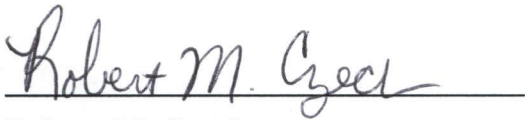


Re: Victoria Vartolone

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
APRIL 5, 2017

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a solid horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09825-16
AGENCY DKT. NO. 2016-4523

**IN THE MATTER OF VICTORIA VARTOLONE,
BERGEN COUNTY BOARD OF
SOCIAL SERVICES.**

Victoria Vartolone, pro se, appellant

**Yaacov Brisman, Esq., for respondent Bergen County Board of Social Services
(Cleary Giacobbe Alfieri Jacobs, attorneys)**

Record Closed: January 27, 2017

Decided: February 27, 2017

BEFORE **KELLY J. KIRK, ALJ:**

STATEMENT OF THE CASE

The Bergen County Board of Social Services terminated human services aide Victoria Vartolone effective June 3, 2016, at the end of her working test period, because she failed to demonstrate the ability to successfully perform her job duties.

PROCEDURAL HISTORY

On June 3, 2016, the Bergen County Board of Social Services issued Victoria Vartolone a Memorandum terminating her employment, effective June 3, 2016, at the end of the working test period. Vartolone appealed, and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on July 1, 2016. The hearing was held on November 29, 2016, and the record remained open for post-hearing submissions. The record closed on January 27, 2017.

FACTUAL DISCUSSION

Susan Silverstein and Allan LaRobardier testified on behalf of the Bergen County Board of Social Services. Victoria Vartolone testified on her own behalf.

Background

The following material facts are largely undisputed. Accordingly, I **FIND** them to be the **FACTS** of this case:

Susan Silverstein has been employed by the Bergen County Board of Social Services (Board) for forty-two years. She has been in the Training Department for twenty-five years and has been training supervisor for the past eighteen. Silverstein develops the training module and testing, and she writes the evaluations. Silverstein and her assistant, Victoria Osborne, conduct the training. Osborne has been employed by the Board for thirty years. Allan LaRobardier has been employed by the Board for nine years. LaRobardier is a provisional permanent human services specialist 4, which is a supervisor position. LaRobardier was a temporary supervisor in the "intake" and "interviewing" department for eleven months, and has been a provisional permanent supervisor in his own test period for just over a month. LaRobardier's department deals with food stamps and cash assistance. LaRobardier's workers interview the clients, document their stories on an application, and then request required verifications so that

completed interview packets may be sent to the processing department and benefits may be issued.

Robert Calocino is employed by the Board as acting director and personnel officer. On October 9, 2015, Calocino issued to Vartolone a letter offering Vartolone a position as a temporary, part-time (twenty-five hours per week) human services aide (HSA), to commence on October 26, 2015. (R-1.) As such, on October 26, 2015, Vartolone reported to Silverstein for training. Vartolone completed the new employee forms, and Silverstein conducted an orientation. Orientation typically lasts two days and consists of an overview of the entire agency, what the agency does, what the agency administers, the different programs, and eligibility for the programs. After the first two days, the actual program training commences. Silverstein started with food-stamps training. The trainees are given a manual, and it takes approximately one month to review the food-stamps policy and computer systems. Tests are administered to the trainees during the first month to determine progress. At the end of the first month, the trainees receive a thirty-day progress report, and the trainers go over the tests with the trainees, so the trainees are aware of their scores.

On November 30, 2015, Silverstein prepared a 30-Day Training Progress Report for Vartolone. (R-2.) The 30-Day Training Progress Report, signed by Silverstein and Vartolone, states, in pertinent part, as follows:

Ms. Vartolone scored a 68% on the Food Stamp Program Eligibility Test, indicating that she had difficulty understanding the Food Stamp regulations. The average score for this test for the class was 84%, therefore she scored below the average. Ms. Vartolone scored a 62% on the Financial Eligibility Test and the average for the class was 82%. This exhibits that Ms. Vartolone had difficulty understanding the financial eligibility requirements of the Food Stamp Program. However, after reviewing the test, she now has a better understanding of the financial eligibility requirements of the Food Stamp Program. Ms. Vartolone scored 96% on the FAMIS and DOVE Inquiry Test, indicating that she has a very good understanding of how to access our systems and interpret the information on the screens. The average for the class on this test was 96% therefore she scored at the average on this test. The final

test, the Utility Allowance Test, Ms. Vartolone scored 94%. The average for the class on this test was 92% therefore she scored above the average. She has a good understanding of the HEA coding and eligibility for the utility allowances.

