Policy Specialist;

² Currently Korn Ferry, previously known as Hay Group.

Federal Program Specialist; Procedures Development Specialist I and II. Class & Comp began working with each agency to review existing IPA positions so each could be reallocated to the appropriate job classification. The IPA job series was to be replaced by the new and revised classifications and was to be abolished after all existing IPA positions were appropriately classified and reallocated. [Appellees' Joint Exhibit 3]

18. There were several steps to the IPA reallocation process. First, each agency's assigned Class & Comp Consultant/Analyst from the Personnel Cabinet requested updated PDs for all filled IPA positions. PDs were drafted by direct supervisors. Each agency's assigned Class & Comp Consultant/Analyst then reviewed the updated PDs to determine the appropriate job classification for each IPA position and communicated final classification determination back to the agency. [Appellees' Joint Exhibit 3]

19. Ogden explained that Becky Pittman (Pittman) was the Personnel Program Consultant from Class & Comp who worked with CHFS on the IPA reallocation project. Ogden is Pittman's supervisor. On March 20, 2019, Pittman sent an email to CHFS to begin the reallocation process outlined above. [Appellees' Joint Exhibit 4]

20. Specifically with regard to Mason's position, Pittman reviewed the final version of the updated PD worksheet drafted by Mason's supervisor and submitted by CHFS. Pittman determined that the duties on the PD were "reflective of the Budget Support Specialist job classification." [Appellees' Joint Exhibit 7]

21. Ogden explained that, after CHFS provided notice to Mason of her reallocation, pursuant to statute, Mason requested that the Personnel Cabinet reconsider the reallocation to Budget Support Specialist. Mason suggested that Federal Program Specialist was the more appropriate classification. [Appellees' Joint Exhibit 8]

22. The Personnel Cabinet reconsidered the reallocation of Mason's position. On reconsideration, in an email to Ogden, Pittman stated that, in her opinion, "this PD reflects oversight of billing processes relating to grant funding and contracts. This position is financial & system based rather than administering the contracts." [Appellees' Joint Exhibit 9 at PC_0039]

23. Ogden reviewed all the materials utilized by Pittman, as well as the additional information provided by Mason in her reconsideration request. Ogden wrote a memorandum setting out her reconsideration review of Mason's reallocation to Budget Support Specialist. [Appellees' Joint Exhibit 10]

24. As outlined in Ogden's memorandum, the Characteristics of the Job for the Budget Support Specialist job classification state that the job;

Provides budget support in the maintenance of financial system processes to ensure compliance with budgetary guidelines; Oversees billing processes and matters related to projects and/or grants OR Develops and

modifies reporting elements for budget planning and management purposes; and performs other duties as required.

[Appellees' Joint Exhibit 10 at PC_0042]

25. Ogden further wrote that:

The Budget Support Specialist job was considered and originally recommended because the duties on the pd worksheet reflect budgetary support in overseeing billing processes related to grant funding. The majority of the duties reflected on the pd include processing invoices/reimbursement requests for contracting officials to ensure accuracy, allowability, and compliance with CFR. Other identified duties include processing invoices for payment; tracking and analyzing data to monitor program/contract performance; serving as a liaison between contractor and the agency; and making recommendations to management for approval and recommending solutions for issues of non-compliance. All of these duties are attributes of the Budget Support Specialist job classification. This determination is further supported by the duties and expectations outlined on the employee performance plan attached to Mason's appeal.

[Appellees' Joint Exhibit 10 at PC_0042-43]

26. As further set forth in Ogden's memorandum, the Federal Program Specialist job classification was considered at Mason's request. The Characteristics of the Job for the Federal Program Specialist job classification state that the job:

Manages all functional aspects of preparing agency state plans to include duties such as the following: develops scope of work, plans, and budgets for grant contractors; develops new contracting partnerships; ensures plans meet federal guidelines, and submits state plans and budget for federal approval OR Independently provides direction and coordination in the administration of federal program grants; reviews applications for expected state impact and determines the compatibility of proposed activities with existing state policies and plans; may project and develop funding allocations for third parties; oversees fund-matching requirements and indirect costs; and performs other duties as required.

[*Id.*]

27. Regarding the Federal Program Specialist job classification, Ogden continued:

Although the employee states that her work depends on the federal funded match program dollars and must adhere to CFR for all direct costs allowable

and non-allowable expenditures, this is in regards to processing contract invoices/reimbursements. Mason's responsibilities are involved in contracts funded by program grants to ensure compliance with federal guidelines. Her duties do not reflect independently administering federal program grants, to include reviewing grant applications to determine state impact and the compatibility of proposed activities with state policies and program state plans, which are responsibilities prior to the third-party contract administration and are aligned with the Federal Program Specialist classification.

[Appellees' Joint Exhibit 10 at PC_0042-43]

28. Ogden concluded her memorandum by stating her recommendation that:

Based on a second review of the original PD worksheet in conjunction with the employee performance plan attached to the appeal, the Budget Support Specialist classification is the most appropriate classification for this position.

