



STATE OF NEW JERSEY

In the Matter of Kathryn Aveni and
Elena Napravnik, Department of
Health

CSC Docket Nos. 2023-2149 and
2023-2137

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION**

Request for Enforcement

ISSUED: August 21, 2023 (SLK)

Kathryn Aveni, Research Scientist 1, requests enforcement of the Division of Agency Services' (Agency Services) January 30, 2023, determination letter. Elena Napravnik, Research Scientist 2, requests enforcement of Agency Services October 26, 2022, determination letter. These appeals have been consolidated due to common issues presented.

By way of background, after a reclassification request, in a January 30, 2023, determination letter, Agency Services determined that Aveni's duties were consistent with those of a Program Manager, Family Health Programs (Program Manager). Agency Services indicated that this action was to be effective September 24, 2022, unless the appointing authority assigned duties commensurate with her current title, Research Scientist 1, within 30 days of receipt of the determination letter.

Additionally, after a reclassification request, in an October 26, 2022, determination letter, Agency Services determined that Napravnik's duties were consistent with those of a Program Manager. Agency Services indicated that this action was to be effective June 4, 2022, unless the appointing authority assigned duties commensurate with her current title, Research Scientist 2, within 30 days of receipt of the determination letter.

In Aveni's and Napravnik's requests, they present that even though it was more than 30 days since Agency Services determination letters, in March 2023, they were informed that since they did not meet the eligibility requirements for a Program Manager promotional examination since it was only open to employees in the competitive division of the career service and they were in the non-competitive division, they would not be considered for a current position in that title. Therefore, their Program Manager duties would be removed from their responsibility, and they would be returned to their permanent titles. Aveni and Napravnik question why a position that was posted for a different unit must be used for promotions within their unit. They both believe that, based on operational needs, that they should not have duties removed. They request to be provisionally appointed as Program Manager.

In response, the appointing authority indicates that on March 24, 2023, this agency approved Aveni's and Napravnik's Position Classification Questionnaires which indicated that Program Manager duties were sufficiently removed from their responsibilities. It indicates that Aveni is to receive differential back pay from September 24, 2022, to March 24, 2023, and Napravnik is to receive differential back pay from June 4, 2022, to March 24, 2023. The appointing authority states that it made the decision to remove their Program Manager duties because Aveni and Napravnik cannot be promoted to that title without a rule relaxation since they are in non-competitive titles and eligibility for Program Manager requires sufficient service in the competitive division, the closing date for the current promotional examination for Program Manager has passed, that examination will lead to a certification from which the appointing authority can make promotional appointments to Program Manager, and it had the option to remove duties and return them to their permanent titles, which it chose.

CONCLUSION

N.J.A.C. 4A:3-3.5(c)1 provides, in pertinent part, within 30 days of receipt of the reclassification determination, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the and responsibilities to which the employee has permanent rights.

In this matter, regardless of the appellants' beliefs about the need for them to perform the duties of a Program Manager, under *N.J.A.C.* 4A:3-3.5(c)1, the appointing authority had the option of removing their Program Manager duties after Agency Services determined that they were performing Program Manager duties rather than provisionally appointing them as Program Managers, regardless of its reasons. The fact that the appointing authority did not exercise this option in a timely manner as directed is not grounds to continue the provisional appointments. Instead, the proper remedy is for the appointing authority to compensate the appellants with differential back pay from the effective date of the determination letter until this


agency approved the removal of their duties. The record indicates that this agency indicated that the appointing authority successfully removed the appellants' duties, effective March 24, 2023. Therefore, as indicated by the appointing authority, Aveni is entitled to differential back pay from September 24, 2022, to March 24, 2023, and Napravnik is entitled to receive differential back pay from June 4, 2022, to March 24, 2023. The appointing authority is cautioned that, in the future, it should strictly adhere to the provisions of *N.J.A.C.* 4A:3-3.5(c)1, and failure to do so in the future could subject it to enforcement under *N.J.A.C.* 4A:10-2.

ORDER

Therefore, it is ordered that this request for enforcement be denied. If it has not done so already, the appointing authority is ordered to pay Kathryn Aveni the difference between her salary as a Research Scientist 1 and Program Manager from September 24, 2022, to March 24, 2023, and pay Elena Napravnik the difference between her salary as a Research Scientist 2 and Program Manager from June 4, 2022, to March 24, 2023, within 30 days of this order. All other requests are denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
THE 17TH DAY OF AUGUST, 2023



Allison Chris Myers
Chair/Chief Executive Officer
Civil Service Commission

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