Ms. Vartolone's Manual Research Exercise had several omissions, which exhibits an inability to research the manual and determine the correct citations for the questions that were imposed.

There is concern that Ms. Vartolone scored below average on two of her tests. However, she is aware of her shortcomings and has shown improvement on the last two tests.

In the next 30 days, the class will learn the SNAPTrac system as well as coding cases into UAP and integrating the OnLine Food Stamp application. They will then begin to interview clients and develop the interviewing skills necessary for the successful processing of a case.

[R-2.]

On January 14, 2016, Silverstein prepared an Interim Progress Report, which she delivered to Vartolone. The Interim Progress Report states, in pertinent part, as follows:

You exhibit a professional manner, you work independently and you are organized. Your case notes are well-written and thorough. You have good interviewing skills, however at times you have difficulty understanding a situation and applying it to the Food Stamp regulations. You are not asking follow-up questions when necessary and therefore don't have the client's total situation. You need to analyze each circumstance and determine how to proceed based on the circumstances. Some verification requests were not complete and some cases were missing DOVE screens. There were also some budgeting problems which caused issues with determining if a case should be expedited. It is imperative that you take more time and review your work thoroughly prior to submission.

[R-3.]

After thirty days, the trainees work on real food-stamp cases, and must conduct telephone interviews of the clients and ask numerous questions. The food-stamp application is approximately ten to twelve pages, and there are computer systems into which data must be entered.

On February 29, 2016, the Board issued a letter to Vartolone confirming that she had accepted the part-time HSA position and that her appointment was contingent upon her successful completion of the ninety-day working test period (WTP), after which permanent status would be granted. (R-4.) On February 29, 2016, Calocino issued a memorandum to Vartolone confirming that although she had been advised that her start date was February 29, 2016, she would remain in temporary status until Board approval was received. (R-5.)

On March 7, 2016, the Board issued a letter to Vartolone confirming its offer and Vartolone's acceptance of a position as a part-time (twenty-five hours per week) HSA, effective March 7, 2016, and that the appointment was contingent upon her successful completion of the ninety-day working test period, after which permanent status would be granted. (R-6.) Vartolone was instructed to report to supervisor LaRobardier on March 7, 2016. (R-6.)

LaRobardier completed three Employee Performance Reviews for Vartolone: a thirty-day evaluation, a sixty-day evaluation, and a ninety-day evaluation. Specifically, on April 20, 2016, LaRobardier completed an Employee Performance Review for Vartolone's 30-Day Evaluation (30-Day Review). (R-8.) On May 12, 2016, LaRobardier completed an Employee Performance Review for Vartolone's 60-Day Evaluation (60-Day Review). (R-9.) On June 3, 2016, LaRobardier completed an Employee Performance Review for Vartolone's 90-Day Evaluation (90-Day Review). (R-10.) Vartolone's 30-60-90-Day Reviews reflect the following scores (on a scale from poor to outstanding) and comments:

QUALITY: Work assigned to the employee is completed timely, consistently, accurately and thoroughly. Include strengths and weaknesses. (Compute using statistics both with and without employee.)

| Review | Score (0-6) | Comments |
|--------|-------------|--|
| 30-Day | 1.5 | Ms. Vartolone completed 92 interviews, 25 of which contained errors, an error rate of 27.2%. This error rate is above the training class average of 17.6% |
| 60-Day | 0 | Ms. Vartolone completed 105 interviews, 29 of which contained errors, an error rate of 27.6%. This error rate is above the training class average of 13.3%. In addition, 27.6% is significantly higher than 17.6%, the 60 day evaluation period average error rate for the other trainee interviewers. |
| 90-Day | 0 | Ms. Vartolone completed 80 interviews, 25 of which contained errors, for an error rate of 31.3%. This error rate is above the training class average of 12.2% for the 90 day evaluation period. In addition, 31.3% is elevated from the previous period's error rate of 27.6%. |

QUANTITY: The amount of work completed by the employee in relation to others in the same job. (Compute using statistics both with and without employee.)