[Appellees' Joint Exhibit 10 at PC_0043]

29. Ogden submitted her memorandum and all associated documents to Commissioner Mary Elizabeth Bailey, Department of Human Resources Administration, Personnel Cabinet, for her review as the Personnel Cabinet's final decisionmaker. By letter of December 9, 2019, Commissioner Bailey notified Mason in writing that Mason's duties most appropriately matched the job class specification for "Budget Support Specialist I [sic]." [Appellees' Joint Exhibit 11 at PC_0047] Via written email from Rebecca Ogden on December 12, 2019, Mason was informed that there was a minor typographical error in the letter and that her appropriate job classification remained "Budget Support Specialist," not "Budget Support Specialist I." [Appellees' Joint Exhibit 11 at PC_0048]

30. Ogden explained that, out of approximately four hundred (400) positions involved in the IPA project, approximately seventy-five (75) employees who were reallocated from the IPA job series requested reconsideration. In some cases, upon further review, the Personnel Cabinet changed the job classification.

31. Ogden explained that an employee's years of experience and knowledge do not come into play when determining appropriate job classification of a position. That is determined by the statement of duties on the PD and, if they correlate with the Characteristics of the Job on the job class specification. The only time experience and education would come into play is with the minimum requirements to determine whether an individual qualifies for a certain job classification. Education and experience of the individual do not come into play when determining what classification a position should be. Pay grades are assigned to job classes, not individual employees, according to the duties performed and the factoring methodology.

32. It was Ogden's opinion that, even if the IPA III classification had not been abolished, the new Budget Support Specialist job classification was the best fit for the job tasks performed by Mason's position as described on the PD. The Characteristics of the Job for IPA III were:

Coordinates the work of professional staff and performs analysis and makes recommendations regarding policy and/or budget issues; OR, performs functional supervision over technical policy or budget activities of an agency; and performs other duties as required.

[Appellees' Joint Exhibit 15]

33. Ogden testified that, when comparing the Characteristics of the Job of the IPA III job classification to the description of duties on Mason's PD, the duties do not make a good fit for the classification, which was indicative of the problems associated with the IPA job series. There was no indication in the tasks outlined on Mason's PD that she coordinated the work of any professional staff. While Mason did perform analysis of invoices submitted by county attorneys, she did not make recommendations regarding policy or budget issues. To some degree, Mason exercised functional supervision over the invoices that the county attorneys submitted up through the process, but that is not "budget activities." Budget Support Specialists are working within the budget of the federal grant and overseeing those billing processes. The intent of the IPA III was that it be part of the budget process in developing, drafting and implementing the budget itself. Mason was working within an already existing budget.

34. Ogden reiterated that the intent of the IPA project was to tailor the job classes to the duties that were *actually* being performed by those positions. The existing IPA classifications were no longer viable to accomplish this.

35. The definition of "Class" found in KRS 18A.005(6) was read at the evidentiary hearing: "Class means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group."

36. Ogden gave the example that, in one agency, there were IPAs just doing policy work while, in another agency, IPAs were just doing budgetary work and, in another agency, IPAs were doing both. That is why Class & Comp found that the range of the IPA job classification series was too broad and no longer viable. The original intent was for it only to be used in a budget or financial area to work with budget and financial policy, however, it was being used in all different areas.

37. Going back to the definition of "Class," Ogden explained that the IPA job series was no longer sufficient to describe a group of positions "sufficiently similar as to duties performed, scope of discretion and responsibility," etc., which meant it became an incorrect classification and was no longer viable to be used.

38. The weight of Class & Comp's classification decision is based on the supervisor's description of duties and tasks listed in the official PD in the Kentucky Human Resource Information System (KHRIS), not the supervisor's opinion on job classification for the position. Job classifications are assigned to positions by Class & Comp staff members, who are trained to do so. Mason's supervisor, Melissa Rife, wrote and signed off on Mason's updated PD.

39. When an agency submits an updated PD, that is a KHRIS workflow action that forwards to the Class & Comp branch. Class & Comp review the PD worksheet and compare it to the official PD in KHRIS. If the PD is not truly an update and shows a material and permanent change to job duties, Class & Comp will reject the PD worksheet and notify the agency that they will need to submit a reclassification action, or, otherwise, they will need to remove those duties from the employee because the employee is performing duties outside of their classification. There were a small number of such cases during the IPA reallocation process.

40. Ogden reiterated that Mason lost no pay after the reallocation, pursuant to statute. If she had been reallocated to a higher grade, she would have received a salary increase. Essentially, after the reallocation, Mason was working as a Budget Support Specialist, pay grade 12, but retained the salary she was earning as a pay grade 15.

41. The Appellees closed their case-in-chief upon the conclusion of Ogden's testimony.

42. **The Appellant's Case-In-Chief.** For her case-in-chief, the **Appellant, Adrienne Mason** testified on her own behalf. She began her tenure with CHFS (or "the Cabinet") in 1999. When she first began with the Cabinet, she was a Human Service Program Section Supervisor, grade 15. She held this position until 2009. Mason then became an Internal Policy Analyst III, grade 15 in the Department of Income Support, Division of Child Support Enforcement. She began performing as a backup for county attorney invoice processing in 2010-2011. By 2012, Mason had her own caseload. Mason was out on medical leave from July 2017 to August 2018. Mason was reallocated in 2019 to a Budget Support Specialist I, grade 12, effective June 16, 2019. Her pay did not change as a result of the reallocation.

