

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293

KRISTEN LANNIGAN,
Appellant

CASE NO: C-16-168

v.

DEPARTMENT OF
DEVELOPMENTAL SERVICES,
Respondent

Appearance for Appellant:

Alfred A. Gray, Jr., Esq.
Amy M. McCallen, Esq.
Rubin & Rudman LLP
53 State Street, 15th Floor
Boston, MA 02109

Appearance for Respondent:

Mark P. Detwiler, Esq.
Labor Counsel
Human Resources Division
One Ashburton Place, Rm. 211
Boston, MA 02108

Commissioner:

Paul M. Stein

DECISION

The Appellant, Kristen Lannigan, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49, from the denial of a request to reclassify her position of Administrative Assistant II (AA-II) to a Program Coordinator II (PC-II) at the Department of Developmental Services (DDS), formerly known as the Department of Mental Retardation, within the Executive Office of Health & Human Services (EOHHS). The Commission held a pre-hearing conference at the UMass School of Law, Dartmouth, on November 29, 2016 and held a full evidentiary hearing at that location on June 8, 2017 and July 7, 2017.¹ The hearing was digitally recorded.² Thirty-one exhibits (Exhs.1, 1A, 2 through 30) were introduced in evidence and HRD submitted

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c.30,§49, or Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff becomes obligated to use the copy of the CD provided to the parties to supply the court with the written transcript of the 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.

two post-hearing exhibits (PHExh.31 & PHExh.32).³ On September 19, 2017, each party filed post-hearing submissions.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DDS:

- Tracy Daigneau, DDS Southeast Regional Eligibility Coordinator
- Beth-Ann Litchfield, EOHHS Employment ^ Staffing Supervisor
- Rick O.Meara, DDS Southeast Regional Director

Called by the Appellant:

- Tonia Zarella, former DDS Southeast Region Eligibility & Intake unit manager (by subpoena)
- Gerald Scott, retired DDS Central Office manager
- Kristen Lannigan, DDS Administrative Assistant II, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Kristen Lannigan, began employment with the DDS in 1993 as a Clerk III and became an AA-II in 1996. Her initial assignment as AA-II was as the Commissioner's Administrative Assistant in the Boston Central Office, a job she performed until until 2013, when she transferred to her current position of AA-II in the Intake and Eligibility Unit of the Southeast Regional Office. (*Exhs. 1A & 9; Testimony of Appellant*)

2. DDS is a state agency, headed by a Commissioner, within the EOHHS Secretariat. DDS provides services to persons with intellectual and developmental disabilities through a variety of programs (counselling, day programs, etc.) from birth to end of life. DDS operates a central office (Boston) and regional offices across the Commonwealth. In order to receive DDS services, an applicant must be qualified to be admitted to care. EOHHS provides HR support to agencies within its umbrella, including DDS. (*Testimony of Appellant, Litchfield & Daigneau*)

³ Exh.20 is the first page of a document that has been substantially redacted and maintained as a Confidential Exhibit pursuant to Commission procedure and the request received by the Commission from DSS.. See Letter dated 8/3/2017 to Commission from DDS Privacy Officer and Commission's reply dated August 4, 2017.

3. While assigned to the Boston Central Office, Ms. Lannigan's job was to provide administrative support to the DDS Commission, the Deputy Commissioner and other senior staff. Her day-to-day core duties included tracking and forwarding mail, correspondence and telephone calls, maintaining the filing system, typing reports, administering survey and collecting of information as required, conference support, collecting and submitting payroll records for the Commissioner's Office, overseeing the Commissioner's office supply budget and ordering supplies. She also provided support to other units as needed, including assistance to the Legal and Investigative Unit in investigative appeals, serving as liaisons for CORI checks, and providing support to the DDS Mentoring Program Director for the DDS Urban Youth Collaborative Program (UYCP) and the DDS Mentoring Program. (*Exhs. 1A, 8 & 9; Testimony of Appellant & Scott*)

4. The UYCP was established in 1992 for the purpose of introducing urban youth to a career path in the health and human services field by providing internships in various roles with DDS leading to eventual permanent employment with the agency. Begun as a summer internship program, the UYCP soon evolved into a year-round program to meet the desires of some students to work throughout the year. (*Exhs. 8; Testimony of Appellant & Scott*)

5. The Mentoring Program was established in 2011. This program pairs senior DDS employees with junior staff to mentor them in achieving their career goals. It also runs year-round. (*Testimony of Appellant & Scott*)

6. Since inception, the UYCP and the Mentoring Program were managed through the DDS Central Office by Gerald Scott, who held the management position of Mentoring Program Director. Now retired, Mr. Scott continues to manage these programs for DDS on a part-time basis. (*Testimony of Scott*)

7. In 2009, Ms. Lannigan was assigned to assist Mr. Scott with the UYCP. Working under his direction, she provided administrative support for the program. Her responsibility include such duties as coordinating and scheduling meetings with UYPC Program Coordinators;⁴ preparing an agenda and coordinating the “Commissioner’s Tour” activities with Program Coordinators, Appointing Authorities and legislators; maintaining UYCP rosters and matching the interns with their respective legislators; planning and organizing the activities for Annual Retreat day and the Annual State House UYCP event, including creating certificates given to all interns, creating an Annual State House brochure, reserving Gardner Auditorium and the State House Grand Staircase and obtaining a legislative sponsor for the UYCP group picture; assisting in determining the annual award recipients; assisting in the drafting, coordinating and program surveys and program reports from data provided by program participants; providing technical assistance to Program Coordinators, DDS managers and Senior Staff; and creating press releases and disseminating information to internal and external contacts, including legislators, the public and social media. (*Exhs. 1A, ,4, 8, 16, 17, 23 through 26 & 28; Testimony of Appellant & Scott*)

8. Ms. Lannigan’s work with the Mentoring Program includes similar support of the Mentoring Program Director. Working under his direction, Ms. Lannigan creates and maintains records of Mentoring Program participants; administers surveys collects information and provides technical assistance on current and past Mentoring Participants to submit to the Mentoring Program Director, Recruitment Director and Commissioner as requested; assists with the Annual Mentoring Conference; and communicates with program participants, Recruitment Director and various DDS staff on meetings, agendas, and policies and procedures. (*Exhs. 1A, 4, 8, 9, 16 & 17; Testimony of Appellant & Scott*)

⁴ The Program Coordinators are DDS managers or staff at DDS vendor-operated facilities, who provide the direct oversight and mentoring of the interns assigned to them. (Testimony of Appellant & Scott)

9. In her 2013 annual Employee Performance Review (EPRS), prepared by her direct supervisor in the Central Office and approved by the DDS Commissioner, Ms. Lannigan received the top overall rating of “Exceeds/Excels.” Her supervisor’s comments, include, in part:

“Kristen continues to handle her workload and responsibilities efficiently and effectively. She manages schedules requests for the Deputy Commissioner and arranges meeting space and/or transportation when necessary. She organized the successful completion of the Annual State House [event] for the Urban Youth Collaborative Program and provided admin support to the coordinator.”

(Exh. 8)

10. After her transfer to the Southeast Region, Ms. Lannigan was initially supervised directly by Tonia Zarella, Program Manager V, who held the position of Director of Family Support and Intake and Eligibility Manager (aka REM) until the end of 2016. Ms. Zarella had been in that position for approximately six months when Ms. Lannigan transferred into the unit. The unit includes a Regional Eligibility Team (RET) consisting of one psychologist aka REP (Psychologist V), a supervisory position of regional Eligibility Coordinator, aka REC (HSC C), then vacant, and four Intake & Eligibility Specialists (HBC A/B). Ms. Zarella reported to the Southeast Regional Director, Richard J. O’Meara (Admin X). She became Ms. Lannigan’s indirect supervisor in September 2014, when the position of Intake and Eligibility Supervisor (REC) was filled by Tracy Daigneau (HSC C), who has served as Ms. Lannigan’s direct supervisor since then. *(Exhs. 4, 5, 17 & 18; Testimony of Appellant, Zarella & O’Meara)*

11. The Southeast Region RET processes hundreds of applications a year from individuals looking to receive DDS services. The RET’s Intake & Eligibility Specialists are responsible for assisting in the completion of the application, conducting intake interviews and obtaining any additional data the RET’s psychologist needs to make an eligibility determination. The psychologist is responsible to make the final determination whether an applicant is eligible for DDS services. *(Testimony of Daigneau)*

