



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Stacey Amelung-
Bogden, Department of Human
Services

CSC Docket No. 2016-2655

Request for Interim
Noncompetitive Appointment

ISSUED: **OCT 21 2016** (DASV)

The Department of Human Services (DHS) requests the reallocation of the Child Support Specialist 2 title to the noncompetitive division of the career service on an interim basis in order to appoint Stacey Amelung-Bogden.

By way of background, the Civil Service Commission (Commission) approved DHS' request to reallocate the competitive titles of Child Support and Paternity Specialist 2, Child Support and Paternity Specialist 3, and Research Technician 2 to the noncompetitive division on an interim basis. *See In the Matter of Reallocation of Titles in the Department of Human Services* (CSC, decided September 19, 2012). It is noted that the Child Support and Paternity Specialist 2 and Child Support and Paternity Specialist 3 titles were renamed on July 26, 2014 to Child Support Specialist 2 and Child Support Specialist 1, respectively. DHS presented that noncompetitive appointments would allow the State to employ individuals who have the requisite knowledge, skills and length of service critical to the maintenance and operations of NJKids, which was a "multimillion dollar new IT system" which supported the functions of the Office of Child Support Services (OCSS), Division of Family Development. DHS explained that it was critical that the OCSS is fully staffed to enable it to carry out its functions under Title IV-D of the Social Security Act in the delivery of child support services. Based on the foregoing, the Commission determined that certification procedures were not likely to meet the needs of DHS, given that some of the contracted staff have worked for over four years on the NJKids project and displacement of these employees through the open-competitive examination process would hinder DHS' ability to meet federal requirements. Therefore, the Commission granted the request and reallocated the

titles to the noncompetitive division for one pay period, effective September 22, 2012 to October 5, 2012. The Commission also indicated that, at the end of this period, the titles would be returned to the competitive division of the career service.

With regard to Amelung-Bogden, she was appointed provisionally pending promotional examination procedures (PAP) as a Child Support and Paternity Specialist 2 with DHS effective May 7, 2011. She had transferred from the Judiciary, having held permanent status as a Senior Probation Officer. Subsequently, Amelung-Bogden received provisional appointments pending promotional examination procedures to Standards and Procedures Technician 3, effective December 31, 2011, and Program Support Specialist 1, Assistance Programs effective July 13, 2013. However, she was deemed ineligible for the Standards and Procedures Technician 3 (PS6401K), DHS, examination as she lacked the minimum experience requirement. She did not file an appeal of her ineligibility. Moreover, although Amelung-Bogden appears on the Program Support Specialist 1, Assistance Programs (PS2861K), DHS, eligible list,¹ she ranks 13th. Her name was certified on October 2, 2015, but she was not reachable for appointment. Thus, she was displaced from her position. Thereafter, Amelung-Bogden received an interim appointment as a Child Support Specialist 2 effective February 6, 2016. She is serving in the Division of Family Development, DHS. It is noted that an eligible list for Child Support Specialist 2 (PS2859K), Division of Family Development, DHS, promulgated with 14 eligibles on December 17, 2015 and expires on December 16, 2018. Amelung-Bogden did not file for the (PS2859K) examination² or appear on this eligible list, which was certified against 13 provisional employees on January 14, 2016. In disposing of the certification, the appointing authority appointed 12 eligibles, effective April 14, 2016, and removed one eligible. There is one eligible remaining on the Child Support Specialist 2 (PS2859K), Division of Family Development, DHS eligible list.

In the instant matter, DHS requests that the Child Support Specialist 2 title be placed in the noncompetitive division on an interim basis in order to effectuate the permanent appointment of Amelung-Bogden to that title. Amelung-Bogden was originally identified by DHS as one of the employees serving provisionally as a Child Support and Paternity Specialist 2 at the time of its 2011 request for interim noncompetitive appointments. DHS intended to change Amelung-Bogden's status from PAP to RAN (regular appointment noncompetitive), but she was removed from the employee list because she had been promoted to the Standards and Procedures Technician 3 title effective December 31, 2011.

The Division of Agency Services (Agency Services) supports DHS' request and notes that Amelung-Bogden cannot return to her permanent title of Senior

¹ The eligible list promulgated on October 1, 2015 and expires on September 30, 2017.

² The Child Support Specialist 2 (PS2859K) examination was administered as a written examination on November 19, 2015.

Probation Officer since the title is not used by DHS. Moreover, Agency Services indicates that, in accordance with *N.J.A.C.* 4A:3-1.2(e), it has notified the Communications Workers of America of the request to place the Child Support Specialist 2 title in the noncompetitive division on an interim basis. It did not receive any comment.

