

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

HARRIET F. FISHMAN,
Appellant

v.

C-20-094

DEPARTMENT OF PUBLIC HEALTH,
Respondent

Appearance for Appellant:

Pro Se
Harriet F. Fishman

Appearance for Respondent:

David Markowitz, Esq.
Department of Public Health
250 Washington St., 2nd Floor
Boston, MA 02108

Commissioners:

Christopher C. Bowman¹
Cynthia A. Ittleman

SUMMARY OF DECISION

The Civil Service Commission denied the Appellant’s appeal to be reclassified from Recreation Therapist III to Program Coordinator III, as she failed to show that she performed the level-distinguishing duties of a PC III a majority of the time.

DECISION

On June 9, 2020, the Appellant, Harriet F. Fishman (Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the

¹ Commissioner Cynthia Ittleman conducted the full hearing regarding this appeal, but retired prior to drafting a decision. The appeal was reassigned to me and I have reviewed the entire record.

state's Human Resources Division (HRD), in which HRD affirmed the denial by the Department of Public Health (DPH) of her request to be reclassified from Recreational Therapist III (RT III) to Program Coordinator III (PC III). On July 7, 2020, Commissioner Cynthia A. Ittleman held a remote pre-hearing conference. Commissioner Ittleman then held a remote full hearing, on September 9, 2020 and September 14, 2020.² The hearing was recorded via Webex, and both parties were provided with a link to the recording of the hearing.³ The Commission also retained a copy of the hearing recording. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

Eighteen (18) Appellant exhibits (numbered 1-9 and 9A-17, and referenced herein as Exhibits App1-App17) and nineteen (19) DPH exhibits (numbered 1-19, and referenced herein as Exhibits R1-R19) were entered into evidence at the hearing. At the request of Commissioner Ittleman, one additional exhibit was submitted after the hearing by the Appellant (referenced herein as Exhibit App18) and six additional exhibits were submitted after the hearing by DPH (numbered A-F). Based on these exhibits and the testimony of the following witnesses:

For DPH

- Cindie Smey, Classification and Compensation Analyst, Human Resources Dept., EOHHS
- Nathan Bohnke, PT, DPT, Manager, Physical Medicine & Rehabilitation, Lemuel Shattuck Hospital

For the Appellant:

- Catharina Armstrong, MD, MPH, Associate Director of Substance Abuse Services, Newton-Wellesley Hospital

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In conjunction with the preparation of this decision, the Commission has caused a written transcript of this hearing to be prepared.

- Roger Keller, Milieu Therapist, Lemuel Shattuck Hospital
- Maria Tricarico, RN, BS, MA, formerly executive VP for Patient Care Services, Lemuel Shattuck Hospital
- Rhonda McCormack, RN, Milford Regional Medical Center
- Harriet F. Fishman, Appellant,

and taking administrative notice of all pleadings filed in the case, and pertinent rules, statutes, regulations, case law and policies; and drawing reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

1. The Appellant is employed by the Massachusetts DPH as a Recreation Therapist III at the Lemuel Shattuck Hospital. She has held that position and title since she was first hired by DPH in 1999. (Testimony of Appellant; Exhibits R10, R15)
2. The Appellant holds a B.S. in Education and a M.S. in Behavioral Disabilities. She completed the courses required to become a Certified Therapeutic Recreation Specialist (CTRS) and holds a CTRS certification from the National Council for Therapeutic Recreation Certification in Thiells, New York. The Appellant holds licenses in therapeutic massage from Massachusetts, New Hampshire, and the National Certification Board for Therapeutic Massage & Bodywork. She also holds Massachusetts teaching certifications in Early Intervention and Special Needs and certifications from New Hampshire in Special Education and from California in Adult Education. (Testimony of Appellant; Exhibits R15, R16)
3. Prior to her employment with DPH, the Appellant worked as a spa manager and therapeutic massage practitioner; as a caterer and conflict resolution case manager in Haifa, Israel; as a special needs teacher; as a teacher in a program for at-risk youth; and as a marketing researcher. (Exhibits R15, R16; Testimony of Appellant)