12. The Southeast Region RET also processes so-called Chapter 688 Referrals for special needs students in school districts within the region. Chapter 688 (aka the "Turning 22" law) was enacted in 1984 to provide a planning process for young adults with severe disabilities as they leave special education and transition into the adult service system. Upon receipt of a Chapter 688 Referral Form, an adult services application form is sent to the family to be completed and returned for processing through the application process. (*Exh. 20 & 21; Testimony of Daigneau*)⁵

13. Applicants found not eligible are entitled to appeal the decision for a "Fair Hearing". As part of the appeal process, "Informal Conferences" are held once a month with the applicant, the assigned Eligibility Specialist and the attorneys involved. (*Testimony of Daigneau*)

14. As the Southeast Region RET Administrative Assistant, Ms. Lannigan's day-to-day duties involved administrative and clerical support to the unit; processing Chapter 688 referrals and eligibility applications; maintaining files and other confidential information and documents; tracking RET staff schedules and case assignments; answering and responding to routine telephone inquiries and directing others to the appropriate staff member; establishing work procedures in cooperation with others for approval by the RET manager; in the absence of the REC, compiling/preparing statistical information, standardized forms and statewide reports (now performed by Mr. Daigneau); administrative/clerical support to the Psychologist; administering the Informal Conference process and assisting RET management and General Counsel's office in scheduling and preparing for Fair Hearings; and oversight of the RET's supply budget. Ms. Lannigan assures that the 688 Referral applications are complete, but she does not make the eligibility determinations, which is the purview of the RET psychologist. (*Exhs. 1A, 4, 9, 10, 16 through 22 & 28; Testimony of Appellant, Zarella, Daigneau & O'Meara*)

⁵ The Chapter 688 referral process is to be distinguished from the so-called "17-year-Old Letter Project", now discontinued, which provided notice of a recipient's impending 18th birthday. (*Exhs. 4, 17, 18 & 21*)

15. In addition to her core duties as the Administrative Assistant to the RET unit, at the request of Mr. Scott, and with Mr. O’Meara’s approval, Ms. Lannigan continued to provide support to the UYCP and Mentoring Program, under Mr. Scott’s direct supervision. Ms. Lannigan performs much of this work through telephone conferences, correspondence and occasional in-person meetings with Mr. Scott, DDS and outside provider program coordinators, and the program participants, mentors and mentees. Ms. Lannigan’s superiors in the Southeast Region had a general familiarity with Ms. Lannigan’s work on the UYCP and Mentoring Programs and they remained an enumerated duty on her EPRS until 2016, but she did not receive any direct supervision from any of them concerning that work, for which they deemed she was “volunteering” her time. (*Exh. 4, 15, 17 through 19, 28 & 29; Testimony of Appellant, Scott, Zarella, Daigneau & O’Meara*)

16. Mr. Daigneau, whose office is adjacent to Ms. Lannigan’s, observed that Ms. Lannigan spends about 10 hours per week performing duties associated with processing Chapter 688 Referral applications, entering data into the DDS database [Meditech] and organizing/closing non-eligible files. He estimated that she devotes about 2 hours per week to her clerical duties (handling phones, mail distribution and photocopying as needed) and her duties with the Fair Hearing process takes several hours a month. (*Testimony of Daigneau*).

17. As to Ms. Lannigan’s work on UYCP and Mentoring Programs, Mr. Daigneau said that, at the height of the activity on those projects (summer for UYCP and winter for the Mentoring Program), Ms. Lannigan spent about 5 hours per week on those projects. Mr. Scott estimated that Ms. Lannigan devoted as much as 30 hours per week on them. (*Testimony of Daigneau*)⁶

⁶ The significant discrepancy in estimates of Ms. Lannigan’s time on the UYCP and Mentoring Program by her two direct supervisors is likely due to the fact that much of that work took place off-site and before and after regular working hours, as well as the fact that neither supervisor observed all the work she performed. (*Exh., 1A & 28; Testimony of Appellant; Daigneau & Scott*)

18. Ms. Lannigan submitted a personal daily work log for the 87 days she worked from January through July 2017. According her log, she recorded her work approximately as follows:

