



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM

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April 13, 2016

TO: Connie Goff
WPPR&A Acting Section Chief

FROM: Nancy Jacobski
Director's Review Specialist

SUBJECT: Lisa Nesser vs. Department of Social and Health Services
Allocation Review Request ALLO-15-059

Director's Determination

As the Director's Review Specialist, I carefully considered the documentation in the file, the exhibits and the verbal comments provided by both parties during the review telephone conference. Based on my review and analysis of Ms. Nesser's assigned duties and responsibilities, I conclude her position should be reallocated to Forms and Records Analyst 3 (FRA 3).

Background

On January 30, 2015, Lisa Nesser submitted a Position Review Request (PRR) to the HR Office at the Department of Social and Health Services (DSHS) Office in Olympia requesting reallocation from FRA 1 to FRA 3.

By letter dated April 17, 2015, Lester Dickson, Classification and Compensation Specialist, DSHS, notified Ms. Nesser that her position was being reallocated from FRA 1 to FRA 2 effective January 30, 2015.

On May 13, 2015, OFM State HR received Ms. Nesser's request for a Director's review of DSHS's allocation determination (Exhibit A-1).

A Director's review telephone conference was conducted on February 25, 2016. Present for the conference was Lisa Nesser Appellant; Jason Watson, WFSE Representative; John Lawson, WFSE Shop Steward; and Lester Dickson, Classification and Compensation Specialist, DSHS.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications.

This review results in a determination of the class that best describes the overall duties and responsibilities of the position. *Liddle-Stamper v. Washington State University*, PAB Case No. 3722-A2 (1994).

Positions are to be allocated to the class which best describes the majority of the work assignment. *Ramos v DOP*, PAB Case No. A85-18 (1985).

Organizational Structure

Ms. Nesser works in DSHS's Children's Administration located in the Region 3 Bremerton office and reports to Claudia August, Office Support Supervisor 2. Through reorganization efforts, DSHS centralized public disclosure staff to Olympia and kept discovery requests at the local offices. As a result, Ms. Nesser's position remained the only FRA in the Bremerton office and was reallocated from FRA 3 to FRA 1. Subsequently, as stated earlier, Ms. Nesser's position was reallocated up to FRA 2 as a result of a PRR to DSHS Human Resources.

Position Purpose

Serving as the sole FRA in the region for Children's Administration, Ms. Nesser reviews, manages and processes the disclosure of confidential client records for the purpose of discovery and has the authority to determine whether to disclose, withhold, or redact records for disclosure under RCW 42.56 regarding the Public Records Act; RCW 13:34, regarding the Juvenile Court Act; RCW 13:50, regarding keeping and releasing of records by juvenile justice or care agencies; and RCW 26.33, regarding adoption.

Duties and Responsibilities

As referenced in her PRR, 95% of Ms. Nesser's duties may be summarized as follows:

- Processes discovery requests on open Child Protective Service (CPS) and Child and Family Welfare records. These records include medical, mental health and legal records.
- Applies rules, laws and policies necessary to ensure conformance with state and agency standards.
- Uses professional judgement to define the scope of the work or request for discovery and adjusts work plans to meet legal timelines.
- Communicates directly with the Assistant Attorney General (AAG) and other DSHS agency staff.
- Coordinates the delivery and distribution of discovery.
- Works with regional social workers to locate, retrieve and redact necessary client records to fulfill discovery requests.

Summary of Ms. Nesser's Perspective

In the PRR (Exhibit A-4), Ms. Nesser states the following when asked to describe her position purpose:

"Within the Department of Social and Health Services, Division of Children and Family Services – Region 3 office, review manage and process requests for discovery, adoption disclosure and public records/public disclosures of confidential client information in Child Protective Services, Child and Family Welfare Services, and legally free files. Documents contained in these files are legal, health, education, fatality, and case activity information. This position works with master files, regional staff, social worker staff, and the Attorney General's office to locate, retrieve, and redact necessary records to fulfill requests."

The following information was stated in Ms. Nesser's letter of appeal (Exhibit A-1)

1. A position review was completed in 2012, which concluded that the work being done was FRA 3 work and was paid as such through the present time. During that review Ms. Nesser was reallocated to the 3 level alongside her co-workers who were performing the same related tasks...these other positions have recently been consolidated to a regional location to perform the same tasks as they performed in their local offices at the time of reallocation and remain classified at the 3 level...
2. All of those who were identified as FRA 3s during the 2012 position review request retain their FRA 3 status currently. Their job duties and responsibilities have not increased or changed. This was not a consideration by Lester Dickson as he seemed unaware of this and it is not mentioned in his review.
3. The position being reviewed has no different job duties than the FRA 3 counterparts in Olympia who have FRA supervision which limits their responsibilities as to communicating with the public or responding to clients regarding their work...

