



STATE OF NEW JERSEY

In the Matter of Nicole Barringer and Jennifer Cahill, Human Services Specialist 4 (PC4888D), Camden County Board of Social Services	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket Nos. 2024-528 and 2024- 529	:	List Bypass
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ISSUED: November 22, 2023 (SLK)

Nicole Barringer and Jennifer Cahill appeal the bypass of their names on the Human Services Specialist 4 (PC4888D), Camden County Board of Social Services eligible list. These appeals have been consolidated due to common issues presented.

By way of background, the appellants appeared on the PC4888D eligible list, which promulgated on April 6, 2023, and expires on April 5, 2025. The appellants' names were certified on May 18, 2023 (PL230899) for a position in the subject title. A total of 10 names were certified. The first four positioned candidates were appointed, Barringer, the fifth positioned candidate and Cahill, the sixth positioned candidate, were bypassed, the seventh positioned candidate was appointed, and the eighth through 10th positioned candidates were not appointed.

On appeal, Barringer presents that she interviewed for a position in the Medicaid Department, and she was informed that she was bypassed because "knowledge of Medicaid programs was taken into consideration as supervisors are required to answer policy questions and train lower level staff." She highlights that she has 14 years of experience with the appointing authority where her work has involved various benefit programs including 10 years of experience with Medicaid programs. Barringer presents her prior private sector experience as a Pharmaceutical Sales Representative where she gained knowledge of complex data which demonstrates that she has the ability to learn Medicaid policies and programs. Additionally, she provides her Corporate Accounts Manager experience to

demonstrate her supervisory and training experience. Barringer states that the interviewer repeatedly indicated that candidates did not need Medicaid experience as the main duties of the position were to boost morale, increase productivity, be a team player, and possess strong leadership skills. Further, the interviewer used herself as an example as someone who became the Medicaid Department Assistant Administrator without any prior Medicaid experience. Additionally, the interviewer noted that Barringer did not have experience in the department where she currently works, and she was able to learn the programs in her department. Barringer claims that many of the staff members who hold various titles were either promoted or transferred to the Medicaid Department without prior Medicaid experience, including one of the newly hired supervisors. Therefore, she questions why she is the only one who is being “discriminated” against for not having prior Medicaid experience especially when she was advised that it was the goal of the agency to have “generic” workers who were interchangeable between departments. She asserts that inconsistent messaging is contributing to employee retention issues. Moreover, she discovered that on a prior 2021 promotional examination, the first 11 eligibles were promoted to a position in the subject title without any candidate being bypassed. Therefore, Barringer believes that she has been subjected to an “unfair labor practice.” Also, she claims that there is a high need for additional supervisors. Finally, she notes that her union informed her that having specific department experience was not a requirement for a promotion.

Cahill presents similar arguments stating that the interviewer advised that prior Medicaid experience was not necessary for the subject appointment, the interviewer did not have prior experience in Medicaid when she was appointed to a position in the department, and the interviewer acknowledged that Cahill had learned her current responsibilities without prior departmental knowledge. Further, she claims that her union advised that a lack of Medicaid knowledge was not a valid basis to be bypassed for a position in the Medicaid Department. Additionally, Cahill indicates that her union advised that bypassing candidates was not a common practice in the agency and typically a candidate was only bypassed if there was a tie, which was not the case here. Further, she provides that appointments were made throughout the agency to employees who had not previously had experience in their new department. She notes that promotions are hard to come by and she asserts that she has the right to the same employment opportunities as others. Cahill claims that the Medicaid Administrator indicated that she would like to promote the eighth positioned candidate next, so she is also worried about future opportunities. Further, she also indicates that three supervisory positions were phased out and replaced by attorneys with no knowledge of their departments.

In response, the appointing authority presents that the vacancy posting indicated that comprehensive knowledge of ABD Medicaid programs was desirable, the appointed candidate was working in the ABD Medicaid Department with extensive knowledge of ABD Medicaid programs, and the appellants had no knowledge of these programs.

In reply, Barringer reiterates that there are a significant number of clerical employees, case workers, specialists, and supervisory staff who entered the ABD Medicaid department with zero knowledge of the specific program.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-6, and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open-competitive list, provided that disabled veterans and then veterans shall be appointed in their order of ranking.

As set forth above, the Rule of Three allows an appointing authority to use discretion in making appointments. *See N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8(a)3i. As long as that discretion is utilized properly, an appointing authority's decision will not be overturned. *Compare, In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs*, 171 *N.J. Super.* 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing).

In this matter, the record indicates that the appointing authority's appointment complied with the Rule of Three as it presented a legitimate business reason for its selection. Specifically, the appointing authority provides that the appointed candidate was already in the ABD Medicaid department with extensive knowledge of ABD Medicaid programs, while the appellants did not have any knowledge of ABD Medicaid. The fact that the appellants may have been capable of learning about ABD Medicaid programs, the interviewer may have expressed that knowledge of ABD Medicaid programs was not a prerequisite for the subject appointment, previous appointments were made to positions in the ABD Medicaid Department without such experience, including supervisory appointments, and prior supervisory appointments within the ABD Medicaid Department or elsewhere within the agency were made without bypassing candidates does not signify that subject appointment was improper as the appointing authority's choice to appoint a reachable candidate based on that candidate's experience in the department complies with the Rule of Three. Further, while the appellants claim that they were "discriminated" against or otherwise treated unfairly, they have not alleged that they were not promoted based on their membership in a protected class or other invidious motive nor have they presented any evidence to support such an allegation. Simply feeling that they were treated "unfairly" or a concern about a lack of future opportunities for promotion is not a basis for finding a Rule of Three violation. Moreover, while the union may have advised that it was improper for the appointing authority to bypass candidates based on a lack of departmental knowledge, there is nothing within Civil Service law or rules that indicates this is an improper reason for a bypass under the Rule of Three. However, if the appellants believe that they were subjected to an unfair labor practice under the terms of their collective negotiations

agreement or those terms were otherwise violated, they can address such a claim before the Public Employment Relations Commission, which is the appropriate forum for such claims. Accordingly, as there is no evidence that the appellants' bypasses were in violations of any Civil Service law or rules, they have failed to meet their burden of proof in these matters.

ORDER

Therefore, it is ordered that these appeals 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 22ND DAY OF NOVEMBER, 2023



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