<u>TASK</u>	<u>DAYS</u>	<u>HOURS</u>	<u>AVG HRS/DAY</u>	<u>PERCENT (7.5 HR DAY)</u>
688	40	84.75	0.75	10.0%
UYCP	60	173.50	2.00	26.7%
Mentoring	34	62.25	1.00	13.3%
Other	-0-	-0-	-0-	-0-
TOTAL	87	320.50	3.75	50.0%

These estimates are roughly equivalent to estimates Ms. Lannigan provided for those tasks in her reclassification request: 688 Referrals (20%), UYCP (20%) and Mentoring (10%). In addition,, she also estimated that she spent the remainder of her time (40%) providing “technical assistance and advice” to the Regional Eligibility Manager (REM), Regional Eligibility Coordinator (REC) and the Regional Eligibility Psychologist (REP). (*Exhs. 1A & 28; Testimony of Appellant*)

19. Ms. Lannigan’s EPRS evaluations under Ms. Zarella and Ms. Daigneau consistently assessed her performance as the Administrative Assistant to the RET favorably, with “Meets” and “Exceeds” ratings. Among the supervisor’s comments are the following:

2014-2015 EPRS

- Kristen provides administrative support to the RET. RFA’s often go directly to Kristin and she send out applications in a timely manner.
- Kristen communicates messages to I & E personnel in a timely and accurate manner. Kristin checks the Hotline on a daily basis and forwards all calls to be returned to the appropriate specialist, REC, or REM,
- Kristen enters received applications into [DDS’s database] and forwards to REC for assignment. Kristen holds on to those cases that are missing vital information, reaching out to applicant/family as necessary. Kristen consults with REC . . . to determine if we should move forward
- Kristen has received kudos for submitting data on or before the due date . . .
- Kristen mails applications upon receipt of the 688 and RFA. She continues to track 688 referrals, ensuring that liaisons and appropriate central office personnel receive information in a timely manner.
- Kristen . . . recently developed a family satisfaction survey for E and NE to assist with compiling feedback related to our process, specialists, etc.
- Kristen did an excellent job organizing and coordinating activities for the UYCP. The UYCP continues to run smoothly because of Kristen’s strong organizational skills . . . and commitment . . . that the interns and program receive the best possible support. . .

- Kristen manages all of the data on a thorough and consistent manner on the [Mentoring Program], informs Mentors and Mentees of upcoming events and provides technical assistance to all interested parties.

2015-2016 EPRS

- Kristen’s interactions with applicants and/or families is respectful and professional, she answers routine questions and appropriately forwards calls to REC when further information is required. Kristen is professional with personnel, and directs any issues to her supervisor or appropriate personnel. Kristen is on task with minimal time with interactions not related to primary responsibility.
- Kristen labels and forwards applications in a timely manner . . . Kristen continues to process applications that previously would have been held due to not having required documentation. Kristen consistently updates REC with regard to potential issues. . . .
- Kristen takes detailed messages and refers to the appropriate person. Kristen continues to cover agency switchboard. . . .
- Kristen continues to type eligibility determination reports and enters into Meditech [DDS database] in a timely and accurate manner for REP.
- Kristen does well tracking 688 RFA’s and referral packets. . . .
- Schedule informal conferences and keeps REM/REC/REP informed of times, dates, and changes.

(Exhs. 4 & 17 through 19)

20. Ms. Lannigan has never, and currently does not, have subordinates, i.e., employees who directly or indirectly reported to her or whom she hired, supervised and/or evaluated. *(Exhs. 1A, 5, 10 & 16; Testimony of Appellant, Zarrella, Daigneau & O’Meara)*

21. In or about July 2014, Ms. Lannigan initiated a request, through her supervisors, to “upgrade” her position from an Administrative Assistant II to a Program Coordinator II (PC-II). After initial feedback, the original request was revised and resubmitted in or about August 2014. *(Exhs. 1A & 11; Testimony of Appellant, Zarrella & O’Meara)*

22. By letter dated October 2, 2014 from EOHHS human resources officer Karen St. Germaine (now retired), Ms. Lannigan’s request was denied. *(Exh. 1A; Testimony of Litchfield)*