43. Mason explained that the Division of Child Support Enforcement within the Cabinet would contract with county attorneys to assist with child support enforcement. The county attorney would perform any legal action necessary to enforce and collect child support. The county attorney would then seek payment from the Cabinet for the monies expended, such as wages, rent, postage, etc., used in enforcing and collecting child support. This is through a federal grant program, where the Cabinet pays the local county attorney, and is then reimbursed a percentage (66%) by the federal government.

44. When asked to describe her job duties up to the time she was reallocated in 2019, Mason testified that she would process monthly invoices submitted by county attorneys through the Monthly Invoice Portal system (MIP), which required her to review payroll to confirm hours worked, confirm expenses being claimed, reconcile any items where discrepancies were noted, review any documents attached to support the requested expenses and wages, and refer to the county attorney's contract to ensure an expense was reimbursable. She would also need to apply

federal and state statutes and regulations to determine if an expense was allowed to be reimbursed. If clarification or additional information was needed to process the invoice, Mason would contact the county attorney directly.

45. Mason said if a county attorney requested an increase to their budget, the Commissioner would ask her to review past invoices to determine if there was any frivolous spending before agreeing to a budget increase. Mason admitted she did not draft any of the contracts the Cabinet had with the county attorneys and was not part of the contract negotiations. On a quarterly basis, she would create a list of counties that were in noncompliance of their contractual duty to collect and pursue a certain percentage of child support arrearages, which she would then provide to the Commissioner.

46. Mason was tasked with scheduling single audits for any county attorney who received more than \$750,000 in federal funds. Mason admitted she did not perform the single audit; this was performed by a third-party. Instead, she ensured the single audit was completed and submitted, which would then be reviewed by the Cabinet's Office of the Inspector General. Mason also assisted the Office of the Inspector General with any cases involving allegations of fraud in connection with county attorneys. She would collect any data or information they needed for their investigations.

47. Mason also performed an annual federal risk assessment for all of the county attorneys, as required by the federal government. To complete this task, Mason reviewed the monthly invoices for all 120 counties, and then rated each on a scale of whether they were high or low risk based on how compliant they were with their contract, how accurate their invoices were, ensuring that they maintained all necessary training, etc. She said this was necessary to be completed before each new fiscal year so that mechanisms such as additional oversight or auditing could be put in place for those county attorneys who were higher risk. Mason would then provide her report to upper management.

48. Mason testified that processing the county attorney invoices was no longer part of the Division of Child Support Enforcement. She said it was taken over by the Department of General Accounting in 2020³. Mason said she helped train the employees who would be taking over processing the county attorney invoice duties.

49. When Mason learned she had been reallocated, she testified she reviewed various job classifications and felt her job duties more appropriately met those of a Federal Program Specialist, grade 16. [Appellees' Joint Exhibit 14] She stated this was due to the fact that federal funds were involved in paying county attorneys, as well as the annual Federal Risk Assessment she prepared. For her request for reconsideration, she drafted a statement regarding her job duties and included the Federal Program Specialist Job Classification as part of her request for reconsideration. [Appellees' Joint Exhibit 8] Mason admitted that all of the job duties included

³ While this appeal concerns only the reallocation of Mason's position in June 2019, for background and context there was some testimony taken regarding events that occurred after that date.

in her narrative are listed in her annual evaluations, but her statement was more detailed about how she performed her duties.

50. Throughout her testimony, Mason said she was upset that the position she was reallocated to, Budget Support Specialist, included the term “support.” She said it made her feel inferior and “lowly.” She said this did not represent the independent authority she had to perform her job duties; that the job specification made it seem like an “entry level” position.

51. On cross-examination, Mason admitted she did not determine or create the annual budgets for each county attorney. Instead, she would monitor the monthly amount requested and inform the Commissioner if the county attorney was getting close to exhausting their annual budget prior to the end of the fiscal year. She also had no role in any of the federal grant applications for the child support enforcement program.

52. When she was processing county attorney invoices, after she completed her review, Mason would send it on to her supervisor who had the final approval. If her supervisor thought more information was needed, Mason would need to obtain that information from the county attorney.

53. Mason was detailed to special duty from September 16, 2020, to September 16, 2022. She was detailed to a Child Support Specialist II. She then reverted back to a Budget Support Specialist.

54. Mason was presented with her annual evaluation from 2019 and asked about the duties listed therein. [Appellees’ Joint Exhibit 8]. She confirmed the duties listed accurately represented those that she had in 2019. The Hearing Officer asked Mason to reconcile how the Budget Support Specialist Job Class Specification [Appellees’ Joint Exhibit 2] did not meet her current job duties, when she confirmed the duties listed in her 2019 evaluation matched what her job entailed in 2019. Mason said it was just a “generalization” of what her duties were and did not “embody” the processes she performed. She said the Budget Support Specialist job specification made it seem that she was providing “support” to other positions, when she was the one doing the actual functions. The Hearing Officer then asked if the job title was changed so that it did not include the word “support” whether she would still have filed an appeal. Mason said yes because the job specification did not reflect the “complexities” of the tasks she performed.