CONCLUSION

N.J.A.C. 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined that it is appropriate to make permanent appointments to the title, and that one or more of the following criteria are met:

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

Based on the information provided by DHS, interim noncompetitive status for the Child Support Specialist 2 title is not appropriate in this matter. None of the factors noted above have been met. The first two factors are rebutted by the existence of the eligible list for Child Support Specialist 2 (PS2859K), Division of Family Development, DHS. DHS appointed 12 eligibles. Thus, it is clear that competitive testing is still practicable and that certification procedures have met the needs of DHS. While it can be argued that the need of DHS has not been met with regard to Amelung-Bogden, allowing a title to be placed in the noncompetitive division for one employee's permanent appointment becomes a slippery slope and opens that mechanism to abuse. In other words, the need of one individual does not outweigh the opportunity for many who have already demonstrated their merit and fitness by way of examination and certification in this case. Furthermore, the record does not evidence "a need for immediate appointments arising from a new legislative program or major agency reorganization." Thus, criterion three has also not been satisfied.

Rather, DHS is requesting that Amelung-Bogden become permanent in the Child Support Specialist 2 title because she previously held that title prior to her promotion and the title subsequently became noncompetitive for a pay period. Granting DHS' request would be considered an extraordinary measure which, aside

from not meeting the criteria for an interim noncompetitive appointment, is not consistent with Civil Service law and rules given the underlying circumstances of the case. In that regard, Amelung-Bogden received the benefit of a promotion to Standards and Procedures Technician 3, but she was found ineligible for the (PS6401K) examination because she lacked the minimum experience requirement. As part of the process of selection and appointment, a candidate must establish eligibility by demonstrating possession of the applicable experience and/or education requirements and pass an examination. *See In the Matter of Pinky Bemah* (MSB, decided December 1, 2004). Amelung-Bogden was then appointed provisionally to Program Support Specialist 1, Assistance Programs, which appears to have been a result of her ineligibility for her prior title's examination. It is noted that this title is also at a higher level than the Child Support Specialist 2 title. However, Amelung-Bogden was not reachable on the Program Support Specialist 1, Assistance Programs (PS2861K), DHS, eligible list. It is emphasized that the method by which an individual can achieve permanent appointment in the competitive division is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. It is noted that a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). Therefore, DHS' request for an interim noncompetitive appointment is denied.

Nevertheless, a remedy is warranted in this particular situation. Since DHS does not utilize the title of Senior Probation Officer, Amelung-Bogden cannot return to her permanent title.³ Amelung-Bogden also cannot remain as an interim Child Support Specialist 2 indefinitely. *See N.J.A.C. 4A:4-1.6(f)*. Without any action by the Commission, absent Amelung-Bogden's provisional appointment pending open competitive procedures to an appropriate title or her permanent appointment to an appropriate noncompetitive title, she would have to be separated from employment. The Commission finds this too harsh a result under the circumstances presented. Accordingly, given the unique circumstances of this case and the fact that the Child Support Specialist 2 (PS2859K), Division of Family Development, DHS eligible list is now incomplete with only one remaining eligible, the Commission finds good cause to allow Amelung-Bogden to file a late application for the Child Support Specialist 2 (PS2859K) examination and grant her a make-up examination. In that regard, *N.J.A.C. 4A:4-2.6(a)4*, in conjunction with *N.J.A.C. 4A:4-2.1(e)*, provides

³ *N.J.A.C. 4A:4-1.9(a)* provides in part that an employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under *N.J.A.C. 4A:4-1.3, 1.4, 1.5* (provisional appointment), 1.6, 1.7, or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit. DHS does not utilize Amelung-Bogden's permanent title, and she does not have underlying permanent status at DHS.

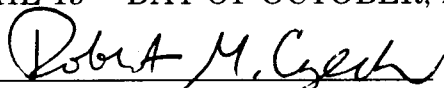
that applicants for promotional examinations must file an application on or before the application filing date. Further, *N.J.A.C.* 4A:4-2.9(a) states in relevant part that make-up examinations may be authorized for other valid reasons. Additionally, *N.J.A.C.* 4A:1-1.2(c) states that the Commission may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes. Accordingly, Amelung-Bogden is directed to submit an application within 10 days of issuance of this decision, along with the \$25 examination fee payable by check or money order to the Commission, to P.O. Box 322, Trenton, New Jersey 08625-0322. She must also enclose a copy of this decision with her application. If Amelung-Bogden is found eligible for the examination and passes, her name shall be added to the Child Support Specialist 2 (PS2859K), Division of Family Development, DHS eligible list, for prospective appointment opportunities only.

ORDER

Therefore, it is ordered that this request be denied. It is further ordered that Stacey Amelung-Bogden be permitted to file a late application for the Child Support Specialist 2 (PS2859K), Division of Family Development, DHS examination.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF OCTOBER, 2016



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