23. In April 2015, Ms. Lannigan submitted a new request for reclassification of her job from the AA-II position to a PC-II position, which incorporated the documents submitted in support of the 2014 request, as well as the required “Interview Guide”(detailing her duties and the basis for

her reclassification request as the Appellant understood them). The 2015 reclassification request was assigned to Beth-Ann Litchfield, the EEOHHS Central Office Employment & Staffing Supervisor. (*Exh. 1A; Testimony of Litchfield*)

24. Ms. Litchfield reviewed the documents submitted in support of Ms. Lannigan's request, as well as the classification specifications for the AA-II and PC-II job titles, the DDS Southeast Region organizational chart, the Form 30s for Ms. Lannigan's position, her resume and her EPRSs. She solicited the opinion of the Southeast Regional Director, Mr. O'Meara but she did not reach out to Ms. Lannigan or to any of Ms. Lannigan's direct supervisors, i.e., Ms. Zarella, Ms. Daigneau or Mr. Scott. (*Exhs. 1A, 4, 5, 8 through 10, 15 through 19 & 28; Testimony of Appellant, Litchfield, Zarella, Daigneau & O'Meara*)

25. Based on Ms. Litchfield's review, EOHHS Director of Employment Services Jill Sampson informed Ms. Lannigan that the reclassification request was denied. and followed up with a letter to that effect dated August 19, 2016. (*Exh. 6; Testimony of Appellant & Litchfield*)

26. Ms. Lannigan appealed EOHHS's denial to the Massachusetts Human Resources Division (HRD). By letter dated September 20, 2016, Ms. Lannigan was informed that HRD concurred with EOHHS decision to deny her reclassification request. On January 13, 2017, Ms. Lannigan duly appealed to the Commission. (*Exh. 7; Claim of Appeal*)

27. The position of AA-II falls within the Administrative Assistant Series of the HRD Class Specifications, approved in May 1987. There are two job titles in the Series; AA-I and AA-II. :

“Incumbents in this series monitor assigned unit activities; confer with agency staff; maintain liaison with others; review and analyze data concerning assigned unit activities; prepare reports; respond to inquiries; compile data; and perform related work as required. The basic purpose of this work is to provide administrative support in connection with assigned unit activities such as office services, records control, agency personnel services, etc.

(*Exh. 3*) (*emphasis added*)

28. The Class Specification provides these examples of the duties performed by an AA-II:

- Monitors assigned unit activities to ensure effective operations in compliance with established standards.
- Confers with agency staff in order to exchange information, to coordinate efforts and to obtain information concerning agency program and activities.
- Maintains liaison with various local, state and federal agencies and others to exchange information, to resolve problems and to coordinate activities.
- Reviews and analyzes data concerning assigned unit activities in order to improve work methods, determine progress, revise procedures and/or to provide information to superiors.
- Prepares reports concerning assigned unit activities in order to furnish required information and make recommendations concerning procedures, programs and activities.
- Responds to inquiries in order to provide information concerning assigned unit activities.
- Compose letters and review documents for completeness, content and compliance with regulatory and legal standards.
- Provide on-the-job training and orientation for employees.
- Oversee and coordinate the activities of subordinates in connection with the preparation and maintenance of reports, records and documents.

According to the Class Specification, an AA-II exercises direct supervision over, assigns work to and reviews the performance of a staff of 1-5 professional/technical employees and 1-5 clerical staff; and indirectly supervises (i.e., through an intermediate level supervisor) over 6-15 personnel. (Exh. 3) (*emphasis added*)

29. The “MINMUM ENTRANCE REQUIREMENTS” for the position of an AA-II are:

Applicants must have at least (A) two years of full-time, or equivalent part-time experience in office management, office administration, business administration or business management, the major duties of which included one or more of the following functions: purchasing, personnel management, budgeting, accounting, records management, work simplification, grants management, contract administration or program management; (B) any equivalent combination of the required experience and . . . (I) An Associates or higher degree with a major in business administration, business management or public administration may be substituted for the required experience. (II) An Associates or higher degree with a major other than in business administration, business management or public administration may be substituted for . . . one year of the required experience.

(Exh. 3) (*emphasis added*)

30. The position of PC-II falls within the Program Coordinator Series of the HRD Class Specifications, approved in July 1987. The series includes three supervisory titles: PC-I, first-

level supervisor; PC-II, second-level supervisor; PC-III, third-level supervisor. Incumbents in the series:

“[C]oordinate 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.”