55. Mason’s next witness was **Lisa Mitchell-Hargis** (Mitchell-Hargis). Mitchell-Hargis is employed as a Budget Support Specialist in the Department of Income Support (“DIS”), Division of Child Support Enforcement (“CSE”). She has been a state employee for approximately seventeen (17) years and has been in CSE approximately ten and one-half (10.5) years. She has worked with Mason in DIS for approximately ten (10) years. Although not her supervisor, Mason trained Mitchell-Hargis regarding the review of county attorney invoices/reimbursement. Mitchell-Hargis also filed an appeal with the Board regarding her reallocation from IPA II to Budget Support Specialist.

56. In 2019, including the time of reallocation, Mason and Mitchell-Hargis had similar job duties. Mitchell-Hargis agreed that her job duties in 2019 could accurately be described as “overseeing billing processes in matters relating to projects and/or grants.”⁴ She admitted that she and Mason did not work with formulating the budget. She acknowledged that only their commissioner had the power to modify contract language, but she and Mason could make recommendations. She and Mason provided initial review of the county attorney invoices and their supervisor, Melissa Rife (Rife), was the “approver.” She and Mason were the first-line auditors. Other levels of supervision had to review the invoices before “a check is cut.”

57. Mason next re-called **Rebecca Ogden** (Ogden) as part of her case-in-chief. Ogden’s entire testimony, both as part of Appellees’ case-in-chief and the Appellant’s case-in-chief, is summarized above. This concluded the Appellant’s case-in-chief.

58. **Appellees’ Rebuttal.** In rebuttal, CHFS called **Lily Patteson**⁵ (Patteson), Division Director for the Division of Child Support Enforcement for the Department of Income Support in CHFS. She has held that position since April 2020. Her duties are to ensure that CHFS is compliant with the Office of Federal Child Support Enforcement, as well as state and federal statutes and regulations pertaining to child support.

59. Patteson said the purpose of the Division of Child Support Enforcement is to establish, collect, and enforce child support for the children of Kentucky. CHFS contracts with local county attorneys, who assist with individuals to establish and enforce child support obligations. The county attorneys will then invoice CHFS for reimbursement of the services (ex. hourly rates working on a case, for appearing in court or drafting pleadings) and allowable expenses (ex. rent, utilities, postage) expended in establishing and enforcing child support.

60. Patteson testified that when CHFS receives an invoice from a county attorney for reimbursement, it is first reviewed by a first level reviewer, who reviews the basic information and makes sure CHFS has all the necessary documentation to support the expenses requested. Once the first level review is completed, it goes to a second level reviewer or approver, who will complete the review and send the invoice to the Finance and Administration Cabinet for payment.

61. Prior to July 2020, Patteson said the invoices were reviewed by the Division of Child Support Enforcement. She testified that the process of reviewing county attorney invoices was shifted to the Department of General Accounting in July 2020.

62. The monies used to reimburse the county attorneys comes through a federal grant, which CHFS administers. Patteson testified that monies paid to the county attorneys are state dollars, which CHFS is then reimbursed for by the federal government. The federal grant applications and contracts with the county attorneys are completed and negotiated by the Division of Child Support Enforcement—Procurement of Contracts and Office of Legal Services.

⁴ See Appellees’ Joint Exhibit 2, Budget Support Specialist Job Class Specification, “Characteristics of the Job.”

⁵ By agreement of the parties and with the consent of the Hearing Officer, Patteson’s rebuttal testimony was taken out of order. By agreement, Patteson appeared remotely via Amazon Chime video conferencing.

63. When asked whether she thought Mason's job duties fell within the Federal Program Specialist job classification [Appellees' Joint Exhibit 14], Patteson testified that Mason's job duties were not those of a Federal Program Specialist. Patteson expounded by saying that Mason did not negotiate county attorney contracts. Patteson said Mason may need to refer to the contracts to determine if an expense was reimbursable, but that was the extent of Mason's involvement. Patteson also said Mason did not create the annual budget to obtain reimbursement from the federal government.

64. In terms of the entire county attorney invoice review process, Patteson testified that Mason was a first level reviewer. Once Mason completed the initial review, the invoice was then sent to a second level reviewer who reviewed Mason's work and made the final approval.

65. In reference to the Appellant's Exhibit 13, Patteson said the individual who sent the e-mail, Linh Doh (Doh), worked at CHFS in the Office of Application Technology Services. Doh was the chief architect who created the Monthly Invoice Portal system (MIP). MIP is the system used by the county attorneys to submit their invoices. Patteson said the e-mail is referring to the requirement that cancelled checks be submitted to support the county attorney's requested expenses. Doh was tasked with adding this function to MIP and, once it was built, Doh asked the people included on the e-mail to test the system before it was launched. Patteson said Mason was included with the other individuals from the Department of General Accounting because she was the only individual who had previously used MIP and would have good input for Doh about the new function, whereas the other individuals on the e-mail had only been using MIP for a few months.

66. Patteson agreed that Mason annually completed a Federal Risk Assessment for all of the county attorneys and, depending on the findings, a corrective action plan may be put in place for a county attorney. Patteson testified that Mason did not create the corrective action plan; but monitored for any non-compliance or further violations, which she reported to Patteson or other management.

67. On cross-examination, Patteson agreed that she did not work for CHFS when Mason was reallocated in 2019 and had no input in that event. She further agreed she was not involved in Mason's day-to-day activities or duties prior to April 2020.