Ms. Nesser provided the following details during the telephone conference:

Ms. Nesser contends her work is at the level of the FRA 3, as she is the only one in the Bremerton Children's Administration office that can respond to and provide public disclosure requests for the purposes of discovery. At any one time, Ms. Nesser may have 20-30 requests for discovery and receives about three new requests per week. Ms. Nesser receives requests from a variety of sources including attorneys, parents, and law enforcement. These disclosure requests are for the purposes of court proceedings relating to CPS, child and family welfare and adoption cases. The various discovery Ms. Nesser provides are sensitive and confidential and include medical and mental health records; legal documents; police reports; CPS records; child welfare records; and juvenile probation information.

When a request arrives directly to Ms. Nesser or through a social worker or other DSHS staff member, she is responsible to obtain necessary documents from the child's case file, typically working with the assigned social worker. Ms. Nesser must ensure all relevant documents pertaining to the discovery request are provided or DSHS could face fiscal sanction for every day the information is withheld. Once Ms. Nesser receives records, she scans them and, utilizing a software program, redacts information depending upon a number of variables, including the type of documents and the recipient. Ms. Nesser states the requests become very complex when, for example, two fathers are involved or when an intervener requests information on behalf of a child. She continually applies state laws around who may receive the information and what must be redacted.

Ms. Nesser prioritizes her workload according to the type of requests she receives. For example, discovery requests for a shelter care case may have a 72-hour turnaround time, whereas a different request may have a 20-day turnaround time. Ms. Nesser also receives requests contending her redaction decisions and questioning whether or not all records were provided.

Ms. Nesser contends her questions are brought to the AAG and that her supervisor, Claudia August, is not able to answer questions about public record requests. Ms. Nesser occasionally talks to DSHS Headquarters, but not for the purpose of obtaining advice, rather to talk about a case and/or obtain information necessary for a request. Ms. Nesser provides training as needed at meetings or individually to staff within the Bremerton office.

Summary of DSHS's Reasoning

DSHS contends Ms. Nesser best fits the definition of FRA 2: She is fully qualified in all aspects of the work with minimal supervision, consistent with the definition of "journey." DSHS further contends Ms. Nesser's duties and responsibilities do not rise to the senior level described by the FRA 3. DSHS states that, according to the Classification and Pay Guide, senior level incumbents are considered to be specialists or experts, described in various ways such as "senior," "specialist," "lead," "trainer," "complex" an "in-depth or in-charge worker." DSHS goes on to say the Classification and Pay Guide identifies the duties of a specialist as involving "intense application of knowledge and skills in a specific segment of an occupational area."

DSHS asserts that Ms. Nesser's duties and responsibilities do not fulfill any of the three options stated in the definition of FRA 3:

- 1) Ms. Nesser is not a specialist in two or more system areas or;
- 2) Ms. Nesser does not function as a management consultant for complex manual and/or electronic forms and/or records problems or;
- 3) Ms. Nesser does not provide management consultation and determinations on responses to public record requests.

DSHS states in their Allocation Decision Letter:

"Although, you have knowledge of the various files and records in which you obtain documents, you do not have management responsibility of those files at the level intended for this class."

Comparison of Duties to Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

Comparison of the Definitions for Forms and Records Analyst 2 and 3

Definition of Forms and Records Analyst 2:

Positions at this level **provide consultation to managers and perform journey-level forms and/or records** work such as analyzing manual, electronic and/or automated forms and/or records management problems, developing and implementing plans for rectifying system deficiencies, designing forms and coordinating forms production. Incumbents assist with and coordinate records retention, migration, transfer and disposition, utilize manual, electronic and/or automated systems, and provide consultation on forms and/or records management programs and system requirements. Incumbents conduct record inventories, assist with reviewing and updating record retention schedules and coordinate, **retrieve information for and respond to public record requests**

OR

In a healthcare facility, hospital, or institution performs records management duties such as, reviewing resident and/or patient records for completeness and accuracy, assigning diagnoses and operative procedures codes, abstracting pertinent data from treatment and/or medical records, and acting as information resource for authorized personnel requesting information from resident and/or patient records. May monitor patient's length of stay, severity of illness, and intensity of services to assure appropriate utilization of resources or explain the justification for admission, treatment, and length of stay and relay pertinent diagnostic information to authorized third party agents (Emphasis added).

Definition of Forms and Records Analyst 3:

Positions at this level are specialists in two or more system areas such as financial records, student records, resident records, and/or health records, or function as a management consultant for complex manual and/or electronic forms and/or records problems, **or provide management consultation and determinations on responses to public record requests**. Incumbents may oversee the work of subordinate staff and coordinate the day-to-day delivery, distribution, access, maintenance and retention of manual and/or electronic forms and/or records (Emphasis added).