(Exh.2) (*emphasis added*)

31. The Program Coordinator Class Specification further provides:

EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES:

1. Coordinates and analyses data concerning assigned agency programs in order to determine progress and effectiveness, to make recommendations for changes in procedure, guidelines, etc. and to devise methods of accomplishing program objectives.
2. Reviews and analyzes data concerning assigned agency programs in order 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 progress in order to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others in order to provide information concerning assigned agency progress.
5. Maintains liaison with various private, local, state and federal agencies and others in order to exchange information and/or to resolve problems.

DIFFERENCES BETWEEN LEVELS IN SERIES:

Program Coordinator II:

Incumbents of positions at this level and higher also:

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.

MINIMUM ENTRANCE REQUIREMENTS:

Program Coordinator II:

Applicants must have at least (A) *three years of full time, or equivalent part-time, professional, administrative or managerial experience in business administration, business management or public administration the major duties of which involved program management, program administration, program coordination, program planning and/or program analysis, or (B) any equivalent combination of the required experience and . . . (I)*

A Bachelor's degree with a major in business administration, business management or public administration may be substituted for a maximum of two years of the required experience [or] . . . (III) A Bachelor's or higher degree with a major other than in business administration, business management or public administration may be substituted for a maximum of one year of the required experience.

According to the Class Specification, a PC-II exercises direct supervision over, assigns work to and reviews the performance 1-5 professional, technical, administrative or other subordinates plus 1-5 clerical staff; and indirectly supervises (i.e., through an intermediate level supervisor) over 6-15 professional, technical, administrative or other staff. (*Exh. 2*) (*emphasis added*)

APPLICABLE CIVIL SERVICE LAW

G.L.c.30, §49 provides:

Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator. . . 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify reclassification, an employee must establish that she is performing duties encompassed within the higher level position the majority of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%).

ANALYSIS

As is often true in most classification appeals, Ms. Lannigan, by all accounts, comes before the Commission as a dedicated public servant who works hard at her job. However,

reclassification of a position requires proof that the “level distinguishing” duties of the higher title are, in fact, actually being performed a majority of the time in her current position. Accordingly, the issue before the Commission is limited to that narrow question.

The first issue raised by DDS is the contention that, in the evaluation of Ms. Lannigan’s reclassification request, the Commission is permitted to consider only the duties she performs for the Southeast Region RET and that her other work (UYCP and Mentoring Program) are not relevant, as they are merely assignments for which she “volunteers”. I disagree. I am aware of no Commission or judicial precedent which makes this distinction and none was proffered by DDS. The idea that, in determining whether an employee is properly classified, the Commission disregard assigned duties that a person has been performing for almost a decade and which, with the concurrence of her current supervisors, require at a minimum 5% to 10% of her time (and by her account much more), is close to a non-sequitur. The very purpose of the reclassification law is to provide a vehicle by which a state agency employee can establish that her classification and Form 30 do not accurately capture the major duties of the work she actually performs for the Commonwealth. Ms. Lannigan has responsibility to support the UYCP and Mentoring Program as part of her day-to-day work for Commonwealth and neither DDS nor the Commission can ignore that work in assessing whether her job is properly classified or not.

The parties also dispute the character of the work that Ms. Lannigan performs. DDS claims that virtually everything that Ms. Lannigan does fits the category of administrative and clerical work. Ms. Lannigan claims that only a few of her duties are properly deemed administrative or clerical support and that she devotes a majority of her time to more complex work that fits the description of a program coordinator, specifically, her support of the UYCP and Mentoring Programs, as well as her work on the RET’s 688 Referrals.

Ms. Lannigan is correct that purely clerical duties, such as covering the phones, handling mail, scheduling meetings and photocopying, comprise a small part of her duties. Mr. Daigneau's estimates suggest that such clerical duties comprise about 10% of her work and I accept that estimate as about right.

