

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200  
Boston, MA 02114  
(617) 979-1900

Kimberly Gervais,  
*Appellant*

v.

Department of Mental  
Health,  
*Respondent*

**Case No.:** C-24-193

**DECISION**

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA) was charged with conducting a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the assigned DALA Magistrate issued the attached Tentative Decision to the Commission on March 18, 2025, and the parties had thirty days to provide written objections to the Commission. No objections were received in a timely fashion.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate thus making this the Final Decision of the Commission.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, and Stein, Commissioners [McConney]) on May 1, 2025.

Civil Service Commission

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

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 this order or 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:

Kimberly Gervais (Appellant)  
Maria Sullivan, Esq. (for Respondent)  
John DiPietrantonio, Esq. (for Respondent)  
Natalie Monroe, Esq. (Chief Administrative Magistrate, DALA)

## COMMONWEALTH OF MASSACHUSETTS

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Kimberly Gervais,**  
Appellant,

No. CS-25-0027  
(Civil Service Commission No. C-24-193)

v.

Dated: March 18, 2025

**Department of Mental Health,**  
Respondent.

### **Appearances:**

For Appellant: Kimberly Gervais (pro se)

For Respondent: Maria Sullivan, Esq., John DiPietrantonio, Esq.

### **Administrative Magistrate:**

Yakov Malkiel

## SUMMARY OF TENTATIVE DECISION

The appellant employee is not entitled to a reclassification of her position from level I to level II in the mental health coordinator series. The evidence does not establish that she devotes a majority of her time to the level-distinguishing duties of the level II classification, which revolve around overseeing other employees, delivering “specialized” services, and participating in community or statewide outreach efforts.

## TENTATIVE DECISION

Appellant Kimberly Gervais is an employee of respondent the Department of Mental Health (department). Ms. Gervais appeals from a decision of the Human Resources Division (HRD) denying her request for reclassification under G.L. c. 30, § 49. The Civil Service Commission (commission) referred the matter to the Division of Administrative Law Appeals for an evidentiary hearing, which I held on March 13, 2025. I admitted into evidence exhibits marked 1-12. Ms. Gervais testified on her own behalf. The department called state employees Mary Connelly and Sue Plasse. At the parties’ request, I heard closing arguments in person.

### **Facts**

I find the following facts.

1. Ms. Gervais works as a peer specialist at the Corrigan Mental Health Center (Corrigan). She has been a certified peer specialist since 2017. Peer specialists draw on personal experiences with mental health issues and recovery to support their clients. (Gervais<sup>1</sup>; Plasse; exhibits 3, 4, 6, 10.)

2. Ms. Gervais is assigned to the program at Corrigan known as Adult Community Clinical Services (ACCS). The clients of that program live at home or in group settings. They suffer from mental health issues, substance use issues, or both. The ACCS team works to identify and address their clients' practical challenges, such as lack of access to housing or reluctance to undergo treatment. The ACCS team does not include a psychiatrist, and its work tackles clinical matters only to a limited degree. (Gervais; Plasse; exhibits 6, 10.)

3. Ms. Gervais carries a caseload of approximately ten clients. She spends most of her working hours seeing them individually. She also moderates weekly group meetings. The individual and group sessions together take up approximately 80% of Ms. Gervais's time. She also prepares paperwork, participates in staff meetings, and works with the rest of the ACCS team to formulate an individual action plan (IAP) for each client. Ms. Gervais temporarily supervised another employee for approximately two months. She is not expected to perform community outreach on a regular basis. (Gervais; Plasse; exhibits 1, 10, 12.)

4. HRD has published a classification specification for the mental health coordinator series. The specification covers levels numbered I-III. Level I employees are expected to counsel clients, provide peer support to them, run support groups, advocate on behalf of clients, and participate in joint decision making with other staff members. Level II employees are expected to perform the following extra duties: supervising the work of level I employees,

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<sup>1</sup> The testimony is cited by witness name.

providing “specialized and/or advanced” consultation and advocacy services, designing and delivering training to other peer specialists, and participating in “local, community-based and/or statewide advisory councils and advocacy groups.” (Exhibit 11.)

