

B-31



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Supervisor Senior
Citizen Outreach and Referral
Program (C0512R), Monmouth
County

CSC Docket No. 2014-1831

Appointment Waiver

ISSUED: **OCT 24 2014** (WR)

Monmouth County requests permission not to make an appointment from the August 1, 2013 certification for Supervisor Senior Citizen Outreach and Referral Program (C0512R).

The record reveals that on April 8, 2013, the appointing authority provisionally appointed Monica Kam, pending open competitive examination procedures, to the subject title. As a result of the provisional appointment, an examination was announced with a closing date of May 29, 2013. The examination resulted in an eligible list of five individuals, which promulgated on August 1, 2013 and expires on July 31, 2015. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. A certification was issued on August 1, 2013, listing Kam in the first position. On August 14, 2013, the appointing authority returned the certification and requested an appointment waiver.

In its request for an appointment waiver, the appointing authority indicates that the subject position has been eliminated due to budgetary constraints. It states that after the impact of sequestration and a change in the State's funding formula for distributions of funds to County Area Agencies on Aging, it could no longer afford to fund the subject position and instead assigned the duties of the subject position to employees in other titles. Moreover, it asserts that Kam was provisionally appointed, pending open-competitive examination requirements to the title of Medical Social Worker, effective November 30, 2013, as a vacancy existed in that title. The appointing authority maintains that Kam's appointment is

temporary, since it also expects that title to be impacted by budget cuts and layoffs.¹ Finally, in light of its desire to meet the needs of its residents and manage State-imposed caps, it requests a waiver of the associated costs of the selection process.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the appointing authority reiterates its arguments. Additionally, it asserts that since the subject eligible list does not expire until July 31, 2015, it cannot definitively determine that it will not utilize the list prior to its expiration date.

Agency records indicate that Kam was provisionally appointed, pending open competitive requirements to the title of Medical Social Worker, effective November 30, 2013, and separated from that position, effective April 30, 2014. Agency records also indicate that currently there are no individuals in the subject title with the appointing authority.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Kam. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to budgetary constraints and indicated that it would instead reassign the duties of the subject position to staff members serving in different titles. Additionally, the appointing authority notes that Kam was assigned different duties and was provisionally appointed, pending open competitive examination procedures to the title of Medical Social Worker. Subsequently, she was separated from employment, effective April 30, 2014. Therefore, since the provisional is no longer serving in the subject title and there are no employees serving in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two

¹ As of the date of this decision, the appointing authority has not effectuated a layoff plan.

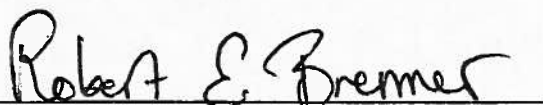
of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this regard, the appointing authority's economic problems, while serious, are no less than those encountered by many, if not most other New Jersey county and municipal governments. Moreover, although the appointing authority claimed that it would be undergoing a layoff, agency records do not indicate that it submitted a layoff plan. Furthermore, reimbursement of selection costs pursuant to *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* does not place an undue burden on the appointing authority or prohibit it from looking towards other cost saving measures. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22nd DAY OF OCTOBER, 2014



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