Distinguishing the remainder of Ms. Lannigan's duties as the "administrative" support work of an AA-II or "program coordinating" work of a PC-II is a more contentious matter. There is certainly some ambiguity as to the line between what constitutes "administrative support in connection with assigned agency unit activities" (Administrative Assistant Series Class Specification) and work to "coordinate, monitor, develop and implement programs for an assigned agency" (Program Coordinator Series Class Specification). These job specifications were created more than thirty years ago and it should come as no surprise that they are not always neatly applied to the work that our modernized and streamlined Commonwealth workforce now performs. The Commission is not ignorant of the difficulties this situation poses for many public employees, but these problems require technical and fiscal solutions that are not within the Commission's power to redress.

After carefully considering the evidence and the arguments of the parties, I conclude that Ms. Lannigan devotes a majority of her time performing work that comprises one or more of the enumerated duties of an Administrative Assistant II, and that she does not devote a majority of her time, including her work for the RET as well as her work on the UYCP and Mentoring Program, performing duties that are exclusive "level distinguishing" work of a "program coordinator" (PC-II) within the meaning of the Program Coordinator Class Specification.

First, it is undisputed that Ms. Lannigan is not a direct or even "functional" supervisor, let alone a second-level supervisor, over even one subordinate to whom she assigns work or

prepares or reviews their performance. Thus, for this reason alone, under the generally established standards for a position reclassification, there is no factual dispute that EOHHS and HRD were correct in denying Ms. Lannigan's request to be reclassified to the position of a Program Coordinator II on that basis alone.

I have not overlooked Ms. Lannigan's argument that there are other PC-IIs employed by DDS who do not appear to have supervisory duties and her position as an AA-II also purports to require supervisory duty. The argument that other employees (or even Ms. Lannigan in her current title) may be overclassified or misclassified, however, cannot carry the day for her claim to be (similarly) misclassified in this particular case. See, e.g., McKinnon v. EOHHS, 30 MCSR 272 (2017) and cases cited.⁷ The sole question before the Commission remains whether or not Ms. Lannigan proved, by a preponderance of evidence, that she qualifies as performing at the Program Coordinator II level, within the letter and intent of the Class Specification, most of the time.

Second, the evidence presented to the Commission demonstrated that, while Ms. Lannigan does, at times, perform tasks that can be fairly described to fall within examples of duties within duties of a Program Coordinator, most of the duties she performs, and certainly well more than 51% of the time, appropriately fit the duties of an Administrative Assistant.

The work that Ms. Lannigan identified which arguably might qualify as "program coordination" is associated with her duties for the Southeast Region's RET 688 Referrals, as well as her support of the UYCP and Mentoring Programs, which she has self-assessed to amount to

⁷ As DDS points out, the Commission's Decision in McKinnon v. EOHHS, 30 MCSR 272 (2017) is inapposite. That Decision must be confined to the specific facts of that appeal which involved a reclassification from an older, obsolete administrative position (Clerk IV) into a newly created administrative job series (Office Support Specialist), which more appropriately matched the job titles of other more recently hired, similarly situated employees in the agency, the employee did exercise equivalent "first-line" functional supervision, and her reclassification created no "organizational disruption." In addition, the Appellant in that appeal did perform all of the other major functions of the position.

just barely the majority (50%) of her time. Her DDS supervisors have estimated less than 50% for these components. Thus, viewing the evidence most favorably to Ms. Lannigan, In order for Ms. Lannigan to perform at a PC-II level a majority of her time, all (100%) of the work she performed in all three of those areas must qualify as exclusively (i.e., “level distinguishing”) duties of a PC-II. The evidence does not support such a conclusion.

Ms. Lannigan correctly points to some of the work that she performs herself (as opposed to supervising others who perform those duties) do fairly fit with examples of a “distinguishing” duty performed by a PC-II. For example, her contribution to preparing a final evaluation questionnaire to be completed by UYLP participants and reviewing the results with Mr. Scott, as well as her development of an inter-regional “family satisfaction survey”, do appear to require her to “confer with management staff and other agency personnel in order to . . . develop the criteria and standards for program evaluation”, which is one of the enumerated duties exclusive to a PC-II.