68. Patteson testified that, as a result of a 2019 audit conducted by the Auditor of Public Accounts (APA) and corrective action plan, the handling of county attorney invoices was shifted from her division to the Department of General Accounting. She said the APA audit found reimbursements did not have the proper paperwork to support the expenses and service requested and should not have been approved. Patteson admitted this shift decreased Mason's job duties. This occurred after the date of reallocation.

69. Patteson confirmed Mason was detailed to special duty on September 16, 2020, to Child Support Specialist II in the Processing and Distribution Branch. She said the detail ended on September 16, 2022, at which time Mason reverted back to her position as a Budget Support Specialist. Patteson said the decision to detail Mason was based on the decrease in her duties after

they were shifted to the Department of General Accounting, as well as her experience in using the KASES mainframe system that was also used in the Processing and Distribution Branch.

FINDINGS OF FACT

The material facts are largely not in dispute.

1. The Appellant, Adrienne Allen Mason, is a classified employee, with status. She has over twenty-four (24) years of service as an executive branch employee of the Commonwealth.

2. Prior to June 16, 2019, Mason's position was classified as an IPA III (grade 15). Mason was, and continues to be, employed by CHFS in the Department for Income Support, Division of Child Support Enforcement.

3. The authority to prepare, maintain, evaluate, and revise the system of job classification for the classified service was delegated by the General Assembly to the Personnel Cabinet. KRS 18A.025(3)(b); KRS 18A.110(1)(c) and (7)(a); 101 KAR 2:020, Section 1(7). Accordingly, and explicitly by statute, the Classification, Compensation, and Organization Management Branch in the Department of Human Resources Administration of the Personnel Cabinet determines the job classification assigned to all positions in the merit system in the executive branch.

4. After studying the functioning of the Internal Policy Analyst job series over the course of several years and in consultation with the agencies that used those job classifications, including CHFS, the Personnel Cabinet determined that the IPA job series no longer satisfied the definition of "Class." This meant it was determined the group of positions assigned to the IPA series were no longer "sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group." KRS 18A.005(6). As Ogden testified, the IPA job classifications were "no longer viable."

5. After consulting with a work group consisting of representatives from the user agencies made up of personnel from human resources and employees who dealt with financial and budget issues, it was determined that the IPA job series would be abolished and replaced. In order to represent those job duties that were actually being performed by those in positions classified as IPAs, six (6) new job classifications were created and three (3) existing job classifications were revised. [Appellees' Joint Exhibit 3]

6. Each employee assigned to one (1) of the IPA job classes was reallocated to a more appropriate job classification. The first step in the reallocation process was for the supervisor of each IPA to update all PDs for each filled IPA position and submit it to the Personnel Cabinet. [Appellees' Joint Exhibits 3 and 4]

7. Mason's updated PD [Appellees' Joint Exhibit 1] was drafted and submitted by supervisor Rife at CHFS. Next, the PD update was evaluated by Pittman, the assigned Personnel Program Consultant in Class & Comp, to determine the proper job classification.

8. Based on the PD submitted by CHFS, Pittman determined that the appropriate job classification for Mason's position was Budget Support Specialist (Pay Grade 12). [Appellees' Joint Exhibit 7]

9. On July 3, 2019, Mason received and signed the form entitled "**NOTIFICATION OF REALLOCATION.**" [Appellees' Joint Exhibit 8 at PC_0029]. The document, signed by Mason and Missy Jones, CHFS' appointing authority, states as follows:

NOTIFICATION OF REALLOCATION

On 7/3/19, the Appointing Authority (or designee) provided me a Personnel Action Notification (PAN)⁶ stating that my job classification/job title has been changed.

From: Internal Policy Analyst III

To: Budget Support Specialist

Justification: Abolishment of the Internal Policy Analyst series.

By signing below, I acknowledge that I have received notification of my reallocation, though it does not imply that I agree with this change.

10. The PAN reflects that Mason was reallocated from Internal Policy Analyst III (grade 15) to Budget Support Specialist (grade 12) with no loss in pay pursuant to 101 KAR 2:034, section 3(4)(b). The effective date of the reallocation was June 16, 2019. [Appellees' Joint Exhibit 8 at PC_0035]

11. The bottom half of the Notification of Reallocation form⁷ is entitled "**REQUEST FOR RECONSIDERATION OF REALLOCATION**" and states as follows:

If you believe that your new classification/title is incorrect and you wish to have it reconsidered, complete the bottom half of this form and return it to the agency/address listed below, along with a copy of your PAN. This completed form must be post marked within ten (10) working days of the above dated notification and mailed to the Secretary of the Personnel Cabinet at 501 High Street, 3rd Floor, Frankfort, KY 40601. A copy of the completed form should also be provided to your HR Administrator.

⁶ Appellees' Joint Exhibit 8 at PC_0035.

⁷ Appellees' Joint Exhibit 8 at PC_0029.

I believe that my new classification/title is incorrect. I believe that I should be classified as a: Federal Program Specialist⁸ for the following reasons...

12. Mason included five (5) pages of documentation to support her reconsideration request. [Appellees' Joint Exhibit 8 at PC_0030-0034].

13. Pursuant to KRS 18A.095(10)(c), Mason timely requested that the Personnel Cabinet reconsider the reallocation. [Appellees' Joint Exhibit 8 at PC_0029-0034].