5. Ms. Gervais is classified as a mental health coordinator I. The job description applicable to her position (form 30) is consistent with HRD’s classification specification: her stated duties involve providing “one-to-one peer support,” running sessions in a “group format,” sharing “personal recovery experiences,” advocating for clients, helping them to develop coping skills, and “assisting in the development and implementation of IAPs.” Ms. Gervais’s performance review forms list similar duties for her. She views the form 30 and the performance review forms as fair depictions of her role. (Gervais; exhibits 4, 8, 9.)

6. Corrigan is one of three facilities in the department’s southeast area. All told, the southeast area employs fourteen peer specialists. They are all classified as mental health coordinators: ten in level I, four in level II. Three of the level II employees shoulder supervision-adjacent responsibilities: they provide guidance to level I colleagues and liaise between those colleagues and the department’s management group. (Plasse.)

7. The fourth level II employee has no supervisory responsibilities. She is assigned to a different program at Corrigan known as Coordinated Specialty Care (CSC). The CSC team is geared specifically toward clients aged 16-26 who have suffered a first psychotic episode. The team adheres to a detailed written program known as Navigate. The team includes a psychiatrist and spends a significant portion of its work on clinical treatment. Team members undergo substantial training both when they join the team and regularly after that. They are expected to be familiar with the clinical aspects of the program. (Plasse; exhibit 5.)

8. It is fair to conclude that the mental health coordinator II assigned to the CSC team provides “specialized,” “advanced” services rooted in extra expertise. In addition, she belongs to a state-level committee and is responsible for regular community outreach. It is also fair to recognize that these aspects of the job are denoted by only a few words of the employee’s form 30, which otherwise is extremely similar to Ms. Gervais’s. (Plasse; exhibits 4, 5.)

9. In October 2023, Ms. Gervais asked the department to reclassify her position from level I to level II. After collecting pertinent information, the department declined. HRD denied Ms. Gervais’s ensuing appeal, and the current appeal followed. (Connelly; exhibits 2, 3.)

### **Analysis**

One of the statutory duties assigned to HRD is to “administer . . . an office and position classification plan.” G.L. c. 30, § 45. Each position in the plan corresponds to a statutorily specified pay amount. *Id.* § 46. Employees who believe that their positions are misclassified may seek relief first before HRD and then before the commission. *Id.* § 49.

The appealing employee bears the burden of proving that she is improperly classified. To discharge that burden, the employee must show that she spends the majority of her working hours on the “level-distinguishing duties” of the classification she seeks. *See Thompson v. Division of Ins.*, 29 MCSR 565 (2016); *Gaffey v. Department of Rev.*, 24 MCSR 380 (2011).

The concept of level-distinguishing duties recognizes that various jobs inevitably overlap. An employee’s work on duties that are included both within her current position and within the one she seeks is not a sign of misclassification. The analysis focuses on the duties that are assigned to the higher classification only. *See Saunders v. Department of Labor Stds.*, 32 MSCR 413 (2019); *Lannigan v. Department of Dev. Servs.*, 30 MCSR 494 (2017).

In typical cases, the level-distinguishing duties of the pertinent positions are drawn from

HRD's classification specifications. *See Strong v. Department of Pub. Health*, 37 MCSR 192 (2024). That approach may need to be modified where outdated classification specifications are no longer consistent with practices on the ground. *See id.* An adjustment of that nature is not warranted here. The level II employees in Ms. Gervais's peer group all perform at least some of the level-distinguishing duties described by HRD: they offer guidance or oversight to other peer specialists, deliver specialized or advanced services to clients, participate in community or statewide outreach efforts, or some combination of these duties.

Ms. Gervais has not shown that she spends the majority of her time on the level-distinguishing duties of the level II classification. The consulting and advocacy services that she delivers to her clients are important and high quality; but they involve the same degree of specialization as the services offered by Ms. Gervais's fellow level I employees. Ms. Gervais is not regularly required to perform community or statewide outreach efforts. And her supervision of another employee was temporary. *See Dell'Anno v. Department of Rev.*, 33 MCSR 8 (2020); *Magno v. Department of Rev.*, 36 MCSR 385 (2023).

Ms. Gervais is a valuable employee. Her frustration might have been prevented if the form 30 of her colleague in the CSC program had been drafted with greater emphasis on the distinctions between the level I and II classifications. Nevertheless, the evidence presented does not show Ms. Gervais to be misclassified.

### **Conclusion**

Subject to review by the commission, the department's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate