



STATE OF NEW JERSEY

In the Matter of Program Specialist 3
Social/Human Services (S1086D),
Statewide

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2024-182

Appointment Waiver

ISSUED: February 7, 2024 (AMR)

Ancora Psychiatric Hospital, Department of Health, requests permission not to make an appointment from the June 12, 2023 certification for Program Specialist 3 Social/Human Services (S1086D), Statewide.

The record reveals that Ancora Psychiatric Hospital provisionally appointed Michael Simmons, pending open competitive examination procedures, to the subject title effective November 21, 2020. An examination was announced with a closing date of August 22, 2022, that resulted in a list of 36 eligibles promulgating on June 8, 2023, and expiring on June 7, 2026. It is noted Simmons was separated from his provisional position when he was appointed provisionally pending open competitive examination procedures to the title of Supervisor Information Technology Help Desk effective October 23, 2023. Additionally, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, stating that when Simmons appealed his ineligibility for the Program Specialist 3 Social/Human Services (S1086D), Statewide, examination, the appeal was denied, and the classification of Simmons' position was forwarded to the Division of Agency Services (Agency Services) for review. *See In the Matter of Michael Simmons* (CSC, decided March 15, 2023). It is noted that in its September 11, 2023 determination, Agency Services found that

Simmons' position was more in line with his permanent title of Information Technology Specialist effective October 21, 2023. In the interim, the appointing authority asserted that it no longer had a need for the Program Specialist 3 Social/Human Services title and was seeking a more appropriate title for Simmons. Ultimately, Simmons was provisionally appointed to the title of Supervisor Information Technology Help Desk, effective October 23, 2023, and Agency Services' determination had not been implemented.¹

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 \$8,285. The appointing authority responded, reiterating its arguments from its original request. Additionally, it requested a waiver of the \$8,285 selection fee, in the hope that the eligible list can be utilized by another State agency.

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 a result of the provisional appointment of Simmons. However, after a complete certification was issued, the appointing authority requested an appointment waiver. Simmons was eventually separated from his provisional position and appointed provisionally to the title of Supervisor Information Technology Help Desk effective

¹ It is noted that both the appointing authority and Simmons appealed Agency Services' determination, by letters dated September 21, 2023 and September 28, 2023, respectfully, requesting that Simmons' position be reclassified to a Supervisor Information Technology title. As the appeals related to the within matter, they were consolidated herein. However, since the appointing authority subsequently appointed Simmons provisionally to the title of Supervisor Information Technology Help Desk, effective October 23, 2023, Simmons' appeal is moot. With regard to the appointing authority's appeal, *N.J.A.C. 4A:3-3.9(e)* provides in part that only appeals from the decision of a Commission representative may be made by an employee, authorized employee representative or local appointing authority. As such, a State agency has no standing to file an appeal of the determination. Nonetheless, at its discretion, an appointing authority may choose one of the options set forth in *N.J.A.C. 4A:3-3.5(c)1*. This regulation provides in part that 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 duties and responsibilities to which the employee has permanent rights. In this case, as set forth above, the appointing authority chose to appoint the appellant provisionally to another title.

October 23, 2023. Thus, in conjunction with the fact that there are no provisionals currently serving with the appointing authority, there is a sufficient justification for an appointment waiver.

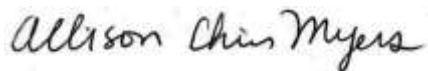
Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two 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 list in question will not expire until June 7, 2026, and the appointing authority may be able to use the list in the future. Furthermore, the examination was announced statewide. Thus, the list is of such duration and scope as to make utilization by this or other State appointing authorities 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. Nevertheless, in the event that the subject eligible list is not utilized by its expiration date of June 7, 2026, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made against the appointing authority.

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be 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 7TH DAY OF FEBRUARY, 2024



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