

On appeal, the appellant states that she has participated in the DLP to care for her mother since 2012. In this regard, she explains that her mother has Lupus and smoldering myeloma. Thus, her mother's illnesses may "flare-up" and cause her to be out of work for longer periods of time. For example, she presents that her mother was in a coma on two occasions prior to her even being aware that the DLP existed and that she was hospitalized and in therapy for over two months each time. The appellant states that in response to the Commission's decision, all employees who had been approved for intermittent donated leave, such as herself, were removed from the program. However, she was never advised of the change in the program as she was out on medical leave suffering from a mini-stroke and did not return to work until October 6, 2014. Further, she states that she was advised that even though time that had been donated to her would normally be returned to the donors, that would not be the situation in her case since all of the employees who donated leave to her had retired. Therefore, since she was never advised of the change in the program while she was out on medical leave and had previously been approved for intermittent donated leave prior to the appointing authority revising its policy, the appellant requests that she be permitted to utilize, on an intermittent basis, the 46 hours of leave that had been donated to her.

In response, the appointing authority states that prior approval to utilize intermitted donated leave is irrelevant in this matter as the appellant's request for intermittent leave was submitted on October 6, 2014. As such, her request is considered a new request for donated leave. Accordingly, since intermittent donated leave is not provided for in *N.J.A.C. 4A:6-1.22*, the appointing authority maintains that it properly denied her request.

CONCLUSION

N.J.A.C. 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that a State employee shall be eligible to receive donated sick or vacation leave if the employee suffers from a catastrophic health condition or injury. A catastrophic health condition or injury is defined as a life threatening condition or combination of conditions or a period of disability required by an employee's mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days. See *N.J.A.C. 4A:6-1.22(b)1*. *N.J.A.C. 4A:6-1.22(a)2* provides that an employee shall be eligible to receive donated leave time if the employee has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off.

In the instant matter, the appellant's circumstances do not meet the established criteria for participation in the DLP. Initially, *N.J.A.C. 4A:6-1.22* does *not* provide for "intermittent" donated leave. Rather, the intent of the DLP, since its inception in 1993, was to provide employees the opportunity to donate sick or

vacation leave to other employees who are suffering from a catastrophic health condition or injury which is expected to *require a prolonged absence from work* and who had exhausted all of their accrued leave time. See 24 N.J.R. 3590. In other words, receipt of donated leave requires the employee's prolonged absence from work as a condition precedent to considering a request for donated leave.

The practice of permitting the *limited* use of "intermittent" donated leave evolved from those cases where an employee who required a prolonged absence from work due to a catastrophic health condition was returned to work and needed additional time to transition back into full-time work. For example, in *In the Matter of A.M.* (Commissioner of Personnel, decided September 17, 1998), an employee diagnosed with rectal cancer received donated leave because her condition required a prolonged absence from work in order to receive chemotherapy and radiation therapy, as well as to undergo two surgical procedures. The employee's condition progressed well and she was permitted to return to work. However, the employee's treating physician recommended that she work no more than four days per week in the coming few months due to her lower level of resistance and stamina. The former Commissioner of Personnel approved the request for an extension of her donated leave so she could take off one or two days per week for a period of two to three months to recuperate. Thus, "intermittent" donated leave was only approved for use *after* an employee returned from a prolonged absence from work and for limited time frames.

Against this backdrop, since "intermittent" donated leave is not provided for in N.J.A.C. 4A:6-1.22 and the DLP was intended to provide additional leave time for employees expected to require a prolonged absence from work who have exhausted all accrued leave time, the use of "intermittent" donated leave is clearly not contemplated by the rule. Rather, it has evolved based on limited exceptions to the donated leave rule authorized by the former Commissioner of Personnel in those cases where an employee returning from a prolonged leave of absence required an additional, medically defined, finite period of time to transition back into the workplace. Thus, while the use of additional, short-term donated leave upon return to work *may* be appropriate in limited situations, it should be judiciously approved in compliance with N.J.A.C. 4A:6-1.22(b). In this regard, it must be underscored that in adopting amendments to the DLP to expand participation to employees who must care for an immediate family member suffering from a catastrophic health condition, the former Merit System Board emphasized that "the exceptional nature of a catastrophic health condition or injury means that the DLP will not be that widely used" in such situations. See 28 N.J.R. 3781(a).

In this case, notwithstanding the fact that the appellant was on medical leave when the appointing authority changed its policy regarding intermittent donated leave or that she had received donations prior to the change in policy, it is not the intention of the DLP to provide intermittent donated leave. Indeed, the

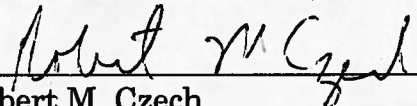
Commission determined that intermittent donated was not contemplated or provided for in the rules in September 2013 and the appointing authority formally changed its policy one year later, in August 2014. Rather, as stated earlier, intermittent donated leave is not provided for in the rules governing donated leave and should only be approved in those limited circumstances where an employee is returning to work from a prolonged absence and requires an additional, medically defined, finite period of time to transition back to the workplace. This is not the case in the instant matter. Moreover, the appellant has not provided any medical documentation which indicates that her mother's current condition is catastrophic and that she requires the appellant to be off from work to assist in her care. Further, the appellant did not return from a prolonged leave of absence in October 2014 as a result of caring for her mother. Accordingly, the appellant does not meet the regulatory criteria to participate in the DLP. However, it is noted that this decision does not preclude the appellant from submitting additional documentation from her physicians which may establish that she satisfies the criteria.

ORDER

Therefore, it is ordered that this appeal be denied.

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 3rd DAY OF JUNE, 2015



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