14. The Personnel Cabinet reconsidered the reallocation of Mason's position. On reconsideration, in an email to Ogden, Pittman stated her opinion that the position was appropriately reallocated as a Budget Support Specialist as "this PD reflects oversight of billing processes relating to grant funding and contracts. This position is financial & system based rather than administering the contracts." [Appellees' Joint Exhibit 9 at PC_0039]

15. Ogden reviewed all the materials utilized by Pittman, as well as the information provided by Mason in her reconsideration request. Ogden wrote a memorandum summarizing her reconsideration review of Mason's reallocation to Budget Support Specialist. [Appellees' Joint Exhibit 10] Upon review, Ogden specifically considered the job classifications of (1) Budget Support Specialist; (2) Federal Program Specialist; and (3) Budget Specialist I.

16. At the conclusion of her memorandum, Ogden determined that the Budget Support Specialist classification was the most appropriate classification for Mason's position. [Appellees' Joint Exhibit 10 at PC_0043]

17. Ogden submitted her memorandum and all associated documents to Commissioner Mary Elizabeth Bailey for her review as the Personnel Cabinet's final decisionmaker. By letter of December 9, 2019, Commissioner Bailey notified Mason in writing that Mason's duties most appropriately matched the job class specification for "Budget Support Specialist I [sic]." [Appellees' Joint Exhibit 11 at PC_0047] By follow-up written email on December 12, 2019⁹, Ogden notified Mason that there was a minor typographical error in the letter and that her appropriate job classification remained "Budget Support Specialist," not "Budget Support Specialist I." There was no evidence in the record that Mason was confused by or suffered any prejudice due to the typographical error.

18. With the hard copy of the December 9, 2019 letter, Mason was provided with an Appeal Form and told that she "may appeal to the State Personnel Board using the enclosed form within sixty (60) calendar days of the date of this letter."

19. Mason filed her appeal with the Board on February 7, 2020. [Appellees' Joint Exhibit 12]

⁸ This portion of the form is left blank and is to be filled in by the employee. Mason wrote "Federal Program Specialist" in the blank space.

⁹ Appellees' Joint Exhibit 11 at PC_0048.

20. The Hearing Officer finds as follows:
- a) Mason was penalized when she received her “Notification of Reallocation” on July 3, 2019, when her reallocation was effective June 16, 2019. [Appellees’ Joint Exhibit 8]
 - b) Mason was further penalized when she received notice on December 9, 2019, that her request for reconsideration of her reallocation was denied. Mason received an email on December 12, 2019, that she was reallocated to “Budget Support Specialist” instead of the non-existent classification “Budget Support Specialist I.” This notice was over sixty (60) days late after the statutory deadline. [Appellees’ Joint Exhibit 11]
 - c) The record does not establish that Mason suffered any harm as a result of either of these violations.
 - d) The Appellees’ decision to reallocate Mason to Budget Support Specialist was supported by the evidence presented at the hearing.
 - e) The evidence does not support that the Appellant was performing the duties of a Federal Program Specialist.
 - f) The Personnel Cabinet, specifically the Classification, Compensation and Organizational Management Branch, was overwhelmed with approximately four hundred (400) reallocations (and seventy-five (75) requests for reconsideration) as a result of the abolishment of the IPA series. The evidence demonstrated the Personnel Cabinet worked diligently and carefully to appropriately reallocate Mason.

21. The Hearing Officer specifically relies on the testimony of Ogden and her considerable expertise in the classification of positions as a former Personnel Program Consultant and now Branch Manager in the Classification, Compensation, and Organizational Management Branch of the Personnel Cabinet. Based on the preponderance of the evidence, the Hearing Officer finds that the duties of Mason’s position support the Personnel Cabinet’s conclusion that Mason’s position was properly reallocated to the Budget Support Specialist Job Classification effective June 16, 2019.

22. Likewise, the Hearing Officer agrees with Ogden’s opinion that the duties of Mason’s position do not support the conclusion that the position should be properly classified as a Federal Program Specialist. Mason did not carry her burden to prove, by a preponderance of the evidence, that the job classification of Federal Program Specialist was the appropriate classification for the duties she was performing.

CONCLUSIONS OF LAW

1. In KRS 18A.025, the General Assembly set forth the duties, responsibilities, and organizational structure of the Personnel Cabinet. The legislature created the Department of Human Resources Administration and delegated to it responsibilities that include maintaining, reviewing, and evaluating a job classification plan for state service:

KRS 18A.025 Appointment of secretary of Personnel Cabinet
Responsibilities – Organization and duties of cabinet

(3) There is established within the Personnel Cabinet the following offices, departments, and divisions, each of which shall be headed by either a commissioner, executive director, or division director appointed by the secretary ... :

...

(b) Department of Human Resources Administration, which shall be composed of the:

1. Division of Employee Management, which shall be responsible for payroll, records, classification, and compensation. The division shall also be responsible for implementing lay-off plans mandated by KRS18A.113 to 118A.1132 and shall monitor and assist state agencies in complying with the provisions of the federal Fair Labor Standards Act. The division shall:

...

c. *Maintain* plans of classification and compensation for state service and *review and evaluate* the plans; (Emphasis supplied).