| Review | Score (0-6) | Comments |
|--------|-------------|---|
| 30-Day | 2.5 | Ms. Vartolone completed 92 interviews during the evaluation period, which is below the training class average of 104. |
| 60-Day | 2.5 | Ms. Vartolone completed 105 interviews during the evaluation period, which is just below the training class average of 109. |
| 90-Day | 2.5 | Ms. Vartolone completed 80 interviews during the evaluation period, which is below the training class average of 91 for the 90 day evaluation period. |

JOB KNOWLEDGE/SKILL: Employee knows the details of the job, understands the job, and applies necessary knowledge and skills, including knowledge of interviewing techniques, and uses good judgment in caseload management.

| Review | Score (0-6) | Comments |
|--------|-------------|--|
| 30-Day | 2 | Ms. Vartolone's high error rate and below average number of interviews represent an interviewer who needs improvement on the skills of interviewing and the knowledge of our programs. |
| 60-Day | 1 | Ms. Vartolone's high error rate has not improved since the previous evaluation period, which illustrates the difficulty she is having in obtaining the skills and knowledge of the position. |
| 90-Day | .5 | Ms. Vartolone's error rate continues to remain above an acceptable level for an HSA Interviewer. This high error rate represents an inability to grasp the knowledge and skills needed to be a successful interviewer. |

PROFESSIONAL CONDUCT: Extent to which employee contributes to a productive and harmonious working environment by acting in a respectful and dependable manner towards people in the workplace. Is consistently available during working hours.

| Review | Score (0-6) | Comments |
|--------|-------------|---|
| 30-Day | 4 | Ms. Vartolone has shown to be a dependable and professional employee during her evaluation period. She has zero time away from the agency during this time. |
| 60-Day | 4 | Ms. Vartolone has shown to be a dependable and professional employee during her evaluation period. She has zero time away from the agency during this time. |
| 90-Day | 3 | Ms. Vartolone has shown to be a dependable and professional employee during her evaluation period. She has zero time away from the agency during this time. |

CUSTOMER SERVICE: Identifies and meets customer needs, treats them with respect and in a professional manner. Returns calls promptly.

| Review | Score (0-6) | Comments |
|--------|-------------|--|
| 30-Day | 3 | Ms. Vartolone has shown strong customer service skills during the evaluation period. |
| 60-Day | 3 | Ms. Vartolone has shown strong customer service skills during the evaluation period. |
| 90-Day | 3 | Ms. Vartolone has shown strong customer service skills during the evaluation period. |

SELF-MOTIVATION/INITIATIVE: The extent to which the employee can be consistently depended upon to complete work with minimal supervision. Willingness to undertake problems/projects in a resourceful and independent manner.

| Review | Score (0-5) | Comments |
|--------|-------------|---|
| 30-Day | 2.5 | |
| 60-Day | 2.5 | |
| 90-Day | 2 | Ms. Vartolone's applications must be reviewed thoroughly to ensure the client's eligibility can be determined properly. |

COMMUNICATION: Effective expression of ideas, concepts or directions in individual or group situations, including thorough and well-written narratives.

| Review | Score (0-5) | Comments |
|--------|-------------|----------|
| 30-Day | 2.5 | |
| 60-Day | 2.5 | |
| 90-Day | 2.5 | |

TEAMWORK: Works collaboratively in a group as a dependable team member to accomplish agency goals. Is consistently available during working hours.

| Review | Score (0-5) | Comments |
|--------|-------------|----------|
| 30-Day | 2.5 | |
| 60-Day | 2.5 | |
| 90-Day | 2.5 | |

FLEXIBILITY/ADAPTABILITY: Adapts effectively to deadlines, workloads and sudden or frequent changes in priorities, policies and programs in order to fulfill the requirements of the job. Meets the needs of the customers and accomplishes agency goals.

| Review | Score (0-5) | Comments |
|--------|-------------|----------|
| 30-Day | 2.5 | |
| 60-Day | 2.5 | |
| 90-Day | 2.5 | |

ATTENDANCE AND PUNCTUALITY: # OF DAYS ABSENT (attach attendance report), # OF DAYS LATE (attach attendance report).

| Review | Days Absent | Days Late |
|--------|-------------|-----------|
| 30-Day | 0 | 0 |
| 60-Day | 0 | 0 |
| 90-Day | 0 | 0 |

