



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of D.C., Department of
Human Services

Administrative Appeal

CSC Docket No. 2018-1232

ISSUED: MARCH 27, 2018 (WR)

D.C., a Senior Management Assistant, appeals the decision of the Department of Human Services which denied her request to participate in the Donated Leave Program (DLP).

In the instant matter, the appellant submitted paperwork from her daughter’s healthcare provider which indicated that she needed to care for her daughter during her daughter’s recovery from catastrophic health condition from September 13, 2017 to December 18, 2017. The appointing authority deemed the appellant’s request as one for intermittent leave and denied her request on the basis that the DLP “is only authorized in circumstances in which the employee will be absent for 60 or more working days.”

On appeal, the appellant states her daughter, who is also a State employee, received a kidney transplant on September 13, 2017. The appellant states that she submitted her donated leave request in order to care for her daughter. The appellant argues that *N.J.A.C.* 4A:6-1.22 “does not state that an employee cannot request ‘intermittent’ time.” Accordingly, the appellant requests that she be permitted to participate in the DLP intermittently as described above. In support of her appeal, the appellant submits documentation from her daughter’s health care provider, who states that the appellant’s daughter will require emotional support, transportation to biweekly appointments and assistance from the appellant, but not full-time care.

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's immediate family member 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 the immediate family member's mental or physical health which requires the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days. *See N.J.A.C.* 4A:6-1.22(b)2. *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.

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.

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, D.C. requests that she be granted permission to participate in the DLP intermittently to care for her daughter, who suffers from a catastrophic health condition, from September 13, 2017 to December 18, 2017. In support of her appeal, the appellant submits documentation from her daughter’s healthcare provider, who indicates that D.C. is not needed to care for her daughter full-time. Based upon a review of the record, it appears that had D.C. requested to be absent from work during the entirety of her daughter’s recovery, she would have satisfied the criteria for participation in the donated leave program under *N.J.A.C. 4A:6-1.22(b)2*. Nevertheless, because she was not needed to care for her daughter full-time, she requested to participate in the DLP intermittently. While intermittent participation in the DLP should be judiciously granted, it is clear that the appellant in the instant matter should be allowed to participate in the DLP intermittently. Unlike the Commission’s prior decisions which discussed the use of intermittent leave of an employee who has been returned to work after suffering from a catastrophic injury or illness, the instant matter concerns approval for the donated leave program to care for an immediate family member that was currently suffering from a catastrophic illness or injury. The appellant’s daughter clearly meets the standard for a catastrophic illness. However, the appellant’s daughter’s healthcare provider indicates that although the appellant is not required to care for her daughter full-time, she is needed to provide care on an intermittent basis during her daughter’s recovery. Moreover, the appellant is willing and able to work when not needed to care for her daughter, and the appellant has requested to participate in the DLP for a relatively short and finite amount of time. Therefore the Commission finds that D.C. meets the stringent requirements to use donated leave intermittently for the period between September 13, 2017 and December 18, 2017. Moreover, based on the particular circumstances presented, 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.C. to participate in the donated leave program retroactive. *See In the Matter of C.D.L.* (MSB, decided July 27, 2005).

ORDER

Therefore, it is ordered that this appeal be granted.

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 27th DAY OF MARCH, 2018

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