4. The Appellant provides recreational therapy to patients at the Lemuel Shattuck Hospital, a public hospital that offers medical and psychiatric care to a challenging patient population, including persons with substance use disorder and persons with physical and developmental disabilities. Some inpatients must remain in the hospital for several weeks of intravenous antibiotics following treatment for osteomyelitis (a bone infection), or endocarditis (a heart valve infection), conditions that may arise from substance abuse. Goals of recreational therapy include assisting patients at all levels of illness to develop leisure skills appropriate to their developmental level and functional capacity, in order to optimize their functioning upon transition to the community or to a program. For persons with substance use disorder, recreational therapy can assist them in learning sober living strategies, including both stress reduction and healthy leisure activities. (Testimony of Appellant, Armstrong, Tricarico; Exhibits R3, R11, R15)
5. The Appellant's duties include planning, organizing, and providing recreation, social, and special activities. She provides group activities such as movies, art therapy, cooking, bingo, Wii, coffee hour, and seasonal parties. Sometimes patients who need individual assistance are assigned to the Appellant by a psychologist. For instance, she has assisted a blind patient with accessing computer training and has made adaptive equipment to allow a patient to do art projects with feet rather than hands. She follows up with staff in other departments when there are concerns about a patient, including attending rounds. Although the hospital discontinued a program of complementary therapies, such as meditation and massage, for substance use patients that ran from 2016 to 2017, the Appellant still teaches meditation during her one-on-one sessions with patients. (Testimony of Appellant, Bohnke, Tricarico; Exhibits R3, R10, R15, App11)

6. Before setting the date for a large group party or function, the Appellant consults with other departments and makes sure that there will be staff available to assist during the event from the Milieu Therapy and Physical Therapy departments. She works with food service to develop a menu that both reflects the event's theme and stays within individual patients' dietary restrictions. After adjusting the menu to fall within the event's budget allowance, she presents the plans to her supervisor, Nathan Bohnke, Manager of Physical Medicine and Rehabilitation, for approval. She then creates an illustrated flyer to post and distribute in advance of the event. On the date of the event she and her assistants, milieu therapists and physical therapy aides, set up the furniture and food. During the event, the Appellant also assigns tasks to her assistants, so that patients are met by a greeter, then seated and served food in their chairs. She has worked with a milieu therapist to develop a floor plan and procedures for group events that discourage misbehavior by patients. She has also created lists of rules for events to share with patients, to remind them of expected behavior in advance. (Testimony of Appellant, Bohnke, Keller; Exhibits App10, App13, App14, R3)
7. The Appellant has rearranged and inventoried the recreation space so that it is clean and well-organized. She keeps track of the supplies for the arts and crafts program and creates a detailed Excel spreadsheet listing all items she needs to have ordered from her supply catalog, subject to her budget allowance. To make review and ordering easy for her supervisor Mr. Bohnke, she includes all needed details, including item numbers, descriptions, catalog page numbers, quantities, unit prices, and the total price. She then forwards the spreadsheet to Mr. Bohnke, who approves it and sends it to the supplier. (Testimony of Appellant, Bohnke; Exhibits App12, R4)
8. When the Appellant was first hired in 1999, she was not a Certified Therapeutic Recreation

Specialist (CTRS). The job requirements on her Form 30, and on the job listing, however, stated that “Certification/license strongly preferred.” After starting in her position, the Appellant began on-line studies and was tutored and supervised by a CTRS at a hospital in order to gain the qualifications to receive her CTRS. She received her CTRS certification in 2005. (Exhibits App2, R1, R13, R18; Testimony of Appellant, McCormack)

9. For her first one or two years in her position, from approximately 1999-2000, the Appellant was supervised by a Program Coordinator III, a woman who recently had been hired to create a recreational therapy department. Prior to that time, recreational services at the Shattuck had been provided to mostly geriatric patients, with limited activities, such as knitting or going out to lunch. The new PC III held the functional title of Director of Recreational Therapy and was involved in designing the recreation therapy program and hiring staff. This PC III supervised two recreational therapists (including Appellant) and a recreation therapy aide. Within approximately two years, however, the PC III resigned. Due to budget limitations, the position of Director of Recreation Therapy was eliminated and, in approximately 2000, supervision of the recreation therapy department was reassigned to the manager of occupational therapy. (Testimony of Tricarico, Appellant; Exhibits App2, R3, R13)

10. In 2015, an Early Retirement Incentive Program (ERIP) was offered to state employees. Both the other recreational therapist and the recreational therapy aide took early retirement, leaving the Appellant as the only employee in the recreational therapy department. Additionally, the then-Director of Rehabilitation and the then-Director of Occupational Therapy both took early retirement. All these departures left the Appellant with more work running groups and functions. She had no second recreational therapist or aide to help with

groups and had to ask the Milieu Therapy department and the Physical Therapy department to provide staff to assist her. When no extra assistance was available, the Appellant sometimes ran groups of difficult patients on her own. She also had to take on most of the work required to plan and hold functions, which had previously been done by the other recreation therapist and the rehabilitation director. (Testimony of Tricarico, Keller, Appellant; Exhibits R3, R4)

11. From 2016 to 2017, the Appellant participated in a short-lived program at the Shattuck Hospital for substance use recovery, called “Paving the Way.” The Appellant continued to provide activities such as arts and crafts, but also provided yoga, meditation, and massage and led recovery discussions. She was told she needed a Massachusetts massage license, as well as her existing national and New Hampshire licenses, so she obtained that license. Part of the massage the Appellant provided during this program was one-on-one craniosacral massage. These complementary therapies were provided to help patients with substance use disorder learn other ways to relieve stress and adopt a healthier lifestyle. (Testimony of Appellant, Armstrong, Bohnke; Exhibits R3, App10)
12. Beginning in approximately 2016, the Appellant began expressing concern to her new supervisor, Mr. Bohnke, that her duties and workload had increased significantly since the departure of the other two people in the recreation therapy department and the departure of the occupational and physical therapy directors who had also assisted with recreation. She also expressed her belief that her provision of complementary therapies was not covered by the duties on her Form 30 job description. She sought to receive some change in her title and pay to reflect the additional work she was performing, although she did not file a request for reclassification. Mr. Bohnke considered the Appellant’s request and told her that he did not

agree that it supported a new title. Around the same time, in conjunction with the Appellant's participation in the Paving the Way program, the Appellant's Form 30 was amended to include meditation, Reiki, and other "recreational activities to promote a healthy environment." Those duties were later removed from the Appellant's 2018 Form 30, after the Paving the Way program was discontinued. (Testimony of Appellant, Bohnke; Exhibit R13)

13. The Appellant has consistently received evaluations of "meets" expectations on her EPRS forms. Former employees of the Shattuck Hospital who worked with the Appellant praised her as an "incredible advocate" and an "exceptional therapist," who was known to the staff as going "above and beyond" to help difficult patients. (Testimony of Armstrong, Tricarico; Exhibits R13, App2)
14. The Appellant has no direct reports and has never had any direct reports. She does not supervise any other employees, although she provides temporary functional supervision to the physical therapy aides and milieu therapists when they assist her with groups and functions. (Testimony of Appellant, Bohnke)
15. The title "Director," as used within the agencies under the Executive Office of Health and Human Services, is a functional title reserved for management positions. Within EOHHS, only two facilities have directors of recreational therapy. The Pappas Rehabilitation Hospital for Children in Canton (formerly the Massachusetts Hospital School) has a Director of Recreation, Athletics, and Community Programs who is an Administrator IV. That Director has four direct reports, including coordinators of aquatics, athletics, and community and summer programs, as well as an administrative assistant. Tewksbury Hospital has a Recreational Therapist Supervisor, who is a Recreation Therapist III, who has nine direct