REVIEWERS' COMMENTS

| Review | Comments |
|--------|---|
| 30-Day | As this is Ms. Vartolone's first evaluation period, needing improvement is unsurprising. Ms. Vartolone is expected to lower her error rate and increase her speed as she gains experience as an interviewer through repetition. |

| | |
|--------|--|
| 60-Day | HSA trainees are expected to decrease their error rate while increasing their quantity of interviews. Unfortunately, this has not been occurring with Ms. Vartolone. While her quantity of interviews has increased along with the average for the trainees, her error rate has not shown improvement. Ms. Vartolone must drastically reduce her rate of errors. |
| 90-Day | During the 90 day evaluation period, Ms. Vartolone was unable to demonstrate that she is able to complete the required quantity and quality of work that is essential for a Human Services Aide. |

OVERALL RATING OF EMPLOYEE:

- 0-21 Does not meet job requirements (comments required)
- 22-40 Meets job requirements/job done satisfactorily
- 41-50 Exceeds job requirements (comments required)

| Review | Score | RECOMMENDATION |
|--------|-------|--|
| 30-Day | 23 | |
| 60-Day | 20.5 | Ms. Vartolone must thoroughly review her completed applications, checking for errors. She may find it helpful to review her training materials and to ask questions of her fully trained co-workers and her supervisors when challenging interview circumstances arise. Ms. Vartolone must understand that asking questions is not a hindrance to her training as an interviewer but a necessary step in learning and improving. |
| 90-Day | 18.5 | |

The 90-Day Review reflects that LaRobardier did not recommend Vartolone for permanent status. (R-10.) On June 3, 2016, Calocino issued a memorandum to Vartolone confirming that Vartolone was terminated from her employment with the Board effective June 3, 2016, at the end of the working test period because she did not demonstrate the ability to successfully perform the duties of the HSA title. (R-11.)

Vartolone’s personnel file includes fifty-six Referrals for Case Correction. (R-15.) Of those referrals, Vartolone signed fifty. (R-15.)

Testimony

Susan Silverstein

Clients apply for food stamps online or by mailing in an application, and food-stamp-application interviews may be conducted via telephone. The client is contacted and interviewing requires that trainees ask proper questions of the clients. Certain client answers require follow-up questions that do not appear on the application. By way of example, if a client told the interviewer that his income is \$1,000 per month and his rent is \$1,500 per month, it should suggest to the interviewer that something is amiss and trigger additional questions. Analyzing is very important, and it was a problem with Vartolone. Vartolone was given feedback and was asked to contact clients a second time because she had not asked the proper questions to obtain all necessary information. Vartolone also had problems with budgeting and with coding in the computer systems.

Trainees are kept in the Training Department for ninety days, at which point a decision can be made about whether a trainee is able to handle the position or should be terminated. Silverstein and the other administrators were concerned that Vartolone was not doing very well, so they and the other trainer decided to give Vartolone additional time to see if additional time and reduced class size for more one-on-one attention would help. After the additional month, Vartolone was sent to the "intake" and "redetermination" department, where she continued to interview clients and perform the same tasks she had been performing. At that point, the 30-60-90-Day period commenced, and Silverstein had no more formal interaction with Vartolone. However, at the request of Vartolone's supervisor, Silverstein reviewed some of Vartolone's cases.

A "Referral for Case Correction" was issued when a case was reviewed and determined to contain an error. The referral is a way of providing feedback to correct the error. The December 23, 2015, referral pertained to household composition and was issued because of incorrect application of the food-stamp regulations. (R-15A.)

