



B-7

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Eridania Ortiz,
Family Service Specialist 1, Bilingual
in Spanish and English (PS3421K)
and Supervising Family Service
Specialist 2 (PS6696K), Department
of Children and Families

List Removal Appeals

CSC Docket Nos. 2015-1841 and
2015-1847

ISSUED: JUL 15 2015 (HS)

Eridania Ortiz appeals the removal of her name from the Family Service Specialist 1, Bilingual in Spanish and English (PS3421K), Department of Children and Families (DCF) eligible list on the basis that she failed to respond to the certification notice. The appellant also appeals DCF's request to remove her name from the eligible list for Supervising Family Service Specialist 2 (PS6696K), DCF, on the basis that she failed to respond to the certification notices. These appeals have been consolidated as they address common issues.

The appellant took the promotional examination for Family Service Specialist 1, Bilingual in Spanish and English (FSS1) (PS3421K), which had a closing date of October 22, 2012, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The PS3421K eligible list promulgated on May 2, 2013 and expires May 1, 2016. The appellant's name was certified to the appointing authority on May 6, 2014 (PS140518). In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that she failed to respond to the certification notice.¹ The Division of Classification and Personnel Management (CPM)² upheld the removal of the appellant's name.

¹ The certification notices instruct individuals to write to the appointing authority within five business days of the date of the notice to let it know whether or not the individual was interested in the position.

² This function is now part of the Division of Agency Services.

The appellant also took the promotional examination for Supervising Family Service Specialist 2 (SFSS2) (PS6696K), which had a closing date of February 21, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The PS6696K eligible list promulgated on December 19, 2013 and expires December 18, 2016. The appellant's name was certified to the appointing authority twice on February 21, 2014 (PS140201 and PS140204). In disposing of the certifications, the appointing authority requested the removal of the appellant's name on the basis that she failed to respond to the certification notices.³

On appeal, the appellant explains that when she applied for the FSS1 (PS3421K) examination in October 2012, she provided her Paterson address. However, when she applied for the SFSS2 (PS6696K) examination in February 2013, she provided her "temporary" Lyndhurst address since she was advised by this agency to use the address that matched her driver's license and, at that time, her driver's license reflected her Lyndhurst address. Next, the appellant states that the May 6, 2014 certification (PS140518) from the FSS1 eligible list was sent to her Paterson address and was held by her neighbor since she was not living there at that time. By the time the appellant's neighbor provided her with the certification, the allotted time to respond had passed. The appellant appealed her removal from the FSS1 (PS3421K) eligible list and claims she verified her information. She states that she was never informed by this agency that the February 21, 2014 certifications (PS140201 and PS140204) from the SFSS2 eligible list had also been sent to her at her Lyndhurst address. The appellant argues that due to the confusion over her address, she was precluded from receiving the certifications and timely responding. In support, the appellant submits a copy of a mail forwarding address change order indicating a change in her address from Lyndhurst back to Paterson beginning December 19, 2014.

In response, the appointing authority states that certification PS140518 was issued on May 6, 2014 to the appellant's Paterson address; that certifications PS140201 and PS140204 were issued on February 21, 2014 to the appellant's Lyndhurst address, her address of record at that time; and that there was no response to any of the certifications. However, the appointing authority states that it does not oppose the appellant's restoration to the subject eligible lists for future appointment opportunities provided she submits a sworn statement.

In further support, the appellant submits a sworn, notarized statement indicating that she never received certifications PS140201 and PS140204 and that her neighbor held on to certification PS140518 and did not give it to her until the allotted time to respond expired.

³ The dispositions of certifications PS140201 and PS140204 were recorded on July 9, 2014 and July 28, 2014, respectively.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove the appellant from an eligible list was in error.

The appointing authority requested the removal of the appellant's name from the SFSS2 (PS6696K) eligible list on the basis of her failure to respond to certifications PS140201 and PS140204. The appointing authority also requested the removal of the appellant's name from the FSS1 (PS3421K) eligible list on the basis of her failure to respond to certification PS140518. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that she never received these certification notices. In her sworn, notarized statement, the appellant explains that her neighbor held certification PS140518 and did not convey it to her until the allotted time to respond expired. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, the appellant has rebutted that presumption in submitting her sworn, notarized statement. See *SSI Medical Services, Inc. v. State Department of Human Services*, 146 *N.J.* 614 (1996); *Szczesny v. Vasquez*, 71 *N.J. Super.* 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001). Moreover, the appointing authority has indicated that it does not oppose the appellant's restoration to the SFSS2 (PS6696K) and FSS1 (PS3421K) eligible lists for future appointment opportunities provided she submits a sworn statement. Thus, it is appropriate that her name be restored to both eligible lists.

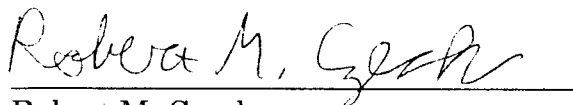
As a final matter, it is emphasized that it is the eligible's responsibility to notify this agency of any address changes. See *In the Matter of Deborah McDermott* (MSB, decided April 18, 2000). The appellant is advised to ensure that this agency has her current contact information on file and to notify this agency promptly of any future changes in her contact information. In this regard, it is noted that when a certification is issued, eligibles are notified at the last provided address. See *N.J.A.C.* 4A:4-4.2(b).

ORDER

Therefore, it is ordered that this appeal be granted and Eridania Ortiz's name be restored to the eligible lists for Family Service Specialist 1, Bilingual in Spanish and English (PS3421K), Department of Children and Families, and Supervising Family Service Specialist 2 (PS6696K), Department of Children and Families, respectively, for prospective employment opportunities only.

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 15TH DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Attachment

- c. Eridania Ortiz
- Linda Dobron
- Kenneth Connolly
- Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair, Chief Executive Officer

November 28th, 2014

ERIDANIA ORTIZ

Title: FMLY SRVC SPCLST I BI S
Symbol: PS3421K
Jurisdiction: CFA
Certification Number: PS140518
Certification Date: 05/06/2014

Initial Determination: M4 - Removed – No Response to Certification Notice

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list. The Appointing Authority requested removal of your name in accordance with *N.J.A.C. N.J.A.C. (4A:4-4.7(a) 6)*, which permits the removal or bypass of an eligible candidate's name from the eligible list for non-compliance with the instructions listed on the notice of certification.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. People receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to: Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, PO Box 312, Trenton, NJ 08625-0312.

Sincerely,

Kairavi Patel
For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

c: LINDA DOBRON