- reports, including eight recreation therapists and one music therapist. (Exhibits B, D, E)
16. A sample Form 30 for a Program Coordinator III at the Shattuck Hospital, the Superintendent of Buildings and Grounds, lists multiple direct reporting staff within nine categories. (Exhibit F)
 17. On October 7, 2019, the Appellant filed a Classification Appeal with the human resources unit of the Executive Office of Health and Human Services, within which DPH is located. She claimed that she was misclassified as an RT III and was performing the duties of a PC III. (Exhibit R1; testimony of Smey, Bohnke)
 18. In support of her appeal, the Appellant filed her Interview Guide on January 22, 2020. Both in her Interview Guide and in a revised resume she attached to her appeal, the Appellant listed her position as “Acting Therapeutic Recreation Director.” (Exhibits R1, R3; Testimony of Smey).
 19. Daniella Floru, M.D., Acting Chief Medical Officer and Medical Director of Rehabilitation Services for the Shattuck Hospital, signed an Audit Decision that included several clarifications of facts included in the Appellant’s Interview Guide. The clarifications were prepared at Dr. Floru’s request by the Appellant’s supervisor, Nathan Bohnke, Manager of Physical Medicine and Rehabilitation at Shattuck Hospital. One clarification stated that the Appellant does not hold the title of Acting Recreational Director, a title which does not exist in the department. (Exhibit R4, R14; Testimony of Smey, Bohnke, Appellant)
 20. The Appellant later explained that she was not holding herself out to have that title, but had used it in her classification appeal to describe her duties. (Testimony of Appellant)
 21. On February 7, 2020, Cindie Smey, Classification and Compensation Analyst at the Office of Human Resources, Executive Office of Health and Human Services, wrote to the Appellant

that her appeal to be reclassified from RT III to PC III had been denied. She informed the Appellant of her right to appeal to Commonwealth's Human Resources Division (HRD).

(Exhibits R5, R6)

22. On March 10, 2020, the Appellant filed her appeal with HRD. (Stipulation)

23. On May 14, 2020, LaToya Odlum, Personnel Analyst in HRD's Classification and

Compensation Unit, wrote to the Appellant to notify her that her appeal had been denied by HRD because her duties did not warrant reallocation of her position. Ms. Odlum provided the Appellant with appeal rights and instructions. (Exhibit R9)

24. On June 9, 2020, the Appellant appealed HRD's decision to the Civil Service Commission.

(Stipulation)

25. The duties of a Recreation Therapist III are set out in the Classification Specification for the

Recreation Therapist series. The Classification Specification states that the RT III position is the "second-level supervisory job in this series." (Exhibit R11)

26. The series Summary describes the function of a Recreation Therapist as follows:

Incumbents of positions in this series develop individual therapeutic goals and objectives for clients and inmates; plan and organize recreational, social, instruction or special activities; recommend use of recreational areas; motivate clients and inmates to participate in recreational activities; conduct training sessions for agency personnel, clients and inmates in such areas as types of services available and new treatment techniques; determine activities for recreational programs; requisition supplies and equipment; enforce rules and regulations; and perform related work as required.

The basic purpose of this work is to meet therapeutic objectives and goals for clients and inmates through participation in individual and/or group activities or sports in accordance with their needs and capabilities.

(Exhibit R11)

27. The RT Classification Specification lists the following under "Examples of duties common to all levels in series":

1. Develops individual client therapeutic goals and objectives for clients and inmates by identifying those which require individual attention; by consulting with and providing feedback to institutional or professional staff in developing, implementing or evaluating individual or group programs; by evaluating individual participation in developmental programs through observation and review of case history to meet the specific needs of clients and inmates.
2. Plans and organizes recreational, social, instructional or special activities by conferring with administrative staff to obtain approval of and funding for new or ongoing programs and activities; by evaluating clients/inmates to determine their recreational needs and interests; by determining which clients/inmates will participate in recreational activities or teams; by arranging transportation and field trips; by accompanying clients/inmates on outings; by supervising group activities such as beano games, tournaments, etc. to teach clients/inmates to cooperate with others through participation in group activities.
3. Chooses recreational programs for use in available areas by evaluating the condition of recreational area, sport fields or facilities and by evaluating existing programs and client/inmate needs to adapt recreation and physical education programs to meet client/inmate capabilities and needs of the population.
4. Motivates clients/inmates to participate in recreational activities through education and counseling on physical fitness and the value of leisure activities; develops and implements physical education or recreation programs for those functioning at various and/or similar levels of impairment.
5. Conducts training and briefing sessions for clients/inmates and agency personnel to inform of types of services and treatment available and to give instructions for team sports, crafts or other activities.
6. Requisitions supplies and equipment by determining operational inventory and supply needs.
7. Enforces the rules, regulations and policies of recreational areas by overseeing the activities of those engaged in recreational activities and by mediating disputes between participants.
8. Maintains attendance records, progress and classification reports and records of goals and objectives for clients and inmates.
9. Participates in staff or interdisciplinary team meetings, seminars and professional development conferences and workshops.
10. Assists clients/inmates in developing relaxation techniques, body awareness, spatial relationships, body image understanding and gross and fine motor skills.

