

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CANDACE D. MCMAHON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-0875SED  
 )  
 DEPARTMENT OF ELDER AFFAIRS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 9, 2004, in Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Aaron. J. Hilligas, Esquire  
AFSCME Council 79  
3064 Highland Oaks Terrace  
Tallahassee, Florida 32301

For Respondent: Susan E. Avellone, Esquire  
Department of Elder Affairs  
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STATEMENT OF THE ISSUE

The issue in the case is whether Petitioner's employment position was properly reclassified from career service to the selected exempt service pursuant to Section 110.205(2)(x), Florida Statutes (2001). All citations are to Florida Statutes (2001) unless otherwise stated.

PRELIMINARY STATEMENT

On July 1, 2001, the Department of Elder Affairs (Department) reclassified Petitioner's employment position from the Career Service System to the Selected Exempt System pursuant to Section 110.205(2)(x), Florida Statutes.

Petitioner was notified by Respondent's letter dated July 21, 2003, that she could file a petition challenging the reclassification of her position. Petitioner timely petitioned for review of the reclassification. The Department forwarded the petition to the Division of Administrative Hearings on or about March 15, 2004. A formal hearing was scheduled for May 27, 2004. The Department filed an unopposed motion for continuance which was granted. The hearing was rescheduled for July 9, 2004.

The parties filed a Joint Pre-Hearing Statement in which the parties agreed that Petitioner's position did not satisfy the definitions of managerial or confidential employee for purposes of Section 110.205(2)(x), Florida Statutes.

Accordingly, the remaining issue is whether Petitioner was a supervisory employee as the term is defined in Section 110.205(2)(x), Florida Statutes.

In the Pre-Hearing Stipulation, the parties requested Official Recognition of Sections 110.205 and 110.206, Florida Statutes. This request was granted.

At hearing, Petitioner testified on her own behalf. Petitioner's Exhibits numbered 1 and 2 were admitted into evidence. Respondent presented the testimony of Thomas Reimers. Respondent's Exhibits numbered 1 through 5 were admitted into evidence. A one-volume Transcript of the final hearing was filed on July 26, 2004. The parties requested and were granted leave to file proposed recommended orders 21 days after the filing of the transcript. Both parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner was employed with the Department beginning in 1998 as a Grant Specialist. In April 2000, she applied for and was promoted into a newly created position of Operations Management Consultant (OMC) Manager in the Serving Health Insurance Needs of Elders (SHINE) program. The SHINE program is primarily a statewide health insurance counseling program designed to serve Florida's elders.

2. At the time of her promotion, Petitioner's new position was classified under the Career Service System. The position was reclassified from Career Service to Selected Exempt Service effective July 1, 2001.

3. Petitioner's position description describes the duties and responsibilities of the position as follows:

The Operations and Management Consultant Manager assists with supervision and coordination of day-to-day volunteer management and program management functions for the SHINE (Serving Health Insurance Needs of Elders) Program. Works [sic] is performed under the supervision of the program coordinator (Senior Management Analyst Supervisor) and in support of the department's mission, vision and values.

4. The position description also provides percentages of time regarding activities engaged in pertaining to these duties and responsibilities:

30% Manages volunteer support activities for the SHINE Program. Provides orientation, training and ongoing technical assistance to program partners and volunteer leadership; develops resource guides and other tools to assist with programmatic and operational issues; conducts meetings, workshops and seminars to build leadership skills; maintains regular communication with program liaisons and volunteer leadership; disseminates correspondence on key programmatic issues; helps resolve operational challenges; and works to ensure outcomes measures are achieved.

20% Supervises volunteer service functions for the program. Develops protocols and tracking systems for service and support

provided to volunteers and staff.  
Coordinates collection of information for the volunteer database and maintenance of volunteer files. Assists with surveys and evaluations. Supervises activities of program staff.

10% Assists with development, preparation, monitoring and oversight of contracts of agreement with providers and program partners.

10% Performs other duties as assigned by SHINE Program Coordinator.

10% Ensures the aspects of SHINE Program of Information & Referral (I & R), education and outreach are coordinated with the overall agency responsibility in those areas. Supervises staff activities as they relate to these functions.

5% Takes the lead for the preparation for the SHINE grant reapplication and other related new grant applications and opportunities.

5% Assists with budget development.

5% Ensures that required grant reports and narratives are submitted to funder on time and complete.

5% Represents Department of Elder Affairs and SHINE at community education events for the public and the aging network. May make presentations at workshops, community forums and seminars as assigned. Serves as an advocate for elders.