DOVE is a computer system by which it can be verified if a client has been working or receiving unemployment, disability, or Social Security. Each case record must contain a DOVE screen for every individual aged eighteen and older. (R-15B.) The December 28, 2015, referral was issued because DOVE screens were missing. The January 11, 2016, referral pertained to a food-stamp regulation called "expedited screening." If a client meets certain criteria the client may receive benefits within seven days because of an emergency situation. Every case must have an expedited screening tool completed within seven days after the interview to determine whether it should be expedited or not. Expedited eligibility is important because those clients need food stamps within seven days, when a normal application is processed within thirty days. If a client is eligible for expedited food stamps, it is mandated that the benefits be received within seven days because of their situation, and an issue with interviewing could delay receipt of benefits. The January 11, 2016, referral was issued because that case was past seven days, and because the client's expenses exceeded her income, but there was no follow-up questioning from Vartolone as to how the client was paying her bills. Additionally, the client's daughter was receiving disability benefits, but there was no notice reflecting why, and no documentation of whether the client was receiving child support when there was no father in the household. (R-15C.) A second January 11, 2016, referral was issued because the budgeting for the expedited screening was not correct, because the income used was incorrect. There is a definite formula that is to be used, and it was not used correctly. (R-15D.) The January 25, 2016, referral was prepared by Osborne. The referral reflects that the client-verification request was not complete, and that Vartolone did not request the proper information, proof of contributions, phone, or work history. (R-15E.) The March 11, 2016, referral was signed by Silverstein because even though Vartolone was no longer under her supervision, Silverstein was assisting LaRobardier in reviewing some of Vartolone's cases and another trainee's cases. (R-15F.)

Vartolone's scores for the Food Stamp Program Eligibility Test and Financial Eligibility Test reflected in the 30-Day Training Progress Report were not acceptable scores. Additionally, there were numerous Referrals for Case Correction, including in March, April, and May. Fifty-six referrals is high and not acceptable. An employee with that number of referrals should not be hired permanently. At the end of the WTP,

Silverstein opined that Vartolone could not handle the position. Vartolone had been in training since October 26, 2015, and had received training on all the issues raised in the referrals. She should have known how to properly handle the cases. Vartolone's errors were in many different areas, but interviewing skills and budgeting or determining expedited eligibility were major problems for Vartolone.

Allan LaRobardier

LaRobardier supervises employees during their working test period (WTP employees). The WTP employees are usually coming from training, so his department completes their thirty-, sixty-, and ninety-day evaluations, assigns them work on a daily basis, continues to train and advise the workers, reviews their work and meets with them to discuss mistakes and corrections, and keeps track of work completion. Data is kept on the WTP employees' performance. Every time a WTP employee makes a mistake it is called an "error," and the WTP employee is given an error sheet. LaRobardier takes great pride in making sure his error sheets are very thorough. He does not just state what the error was, but also provides detailed instruction on how to correct it and how to avoid making the same mistake in the future.

Vartolone was assigned to LaRobardier on or about March 7, 2016. (R-12.) LaRobardier completed all of Vartolone's reviews, with some advice from his administration. From March 7, 2016, until April 20, 2016, his interaction with Vartolone would have been getting cases back to her that had errors and discussing the errors.

Quality is a statistical representation of how well the work is being completed, and how many and how often errors are made. It is an objective criteria, determined from statistical data. The scores can be anywhere from 0 to 100. If every application taken was wrong, it would equate to a 100 percent error rate, and if no application taken was wrong, it would equate to a 0 percent error rate. The scoring scale is 0 to 6, with average being a 3 or 4. In LaRobardier's experience, Vartolone's error rate was on the high side for a 30-Day Review, so she was scored at 1.5 for quality. Vartolone's quantity was below the average for the other WTP employees, so she was scored at 2.5. In assessing job knowledge and skill, LaRobardier usually considers the quality

and quantity of work. Vartolone's low quantity of work was showing a significant number of errors, which demonstrates lack of job knowledge and skill. Vartolone was always professional, always on time, and did not use any sick time during the WTP, so she was scored at 4 for professional conduct. Her customer service was scored at 3 because LaRobardier did not receive complaints or compliments about her. With respect to the remaining factors—self-motivation/initiative, communication, teamwork, flexibility/adaptability—LaRobardier explained that Vartolone was scored at 2.5 out of 5, which were fairly standard scores, because she was average in those areas and it is difficult for a trainee, WTP employee, or new employee to score above average. After the 30-Day Review, LaRobardier looks for improvement. A WTP employee is always going to make errors, but he expects the WTP employee to learn from the errors and not continue to make the same ones. LaRobardier also expects the WTP employees to increase their speed and the number of interviews completed.

For her 60-Day Review, Vartolone's error rate was higher than on her 30-Day Review, so she was given a score of 0 for quality. A 0 is not a common score, but it was given because her quality and speed had not increased. Additionally, in comparison with the other WTP employees in her training class, most showed improvement, but Vartolone did not. Although Vartolone's number of interviews had increased, she was not given a higher score on the 60-Day Review than she had received on the 30-Day Review because she remained below the class average. Her overall score was 20.5, which was lower than her 30-Day Review and indicated that she was not meeting the job requirements. It is not common for the score to be lower on the 60-Day Review than on the 30-Day Review.