(Exhibit R11)

28. Under “Differences Between Levels in Series” the RT Classification Specification states that those in levels RT II and RT III perform the following duties:

Recreation Therapist II:

1. Develop and implement new and improved treatment plans and programs for clients/inmates by selecting recreation activities to achieve therapeutic objectives.
2. Schedule staff to ensure adequate and continuous client/inmate coverage.
3. Coordinate and staff special program areas such as horseback riding, aquatics, camp and vacation activities, etc.

Recreation Therapist III

1. Direct a project or program which encompasses several interrelated functions by overseeing recreational activities for clients from a number of units, by recruiting volunteers, by overseeing clients/inmates engaged in recreational activities to better serve clients and to ensure compliance with department rules and regulations.
2. Conduct and/or participate in staff or interdisciplinary team meetings to formulate and review programs and/or treatment plans for clients.
3. Inspect recreational areas and facilities for compliance with safety standards and to determine area and facility maintenance needs.
4. Determine purchasing priorities within budget guidelines.
5. Interview candidates for permanent agency positions, train employees on the job and conduct evaluation/appraisal of subordinates.
6. Work with other agencies, businesses, groups, etc. to solicit financial or in-kind contributions (equipment, manpower, etc.).
7. Prepare statistical reports.

29. The Classification Specification for Recreation Therapist III lists three additional duties:

Incumbents of positions at this level also:

1. Plan, develop and implement indoor and outdoor physical education, recreation and leisure time activities to develop positive social skills.
2. Prepare reports and summaries of recreational and physical education program, maintain essential records and files of staff and program activities and results.
3. Monitor group activities and staff meetings of physical education and recreation instructors for development and evaluation purposes.

(Exhibit R11)

30. The Classification Specification for RT III also lists the following duties that incumbents may perform, based on assignment:

1. Solicit competition from outside sources for institutional sport teams.

2. Determine what security measures to take in accordance with departmental policy in a crisis situation.
3. Resolve complaints from patrons of recreational areas by investigating circumstances and taking appropriate action.
4. Review recreational sport area reservation requests to determine priority needs for assignment schedules.
5. Provide care and custody to inmates/patients in recreational programs in a correctional facility.
6. Recommend approval for fiscal and maintenance expenditures.
7. Keep accounting records of funds received and review the status of accounts to prevent overspending.
8. Make periodic checks on procedures for receiving and depositing fees, contributions, etc.

(Exhibit R11)

31. Under “Supervision Exercised” the RT Classification Specification provides for those at the RT III level:

Incumbents of positions at this level exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 6-9 direct care therapists or instructors, 6-15 clerical personnel and 6-15 residents working in programs, volunteers, student interns, work study interns and inmates; and indirect supervision (i.e., through an intermediate level supervisor) over 1-5 administrative personnel and 1-5 service workers.

(Exhibit R11)

32. The duties of a Program Coordinator III are set out in the Classification Specification for the Program Coordinator series. The Classification Specification states that the PC III position is the “third-level supervisory job in this series.” (Exhibit R12)

33. The series Summary describes the function of a Program Coordinator as follows:

Incumbents of positions in this series coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required.

The basic purpose of this work is to coordinate, monitor, develop and implement programs for an assigned agency.