Both the FRA 2 and FRA 3 have the responsibility to provide management consultation. Ms. Nesser's duties include consulting with management and staff on public disclosure requests, either in groups or individually. If management receives the requests or has questions, Ms. Nesser is the go-to person for the request, answers questions about what documents to provide, what should be redacted, and ensures timely responses according to state law.

In addition to language about consulting with management, both the FRA 2 and FRA 3 have language in the class specifications about responding to public record requests. However, as noted by DSHS, specific to the FRA 3 is the performance of this work at the senior level. The definition of "senior" from the *Glossary of Classification Terms*:

"The performance of work requiring the consistent application of advanced knowledge and requiring a skilled and experienced practitioner to function independently. Senior-level work includes devising methods and processes to resolve complex or difficult issues that have broad potential impact..."

Consistent with the definition of "senior," Ms. Nesser must apply advanced knowledge, function independently and consult with the AAG as needed. Typically, discovery requests are routed to her directly, even if they are originally sent to headquarters or a social worker. She prioritizes multiple types of requests from a variety of sources and, if untimely or incomplete, may cause DSHS significant financial damage (broad potential impact).

An email from Claudia August to Lester Dickson on February 20, 2015, verified Ms. August has no experience with the work of an FRA, stating: "I am an Admin. Assistant turned clerical sup (supervisor) and have no experience with the Forms and Records Analyst position. Without such experience, I can't provide her supervision of higher-level records and/or forms management staff, as per the Class and Comp description."

Also from the definition of "senior:"

"...These issues typically involve competing interests, multiple clients, conflicting rules or practices, a range of possible solutions, or other elements that contribute to complexity. The senior-level has full authority to plan, prioritize, and handle all duties within an assigned area of responsibility. Senior-level employees require little supervision and their work is not typically checked by others."

Ms. Nesser juggles varying timelines for discovery requests relating to adoption, CPS, and child and family welfare. The documents provided to requestors are confidential medical, mental health, educational, and law enforcement documents. Each of these requests has differing responses depending upon the requestor and document type. Ms. Nesser must apply knowledge of state law to make determinations on how to respond to requests. She requires little supervision and her work is not typically checked by others.

The definition of "journey," according to the Glossary of Classification Terms:

"Fully competent and qualified in all aspects of a body of work and given broad/general guidance. Individuals can complete work assignments to standard under general supervision. Also referred to as the working or fully-qualified level."

Ms. Nesser's duties and responsibilities exceed "fully-qualified," as identified in the definition of "journey." Although DSHS Headquarters staffs the bulk of senior level public disclosure positions, including FRA 3s, Ms. Nesser does not rely on those positions to check her work or answer questions. Since requests for discovery are no less public disclosure requests than those received at headquarters, Ms. Nesser is the regional expert on public disclosure. For this reason the duties of her position rises to the level of "senior" and, as such, best fits the definition of FRA 3.

Based on the duties and responsibilities assigned to Ms. Nesser, her position is consistent with the third option in the definition of Forms and Records Analyst 3, which states: "...or provide management consultation and determinations on responses to public record requests..." Her duties more closely align with "senior" than "journey," per the *Glossary of Classification Terms*. Therefore, the appropriate job class for Ms. Nesser's position is Forms and Records Analyst 3.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is PO Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101 and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Lisa Nesser, Appellant
Jason Watson, WFSE Representative
Lester Dickson, Classification and Compensation Specialist, DSHS

Enclosure: List of Exhibits

Lisa Nesser v Department of Social and Health Services

ALLO-15-059

List of Exhibits

A. Lisa Nesser

1. Appeal Request Letter	1
2. Lisa Nesser's PD from 2011	4
3. Position Action Request from 12/23/2011	9
4. Position Review Request dated 7/23/2012	10
5. Lisa Nesser's PD from 9/12/2012	17
6. Reallocation letter to FRA 3 from Lester Dickson, dated 9/3/2012	22
7. Letter from Dan Estes, dated 2/4/2015	23
8. Lisa Nesser's evaluation	24
9. Email from Claudia August to Lisa Nesser 2/13/2015	26
10. Emails from Lester Dickson, dated 4/16/2015	27
11. Position Review Request	29
12. Email from Wendy Long dated 5/5/2015	38
13. Email from AA Roder's requesting assistance with high profile case	39
14. Email from R. Mandanifard (regional request)	41

B. DSHS Exhibits

1. Allocation Determination Letter	1
2. Memorandum of Understanding	19
3. Position Description for XW09	21
4. Position Review Request	26
5. Various e-mails	34
6. Forms and Records Analyst 1 Class Specification	49
7. Forms and Records Analyst 2 Class Specification	51
8. Forms and Records Analyst 3 Class Specification	54

C. Class Specifications

1. Forms & Records Analyst 1
2. Forms & Records Analyst 2
3. Forms & Records Analyst 3