5. Further, the position description lists six positions which are described as "subordinate positions." This is consistent with the organizational chart of the Division of Self Care and Community Volunteer Initiatives which also reflects six

positions directly under her position. However, during the time Petitioner held the position of OMC Manager, there were some reorganizations that resulted in two of the positions being shifted, sometimes being under the authority of Petitioner and sometimes being under the authority of others. In any event, at all times material hereto Petitioner was the supervisor of five to seven persons.

6. Petitioner does not dispute that she performed some supervisory duties. At hearing, she acknowledged that she had supervisory duties, but asserts that she only spent a minimal amount of time in the performance of supervisory activities.

7. Each morning, Petitioner would hold a staff briefing which lasted 15 to 30 minutes with the individuals she supervised. Petitioner described these group staff meetings as an update session to discuss "what's hot, what are you working on, do you need help, do you need information . . . and more targeted towards continuing to instill a teamwork type of effort in the attitude of the staff."

8. In addition to her duties regarding staff, Petitioner was also responsible for the oversight of contracts with program providers and with volunteers. These providers and volunteers were not employees of the Department. Petitioner estimates that she spent between 50 and 75 percent of each day on contract management issues. However, in terms of her responsibility to

develop, prepare, monitor, and oversee those contracts, she would utilize her staff in order to carry out many of those duties.

9. Tom Reimers has worked for the Department since 1995. He is currently the Director of the Division of Volunteer and Community Services. Prior to that, he served as Director of the SHINE Program. During part of that time, Mr. Reimers was Petitioner's direct supervisor.

10. According to Mr. Reimers, Petitioner was responsible for the work product of the employees she supervised, in reviewing their work product, in informing those employees when their work product was inadequate, and in evaluating employees including signing their "Review and Performance Planning" forms. Her signature on those employee reviews appears in the line designated for "supervisor's signature."

11. Mr. Reimers considered Petitioner to be a full-time supervisor in that Petitioner had the authority to sign time sheets, approve and consider requests for travel, provide information to her employees about their job and about the Department's mission, ensure that they were carrying out the mission, and provide guidance to her subordinate employees.

12. When Mr. Reimers received communications from the persons under Petitioner's supervision or needed to communicate

something to them, he would generally funnel that communication through Petitioner.

13. Moreover, Mr. Reimers was frequently out of the office due to his job responsibilities. When he was out of the office, Petitioner described herself as a "second-in-command type of individual monitoring the program at home."

14. Mr. Reimers conducted Petitioner's employee evaluations. His review of her work included her ability to communicate with employees, whether she was properly assigning and overseeing work of her subordinates, and whether she was motivating her staff. Petitioner received positive evaluations from Mr. Reimers.

15. Petitioner interviewed applicants for at least two employment positions and made recommendations regarding their employment. In both instances, those persons recommended by Petitioner were hired.

16. Petitioner was employed by the Department until March 31, 2002, when her position was eliminated because of loss of grant monies which funded her position.

17. The weight of the evidence supports a conclusion that Petitioner spent a majority of her time supervising employees as contemplated by Section 110.205(2)(x), Florida Statutes.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has



jurisdiction over the parties and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003)

19. Unless exempted, all state employees are deemed to be career service employees. See § 110.205(1) ("the career service to which this part applies includes all positions not specifically exempted by this part . . .").

20. Section 110.205(2)(x), Florida Statutes, reads in pertinent part, as follows:

(2) EXEMPT POSITIONS.--The exempt positions that are not covered by this part include the following:

\* \* \*

(x) Effective July 1, 2001, managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. . .

21. Respondent has the burden of establishing by a preponderance of the evidence that the reclassification of Petitioner's employment position was proper under the applicable statutes. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department

of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Based upon the parties' stipulation, the only issue is whether her position was that of a supervisory employee as defined in Section 110.205(2)(x).<sup>1/</sup>

22. Petitioner's employment position meets the definition of "supervisory employee" as described above. Accordingly, the reclassification of the position from career service to selected exempt was authorized by the statute.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the Department of Elder Affairs should enter a final order finding that the position held by Petitioner Candace C. McMahon on July 1, 2001, was properly classified into the selected exempt service.

DONE AND ENTERED this 17th day of September, 2004, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of September, 2004.

ENDNOTE

<sup>1/</sup> Petitioner raised in her Proposed Recommended Order a constitutional issue regarding her involuntary reclassification from career service to selected exempt service. This issue was not raised in the Petition and will not be addressed herein. Moreover, such issues are appropriately reserved for resolution by a Circuit Court or by the Appellate Court, on appeal from the final order in this case.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.