Throughout the WTP, LaRobardier encourages WTP employees to seek guidance and ask questions of LaRobardier, the other supervisor, and the specialist. WTP employees were provided with handouts and documentation from the Training Department to use as a reference at their desks, and LaRobardier also makes sure there are other trained coworkers situated on either side of them to answer questions. LaRobardier recalled telling Vartolone specifically that she was one of the WTP employees who least frequently came to his office to ask questions, which was why he made it clear in his comments that it was not bad to ask questions. He tells the WTP

employees that it is an investment of his time to make sure they have the correct information and do not make the same mistakes in the future.

LaRobardier's 90-Day Review of Vartolone was reviewed by the lead administrator. On the 90-Day Review, Vartolone received a score of 0 for quality because her error rate had increased, which is not common and is not acceptable. Based on this score alone a WTP employee would not be retained. Vartolone received a score of 2.5 for quantity, because although she had increased the number of interviews, she was still below average. Vartolone received a score of .5 for job knowledge and skill because of her high error rate. A score of .5 is not an acceptable score, and based on this score alone a WTP employee would not be retained. Vartolone received a score of 3 for professional conduct. Her score was reduced one point from the prior review because the lead administrator felt that there could be adverse repercussions for clients if work was not done properly, and work not done properly is not very professional. Vartolone's score for customer service remained the same, but her score for self-motivation/initiative decreased to 2 because her applications had to be reviewed thoroughly to ensure proper eligibility. Her increasing error rate was becoming a hindrance to the Board. The hope is that a WTP employee's work improves and requires less review, but it was taking time for LaRobardier to review all of Vartolone's cases thoroughly because there were so many errors. Vartolone's overall score was 18.5. Vartolone did not demonstrate the ability to successfully perform the duties of an HSA, and LaRobardier did not recommend her for permanent status. LaRobardier had discussions with other supervisors and administrators, and no one felt that Vartolone should be hired after the WTP.

Victoria Vartolone

Vartolone testified that she did not know anything about a ninety-day probation period until training commenced. At the end of the ninety-day training period, she was kept an extra month. She was not told what was going on, and only knew that she was going to be kept there for a couple of weeks to see how she would do. Daily, she never knew if she was going to be laid off or not, which made her nervous and was very confusing to her.

The supervisors did not go over the 90-Day Review with her. She was called into Calocino's office and he gave her the 90-Day Review and told her that he was sorry it did not work out. She was not given an opportunity to look at the 90-Day Review before her swipe card was taken. It was very overwhelming, and she did not understand why the supervisors did not at least sit down with her and go over everything. Vartolone's understanding was that she was terminated because of her error rate.

LaRobardier had been very helpful, and she understood the corrections LaRobardier gave her. LaRobardier did not give her half as many corrections as Silverstein and Hall, another supervisor. LaRobardier had told her to come to his office if she had any questions, which she did. She also asked her coworkers for help or guidance if LaRobardier was busy, but then she would get the case back from Silverstein or Hall and be told it was wrong. Vartolone asked Silverstein, LaRobardier, and her coworkers about a client on unemployment, and she received different answers from each person. Vartolone never really understood the right way, and it was very confusing and overwhelming. Sometimes if she asked Hall to help her understand what was wrong, Hall was dismissive and did not help. Vartolone brought it to LaRobardier's attention on three separate occasions that Silverstein had given her back a case. Vartolone did not understand it at all and tried to figure it out. Additionally, on one occasion Vartolone was on the phone with a client conducting an interview when she was interrupted by Hall, who had a question about a case and asked Vartolone what she did wrong. Vartolone had to hang up with the client and later call the client back. She was back and forth to Hall's office for approximately half an hour, and she was unable to finish her cases on time.

Vartolone has a hard time with test-taking and she spoke to Silverstein about it. Vartolone is more hands-on, working with clients. Vartolone never knew how to process cases the right way because everyone had a different way of doing it, especially coworkers. She felt that Hall targeted her and belittled her a little if she had questions to ask, so she never really felt comfortable when Hall was the supervisor. Hall corrected a lot of Vartolone's cases, and she would put cases on Vartolone's desk and other

coworkers would see her doing it, which was embarrassing because Vartolone got a lot of cases back.