2. Furthermore, the General Assembly delegated complete authority to the Personnel Cabinet to prepare, maintain, and revise “a position classification plan for all positions in the classified service.” KRS 18A.110 provides, in pertinent part:

KRS 18A.110 Personnel secretary – Regulatory authority – Resolution of conflicting provisions of law

(1) The secretary shall promulgate comprehensive administrative regulations for the classified service governing:

...

- (c) Classification and compensation plans;
...
- (7) The administrative regulations shall provide:
 - (a) **For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class.** The secretary **shall** allocate the position of every employee in the classified service to one (1) of the classes in the plan. The secretary **shall reallocate** existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary; (Emphasis supplied)

3. The Personnel Cabinet's regulations are contained in Title 101, Chapter 2 of the Kentucky Administrative Regulations. Included in those regulations is 101 KAR 2:020, Job Classification Plan. It is specifically set forth that "The Personnel Cabinet may change any job class specification in whole or in part." 101 KAR 2:020, Section 1(7).

4. Consistent with the power delegated to the Personnel Cabinet by the General Assembly in KRS Chapter 18A to create, modify, and revise a system of job classification for the classified service, as well as the authority to reallocate positions, the Personnel Cabinet was well within its statutory authority and discretion to determine that the Internal Policy Analyst job classification series should be abolished and replaced by other newly created and modified job classifications, including the Budget Support Specialist and Federal Program Specialist job classifications at issue in this appeal. KRS 18A.025(3)(b); KRS 18A.110(1)(c) and (7); and 101 KAR 2:020, Section 1(7). Mason did not challenge the Personnel Cabinet's authority to abolish the IPA job series or to reallocate her. Mason filed her appeal to challenge her reallocation to the Budget Support Specialist job classification instead of the Federal Program Specialist job classification.

5. The Personnel Cabinet's initiative to review and eventually abolish the IPA job classification series was directly authorized by KRS 18A.025 and KRS 18A.110.

6. The abolishment of the IPA job series, and the creation of the Budget Support Specialist job classification, constituted just cause for the reallocation of Mason's position, meaning "the correction of the classification of an existing position by the placement of the

position into the classification that is appropriate for the duties the employee has been and shall continue to perform.” KRS 18A.005(29); KRS 18A.110(c)(7)(a).

7. Pursuant to KRS 18A.110(7)(a), the “position classification plan” consists of approximately 1,100 job classes making up the classified service. The General Assembly directed the Personnel Cabinet to prepare, maintain, and revise these job classes. The job classes are to be prepared, maintained, and revised “based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class.” The Personnel Cabinet’s statutory authority to maintain and revise the job classification plan includes the ability to create new job classifications, revise existing job classifications, and abolish job classifications that are no longer “based upon similarity of duties performed and responsibilities assumed” KRS 18A.110(7)(a).

8. The Personnel Cabinet is required by statute to allocate each of the approximately 27,000 positions in the classified service to one of the job classes. The General Assembly directed that the Personnel Cabinet “shall” reallocate (i.e., allocate again) a position if the Personnel Cabinet determines a position is no longer correctly allocated, but there has been no substantial change in the duties of the position. As Ogden testified, the IPA job class series evolved such that it no longer was properly based on the similarity of duties performed and responsibilities assumed by the group of positions allocated to those classifications. Accordingly, the Personnel Cabinet properly determined that those employees occupying positions in the IPA job class series were “incorrectly allocated” and were required to be “reallocated.”

9. The Personnel Board has long recognized the authority and discretion of the Personnel Cabinet to review, evaluate, maintain, and revise the job classification plan and to allocate positions in the classified service to the appropriate job classification:

A classified, non-probationary employee has a vested interest in his job, but he does not have a vested interest in the classification of his job. The classification process, as we have seen before, is a legislative function which has been delegated to the Commissioner of Personnel¹⁰ and involves the exercise of discretion. There may be broad disagreement, for instance, regarding the amount of education required to accomplish a given employment function; nevertheless, the Legislature has said that the Commissioner shall have the final say on the matter. This is the essence of discretion.

*Deborah Goin, et al, Appellants v. Department of Personnel, Appellee, Appeal No. 83-024, 1983 WL 820921, at *22 (KY PB, 10/21/1983), (Final Order, 1983 WL 820938 (KY PB, 11/18/1983)).*

By virtue of KRS Chapter 18A and its predecessor, KRS Chapter 18, it is clear that the Legislature has delegated the establishment of classification and compensation plans to the Commissioner of Personnel. The Legislature

¹⁰ Now referred to as the Secretary of the Personnel Cabinet.

has, in effect, under KRS 18A.110 required the Commissioner to formulate, maintain and revise such plans from time to time. There accompanies such delegation the same amount and extent of discretion that the Legislature would have had.

Bernard Bunch, Appellant v. Department of Personnel, Appellee, Appeal No. 83-285R, 1984 WL 919596, at *8 (KY PB 11/19/1984).

As the agency delegated the responsibility establishing and maintaining an appropriate system of classification for the merit system, the Personnel Cabinet's interpretation is entitled to due deference. [citations omitted].

Phyllis Gregory, Appellant v. Cabinet for Families and Children, et al, Appellees, Appeal No. 2001-114, 2001 WL 36147139, at *6 (KY PB 10/16/2001).

