

B-62



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Administrative  
Analyst 1, Fiscal Management  
(S0931P), Statewide

Appointment Waiver Request

CSC Docket No. 2015-534

ISSUED: FEB 09 2015 (DASV)

The State Parole Board requests permission not to make an appointment from the eligible list for Administrative Analyst 1, Fiscal Management (S0931P), Statewide.

The record reveals that the appointing authority provisionally appointed Amy Marino, pending open-competitive examination procedures, to the title of Administrative Analyst 1, Fiscal Management (class code 29), effective July 30, 2012. The provisional appointment generated an examination announcement for the subject title with a closing date of November 8, 2012. Marino filed for the examination, but she was determined ineligible since she did not meet the announced experience requirement. Thereafter, Marino filed an appeal of her ineligibility with the Civil Service Commission (Commission). However, the Commission denied her appeal and referred the matter of Marino's position classification to the former Division of Classification and Personnel Management (CPM).<sup>1</sup> In that regard, it appeared that Marino was not performing the duties of an Administrative Analyst 1, Fiscal Management. *See In the Matter of Amy Marino* (CSC, decided September 18, 2013). Thereafter, CPM conducted a review of Marino's position, and ultimately determined on July 24, 2014 that Marino's duties and responsibilities were commensurate with the title of Building Management Services Specialist 1 (class code 27). The effective date of the position reclassification was June 14, 2014 and Marino was provisionally appointed pending open-competitive examination procedures on that date. Marino did not file an

<sup>1</sup> CPM is now known as the Division of Agency Services.

appeal of this determination. In the meantime, the resulting eligible list for Administrative Analyst 1, Fiscal Management (S0931P), promulgated with 31 names on January 2, 2014. The eligible list does not expire until January 1, 2016. On January 3, 2014 and April 17, 2014, certifications of the subject eligible list issued with 28 names on each certification. The appointing authority returned both certifications, requesting cancellation since Marino's position had been reclassified. It is noted that 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.

Thereafter, the appointing authority requested an appointment waiver. The appointing authority's request 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 \$8,285.

In the instant matter, the appointing authority argues that it should be granted an appointment waiver and a waiver of the costs based on the circumstances of this case, namely that Marino was found ineligible for the Administrative Analyst 1, Fiscal Management (S0931P) examination; the appeal of her ineligibility was denied; and her position was ultimately reclassified to Building Management Services Specialist 1. It is noted that there are no employees currently serving provisionally as an Administrative Analyst 1, Fiscal Management with the State Parole Board.

### 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 for a list 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 a result of the provisional appointment of Marino. After complete certifications were issued, the appointing authority requested an appointment waiver. The record indicates that Marino's position was ultimately reclassified to Building Management Services Specialist 1. Further, personnel records reveal that there are currently no employees serving provisionally in the subject title with the State Parole Board. Accordingly, based on the foregoing, the appointing authority has presented sufficient justification for the appointment waiver.

Although the appointment waiver is granted, 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

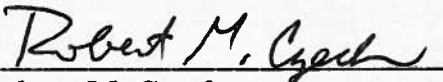
to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Commission notes that the subject eligible list, which is valid for all State departments that utilize the subject title, does not expire until January 1, 2016. Thus, utilization by the State Parole Board or another appointing authority is probable. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided March 22, 2006)* (Not appropriate to assess the Department of Corrections for the costs of the selection process since it had indicated its intention to utilize the eligible list prior to its expiration date). Nevertheless, in the event that the appointing authority, or another appointing authority, fails to utilize the list by its expiration date, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided April 11, 2007)* (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

### ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs be presently assessed.

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 4<sup>TH</sup> DAY OF FEBRUARY, 2015



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