(Exhibit R12)

34. The PC Classification Specification lists the following under “Examples of duties common to all levels of the Program Coordinator series”:

1. Coordinates and monitors assigned program activities to ensure effective operations and compliance with established standards.
2. Reviews and analyzes data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives.
3. Provides technical assistance and advice to agency personnel and others concerning assigned programs to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others to provide information concerning assigned agency programs.
5. Maintains liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports.

(Exhibit R12)

35. Under “Differences in Levels in Series” the PC Classification Specification states that those in the following levels, and those in higher levels, perform the following duties:

Program Coordinator II:

1. Provide on-the-job training and orientation for employees.
2. Develop and implement procedures and guidelines to accomplish assigned agency program objectives and goals.
3. Review reports, memoranda, etc. for completeness, accuracy and content.
4. Confer with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation.
5. Evaluate program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed.

Program Coordinator III:

1. Develop and implement standards to be used in program monitoring and/or evaluation.
2. Oversee and monitor activities of the assigned unit.
3. Confer with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of proposed programs.

(Exhibit R12)

36. Under “Supervision Exercised, the PC Classification Specification provides for those at the PC III level:

Incumbents of positions at this level exercise direct supervision (i.e., not through an Intermediate level supervisor) over, assign work to and review the performance of 1-5 professional personnel; and indirect supervision (i.e., through an Intermediate level supervisor) over 6-15 professional, administrative, technical and/or other personnel.

(Exhibit R12)

Legal Standard

Section 49 of G.L. c. 30 provides:

Any manager or employee of the commonwealth objecting to any provision of the classification of his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.

The Appellant has the burden of proving that she is improperly classified. To do so, she must show that she performs the duties of the Program Coordinator III title more than 50% of the time, on a regular basis. E.g., Gaffey v. Dep’t of Revenue, 24 MCSR 380, 381 (2011); Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding that “in order to justify a reclassification, an employee must establish that he is performing the duties encompassed within the higher-level position a majority of the time”). In making this calculation, duties which

fall within both the higher and lower title do not count as “distinguishing duties.” See Lannigan v. Dep’t of Developmental Services, 30 MCSR 494 (2017).

Appellant’s Argument

The Appellant argues that she should be reclassified to Program Coordinator III because she is effectively directing or coordinating the recreational therapy program at the Shattuck Hospital. Her duties include more tasks than those performed by the former Director of Recreational Therapy, a PC III, twenty years ago, and she has at least as many qualifications to manage a recreational therapy program as were held by the former Director.

Although the Appellant does not supervise anyone, she points to the administrative duties she has taken on as the sole recreational therapist at the Shattuck, including organizing and inventorying the recreation department space, creating orders for supplies within her allocated budget, planning group activities and devising furniture arrangements and rules handouts to assist in behavior management, planning large seasonal functions with input from food service and other departments, and working with milieu therapists to coordinate their similar roles of helping patients learn skills to help them transition to the community. She also points out that she provides individualized assistance to persons with disabilities.

The Appellant also argues that her provision of complementary therapies to assist patients, especially those with substance use disorder, to assist with stress reduction, anxiety, and depression, was outside the role of a recreational therapist. She is still providing meditation therapy, despite the termination of the Paving the Way program that included additional therapies.

More generally, the Appellant argues that she has been in the same position, with the same title, since she was hired in 1999, despite taking on many more responsibilities, especially

following the departure of everyone else in her department as a result of the 2015 ERIP. She has also obtained certifications and licenses. A reclassification to PC III would provide her with career progression commensurate with her experience and qualifications.

DPH's Argument

DPH argues that the Appellant has not proven by a preponderance of the evidence that she performs the title-distinguishing duties of a PC III more than 50 percent of the time. To the contrary, Appellant's duties fall squarely within the RT III classification specification, as well as within her Form 30 and EPRS. Most of her time is spent planning and providing group recreational therapy, planning and providing special occasion functions, ordering recreation supplies, and organizing the recreation area. Her planning responsibilities, as well as her actual running of recreational groups and events, are all duties of an RT III. According to the Appellant's supervisor and the EOHHS Classification and Compensation Analyst, 100 percent of the Appellant's duties fall within the duties of a Recreation Therapist.

