



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of D.D., Department of Environmental Protection

CSC Docket No. 2016-3113

Request for Rule Relaxation

ISSUED: OCT 24 2016 (EG)

The Department of Environmental Protection (DEP), on behalf of D.D., requests the relaxation of the provisions of N.J.A.C. 4A:6-1.22 so as to permit D.D. to receive more than the 260 donated leave days allowed to a recipient and to permit her to receive donated leave days on a retroactive basis if necessary.

D.D. is an approved recipient of the donated leave program (DLP) and is currently participating in the program. As of April 1, 2016, D.D. has utilized 231 donated leave days. The appointing authority indicates that D.D.'s doctor has provided documentation indicating that D.D. will be out of work intermittently, two to four days per week through August 1, 2016. The time off is for D.D. to receive targeted therapy and intravenous infusions as she continues to recover from her catastrophic health condition. The appointing authority asserts that since the leave extension will likely require her to use more than 260 days, it is requesting that she be granted permission to receive and use additional days of donated leave beyond the 260-day lifetime maximum.

CONCLUSION

N.J.A.C. 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that a State employee shall be eligible to receive donated sick or vacation leave if the employee suffers from a catastrophic health condition or injury. A catastrophic health condition or injury is defined as a life threatening condition or combination of conditions or a period of disability required by an employee's mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work

for 60 or more work days. See *N.J.A.C.* 4A:6-1.22(b)1. *N.J.A.C.* 4A:6-1.22(a)2 provides that an employee shall be eligible to receive donated leave time if the employee has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off. Additionally, *N.J.A.C.* 4A:6-1.22 provides that in State service, a leave recipient shall receive no more than 260 sick or vacation days, and shall not receive any such days on a retroactive basis. Further, *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Initially, it is noted that *N.J.A.C.* 4A:6-1.22 does *not* provide for “intermittent” donated leave. Rather, the intent of the DLP, since its inception in 1993, was to provide employees the opportunity to donate sick or vacation leave to other employees who are suffering from a catastrophic health condition or injury which is expected to *require a prolonged absence from work* and who had exhausted all of their accrued leave time. See 24 *N.J.R.* 3590. In other words, receipt of donated leave requires the employee’s prolonged absence from work as a condition precedent to considering a request for donated leave.

~~The practice of permitting the *limited* use of “intermittent” donated leave~~ evolved from those cases where an employee who required a prolonged absence from work due to a catastrophic health condition was returned to work and needed additional time to transition back into full-time work. For example, in *In the Matter of A.M.* (Commissioner of Personnel, decided September 17, 1998), an employee diagnosed with rectal cancer received donated leave because her condition required a prolonged absence from work in order to receive chemotherapy and radiation therapy, as well as to undergo two surgical procedures. The employee’s condition progressed well and she was permitted to return to work. However, the employee’s treating physician recommended that she work no more than four days per week in the coming few months due to her lower level of resistance and stamina. The former Commissioner of Personnel approved the request for an extension of her donated leave so she could take off one or two days per week for a period of two to three months to recuperate. Thus, “intermittent” donated leave was only approved for use *after* an employee returned from a prolonged absence from work and for limited time frames.

Against this backdrop, while the use of additional, intermittent donated leave, upon return to work *may* be appropriate in limited situations, it should be judiciously approved in compliance with *N.J.A.C.* 4A:6-1.22(b). In this regard, it must be underscored that in adopting amendments to the DLP to expand participation to employees who must care for an immediate family member suffering from a catastrophic health condition, the former Merit System Board emphasized that “the exceptional nature of a catastrophic health condition or injury means that the DLP will not be that widely used” in such situations. See 28 *N.J.R.* 3781(a).

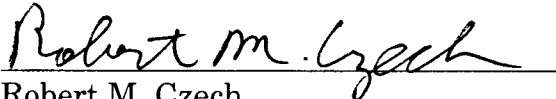
In the instant matter, the appointing authority is requesting that the D.D., an approved recipient of donated leave, be granted permission to receive and use additional days of donated leave beyond the 260-day lifetime maximum for intermittent leave of two to four days per week through August 1, 2016. The leave time is for D.D. to receive targeted therapy and intravenous infusions in her recovery from her catastrophic health condition. In reviewing this matter, the Commission finds that based on the information provided on appeal, D.D. meets the stringent requirements to receive intermittent donated leave. Therefore, based on the particular circumstances presented, good cause has been established to relax the provisions of *N.J.A.C. 4A:6-1.22* to permit D.D. to receive additional donated leave days on an intermittent basis. Further, the Commission finds that good cause has also been provided to relax the provisions of *N.J.A.C. 4A:6-1.22* to allow D.D. to participate in the donated leave program retroactively if necessary. *See In the Matter of C.D.L.* (MSB, decided July 27, 2005).

ORDER

Therefore, it is ordered that this request be granted. Further, if necessary, this decision will permit D.D. to utilize donated leave retroactively.

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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