10. Pursuant to KRS 18A.095(10):
 - (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
 1. The reallocation; and
 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he received notification;
 - (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration.
 - (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.

11. Pursuant to KRS 18A.095(8):

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

 - (a) The demotion, suspension, or other penalization;

- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
- (d) That he or she has the right to appeal to the board within sixty (60) days.

12. In the Notification of Reallocation form and attached PAN [Appellees' Joint Exhibit 8 at PC_0029 – PC_035], Mason received written notice of the reallocation. The form was signed by Mason who acknowledged that she had been duly notified: "By signing below, I acknowledge that I have received notification of my reallocation"

13. The Notification of Reallocation form and attached PAN provided the following information to Mason:

- (1) Her position was being reallocated from Internal Policy Analyst III (grade 15) to Budget Support Specialist (grade 12) with no loss in pay;
- (2) The effective date of the reallocation was June 16, 2019;
- (3) That the specific reason for the reallocation was due to the "abolishment of the Internal Policy Analyst series";
- (4) As this was notice of a personnel action and not a disciplinary matter, there was no "statutory or regulatory violation" of which to inform Mason;
- (5) Likewise, as this was not a disciplinary matter, there was no "date, time, and place of the action or activity" of which to inform Mason, other than the effective date of the reallocation;
- (6) The name of the parties involved in the personnel action were listed in writing as Mason, the affected employee, and Missy Jones, the appointing authority for CHFS; and

- (7) Mason had ten (10) working days to request reconsideration from the Personnel Cabinet, after which she may appeal to the Board.

14. Mason had the full availability of the allotted ten (10) working days from the date of the notice to request reconsideration of the reallocation from the Personnel Cabinet. Upon written notification to Mason that, after reconsideration, the classification would remain Budget Support Specialist, Mason was notified of her appeal rights to the Personnel Board and provided with the appeal form. [Appellees' Joint Exhibit 11]

15. Mason's appeal was filed with the Board within sixty (60) days of the notice she received in Appellees' Joint Exhibit 11.

16. The Appellees carried their burden of proof that they satisfied most of the statutory and regulatory requirements for the reallocation. The Appellees notified Mason on July 3, 2019, of her June 16, 2019 reallocation. The Appellees provided Mason notice of the denial of her request for reconsideration well beyond the sixty (60) -day statutory deadline. KRS 18A.095(10)(c).

17. The Appellees carried their burden of proof by a preponderance of the evidence, demonstrating through testimony and documentary evidence that the Personnel Cabinet had just cause to reallocate Appellant's position to the Budget Support Specialist job classification.

18. The applicable "Characteristic of the Job" for Budget Support Specialist, as set forth on the job class specification, was "Oversees billing processes and matters related to projects and/or grants." All testimony and documentary evidence supported that the tasks performed by Mason with regard to the reimbursement of the county attorneys contracted to perform child support enforcement services with funds from a federal grant would certainly fall into this characteristic.

19. Mason failed to carry her burden of proof by a preponderance of the evidence that her position should be properly classified as a Federal Program Specialist.

20. Mason did not demonstrate, by a preponderance of the evidence, that the duties of her position meet the "Characteristics of the Job" for the job classification of Federal Support Specialist:

Manages all functional aspects of preparing agency state plans to include duties such as the following: develops scope of work, plans, and budgets for grant contractors; develops new contracting partnerships; ensures plans meet federal guidelines, and submits state plans and budget for federal approval **OR** Independently provides direction and coordination in the administration of federal program grants; reviews applications for expected state impact and determines the compatibility of proposed activities with existing state policies and plans; may project and develop funding

allocations for third parties; oversees fund-matching requirements and indirect costs; and performs other duties as required.

21. The Appellees violated KRS 18A.095(8) and (10) when they notified Mason of her reallocation on July 3, 2019, instead of when it became effective on June 16, 2019. To be effective, statutorily required notice should be given before a personnel action is taken. *Debra Ratliff v. Transportation Cabinet*, 2010 WL 2936017 (KY PB) Appeal 2009-291 and *John Holloway v. Transportation Cabinet*, 2010 WL 677198 (KY PB) Appeal No. 2008-296.

22. Mason was also penalized when she received notice from the Personnel Cabinet of the decision on her request for reconsideration of her reallocation over sixty (60) days beyond the statutory deadline. KRS 18A.095(10)

23. Despite these two (2) penalizations, the proof shows that Mason did not suffer any harm as a result.

24. Because the proof establishes that Mason was not harmed by any of the actions of the Appellees, she is not entitled to relief from this appeal except for the restoration of her leave time used to attend the pre-hearing conferences and the evidentiary hearing. KRS 18A.095(22) and (23)

25. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ADRIENNE ALLEN MASON V. CABINET FOR HEALTH AND FAMILY SERVICES and PERSONNEL CABINET (APPEAL NO. 2020-038)** be **SUSTAINED to the extent** that the Appellant was penalized as set forth above and the Appellees shall reimburse the Appellant for any leave time used to attend pre-hearing conferences and the evidentiary hearing. KRS 18A.095(25).

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 fifteen (15) 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

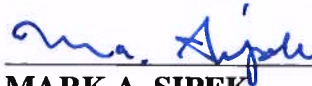
excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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.

SO ORDERED at the direction of the Hearing Officer this 28th day of February, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Joseph Bowman
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)