The Appellant is not performing the duties of a PC III. The former Director of Recreation at the Shattuck Hospital, who was a PC III, had a largely administrative role and did not spend most of her time providing recreation therapy. She was responsible for program design, to expand what had been a very limited recreation therapy program, and her Form 30, as well as the PC III specifications, focused on business-oriented responsibilities such as data analysis, reports, acting as a liaison with state and federal agencies, and providing technical assistance. She hired and supervised staff and oversaw a multi-member department.

That a PC III must include direct supervision of staff was also shown by the example of the Shattuck Hospital's Superintendent of Buildings and Grounds, who supervises multiple employees in several trades. Additionally, recreation therapists in other facilities who have the

title of Director or Supervisor, with titles of Administrator IV and Recreation Therapist III, supervise multiple employees.

Analysis

It is apparent that the Appellant is a hard-working and effective recreational therapist, who goes out of her way to understand and assist her patients, as well as to provide many opportunities for therapeutic recreation to a challenging population. It is also apparent that she has grown into her job, gaining certifications and taking on new duties as her department has shrunk to one person. Nevertheless, the sole issue before the Commission is whether the Appellant has shown that she spends more than 50 percent of her time performing the title-distinguishing duties of a Program Coordinator III. She has not done so.

A PC III is charged with defining the purpose and scope of proposed programs, developing and implementing standards for program evaluation, and overseeing the activities of a unit. Although the Appellant does have administrative responsibilities tied to her provision of recreation therapy, she is not designing a proposed program, determining criteria for program evaluation, or overseeing the activities of a recreation staff. Moreover, her administrative work falls within the duties of a Recreation Therapist, which include planning and organizing recreational activities, requisitioning supplies, enforcing rules, developing and implementing treatment plans and programs, scheduling staff, inspecting recreational areas, determining purchasing priorities within a budget, and recommending approval for expenditures. Where the duties of two titles overlap, they are not distinguishing duties. See Lannigan v. Dep't of Developmental Services, 30 MCSR 494 (2017).

The Appellant's additional duties also fall within her current classification as an RT III. Her work with individual patients who need specialized help due to disabilities falls within the

RT classification's duties to identify clients needing individual attention, to adapt programs to meet client capabilities, and to develop programs for those functioning at various levels of impairment. Her work teaching meditation falls within the RT classification duty to assist clients in developing body relaxation techniques. Although not applicable to this appeal, the massage, yoga, and other complementary therapies that the Appellant was formerly providing are also forms of body relaxation.

Additionally, PC III is a third-level supervisory position, contemplating direct supervision of one to five professional employees and indirect supervision of six to fifteen other personnel. A PC III also must oversee and monitor the duties of an assigned unit, a supervisory duty. Although the Appellant provides temporary functional supervision over milieu therapists and physical therapy aides when they assist her during group activities and social functions, she is not generally in charge of anyone and has no direct reports. By comparison, the Superintendent of Buildings and Grounds, a PC III, has a large number of direct reports.

I recognize that the Appellant holds her current position of Recreation Therapist III, a second-level supervisory position, despite her lack of supervisory responsibilities. In contrast, at least one other RT III at a different hospital does have multiple direct reports. The Appellant's current title, however, is not challenged in this matter, and to the extent that she may be overclassified, at least in terms of supervisory responsibilities, it has been the position of HRD not to penalize an employee by reducing a title as a result of a classification appeal.

I also note that, in terms of career advancement, reclassification is different from promotion. Reclassification requires a showing that most of the employee's current, permanently assigned work falls within the requested position. Promotion, on the other hand, anticipates a prospective move to a new position. See, e.g., Lee v. MassDOT, 34 MCSR 329

(2021).

For all of the above reasons, the Appellant's appeal for a reclassification under Docket No. C-20-094 is hereby *denied*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on July 28, 2022.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Harriet F. Fishman (Appellant)
David A. Markowitz, Esq. (for Respondent)