These tasks, however, appear to be isolated examples, rather than typical, of what Ms. Lannigan mostly does on a day-to-day basis, even in the three areas she singled out as involving “program coordination” work (688 Referrals, UYCP and Mentoring Program), the majority of her work even in these areas either overlaps with, or fits either exclusively within, an enumerated duties of an AA-II (or AA-I). For example, the work Ms. Lannigan performs in reviewing 688 Referrals and following up with families to obtain missing information needed to complete an application, squarely fit the AA-II duty to “compose letters and review documents for completeness and compliance with regulatory and legal standards” and the AA-II duty to “review, analyze and prepare reports concerning assigned unit activities.” Many other aspects of Ms. Lannigan’s work fit examples of duties found in the Class Specification for “Program

Coordinator” as well as the Class Specification for “Administrative Assistant. Duties common to both job series, however, do not count as “distinguishing” duties which must make up at more than half of the overall work performed. Examples of such overlapping duties include:

ADMINISTRATIVE ASSISTANT SERIES	PROGRAM COORDINATOR SERIES
Monitors assigned unit activities to ensure effective operations in compliance with established standards.	Coordinates and monitors assigned program activities in order to ensure effective operations and compliance with established standards.
Maintains liaison with various local, state and federal agencies in order to exchange information, to resolve problems and to coordinate activities.	Maintains liaison with various private, local, state and federal agencies and others in order to exchange information and resolve problems.
Reviews and analyzes data concerning assigned unit activities in order to improve work methods, determine progress [and] revise established procedures, programs and activities. Prepares reports concerning assigned unit activities in order to furnish information and to make recommendations concerning procedures, programs and activities.	Reviews and analyses date concerned assigned agency programs in order to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives.
Responds to inquiries in order to provide information concerning assigned unit activities	Response to inquiries from agency staff and others in order to provide information concerning assigned agency programs.
Provide on-the-job training and orientation for employees.	Provide on-the-job training and orientation for employees.

Third, DDS raised the concern that a reclassification of Ms. Lannigan’s position to a PC-II would create “organizational disruption” within the DYS, as there are no other PC-II positions in any of the Intake & Eligibility Units anywhere in DYS. DYS also contends that, as a PC-II Ms. Lannigan would carry a higher pay grade (Unit 6, Grade 12) than her own supervisor, Mr. Daigneau, a HSC C (Unit 8, Grade 21). Mr. O’Meara also testified that Ms. Lannigan, as well as other AAs, had recently applied for seven PC-II positions that had been posted by DDS, but she and the other AAs were eliminated from consideration because HR found them to lack the minimum entrance requirements for a PC-II position. These facts would certainly be an additional factor that weighed against reclassification, but Mr. O’Meara did not know the specifics of the qualifications that purportedly disqualified Ms. Lannigan and I am not persuaded

that the evidence of the purported pay inequity has been shown by a preponderance of the evidence. See <https://www.mass.gov/guides/salary-and-compensation>.

Finally, Ms. Lannigan points to procedural irregularities in the handling of her reclassification appeal by EOHHS, including the two-year delay in deciding her request, a failure to reach out to her RET supervisors and to Mr. Scott, the removal of her UYCP and Mentoring Program duties from her EPRS while her reclassification request was pending, and the apparent flip-flop by Mr. O'Meara and Ms. Zarella, from originally supporting her reclassification to opposing it. I do find some of these circumstances problematic, especially the elimination of any evaluation of her important (albeit not entirely all PC-II level) work for Mr. Scott, but I am persuaded that, at most, they are attributable to bureaucratic missteps and do not show any unlawful personal animus or bias against Ms. Lannigan. Ultimately, these irregularities did not interfere with the ability of the Commission to provide a fair and full de novo review of Ms. Lannigan's claims.

In sum, EOHHS and HRD correctly determined that Ms. Lannigan does not meet the supervisory, experience or performance criteria for a Program Coordinator II and, therefore, the Commission is not authorized to order that her position be reclassified. While there may be good reason to contest the logic and equity of various job titles and pay grades vis-à-vis each other within an agency, the proper forum, if any, in which to raise those concerns lies elsewhere.

Accordingly, for the reasons stated above, the appeal of the Appellant, Kristen Lannigan, under Docket No. C-16-168, is *dismissed*.

Civil Service Commission
/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman [ABSENT], Tivnan & Stein, Commissioners) on December 21, 2017.

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)(1), 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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:

Alfred A. Gray, Esq. (for Appellant)

Amy M. McCallen, Esq.

Mark P. Detwiler, Esq. (for Respondent)