Vartolone did not sign many of the referrals for case correction. Some she refused to sign because she did not feel they were wrong. Others she refused to sign because she knew she had been thorough and printed everything, but received a correction that the items were not there. Additionally, on some of the cases Silverstein gave back to her for correction, Vartolone had already stated everything that needed to be stated, so she wrote "check case notes." There were also multiple occasions where Vartolone was given a correction for another employee's cases, and they had to go back and redo it, which took time from her cases for that day. Vartolone stayed basically every day until 3:30–4:00 p.m. correcting cases she was given by Hall and Silverstein, trying to figure out what was wrong and asking her coworkers. She was becoming more overwhelmed. Even staying late, she could not finish her caseload because she had to go through corrections. She was unable to do anything properly because she was nervous every day.

Vartolone testified that she dedicated a lot to the job. She admits that there were problems with budgeting that she was not correct on, and that was not her strong point.

Additional Findings of Fact

LaRobardier adequately explained the criteria for and means by which Vartolone was evaluated and provided adequate justification for the scores that were given to Vartolone. Neither LaRobardier nor Silverstein felt that Vartolone's evaluation scores were acceptable. Additionally, even if Vartolone had been given some corrections in error, there were still a significant number of referrals.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following additional **FACTS** in this case:

Vartolone scored below the class average on both the Food Stamp Program Eligibility Test and the Financial Eligibility Test. Vartolone's error rate was significantly above the class average for each evaluation period, and her error rate increased with each evaluation. Vartolone's quantity was below the class average for each evaluation period. Vartolone did not acquire the requisite job knowledge and skill to properly conduct client interviews and analyze client data, and was therefore unable to meet the job requirements of an HSA.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission within the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. It is the public policy of this state to select and advance employees on the basis of their relative knowledge, skills and abilities. N.J.S.A. 11A:1-2(a). The Commission is vested with the authority to, after a hearing, render the final administrative decision on appeals concerning employees terminated at the end of the working test period for unsatisfactory performance. N.J.S.A. 11A:2-6(a)(4).

N.J.S.A. 11A:4-15 provides as follows:

The purpose of the working test period is to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title. A working test period is part of the examination process which shall be served in the title to which the certification was issued and appointment made. The commission shall provide for:

- a. A working test period following regular appointment of four months, which may be extended to six months at the discretion of the commission, except that the working test period for political subdivision employees shall be three months and the working test period for entry level law enforcement, correction officer, and firefighter titles shall be 12 months;
- b. Progress reports to be made by the appointing

authority and provided to the employee at such times during the working test period as provided by rules of the commission and a final progress report at the end of the entire working test period shall be provided to the employee and the commission;

c. Termination of an employee at the end of the working test period and termination of an employee for cause during the working test period; and

d. The retention of permanent status in the lower title by a promoted employee during the working test period in the higher title and the right to return to such permanent title if the employee does not satisfactorily complete the working test period, but employees removed for cause during a working test period shall not be so returned.

The WTP furthers the Civil Service Act's purpose "to fill government positions upon a basis of merit and fitness to serve' by creating a probationary period of service during which time the appointing authority can observe and evaluate the appointee." Comm'n Workers of Am. v. N.J. Dep't of Pers., 154 N.J. 121, 130 (1998) (citing Devine v. Plainfield, 31 N.J. Super. 300, 303 (App. Div. 1954)). Employees are to be selected based upon knowledge, skills and abilities, and the working test period allows for progress reports in order to determine whether an employee should be retained or terminated for unsatisfactory performance. Based upon the record, I **CONCLUDE** that the Board satisfied its burden to prove that Vartolone's performance as an HSA was unsatisfactory, and required her termination at the end of the working test period.

ORDER

I **ORDER** that the respondent's termination of Vartolone at the end of the working test period is hereby **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

2/27/17

DATE



KELLY J. KIRK, ALJ

Date Received at Agency:

2/27/17

Date Mailed to Parties:

2/27/17

dlc

APPENDIX

WITNESSES

For Appellant:

Victoria Vartolone

For Respondent:

Susan Silverstein

Allan LaRobardier

EXHIBITS IN EVIDENCE

For Appellant:

None

For Respondent:

- R-1 Board's letter, dated October 9, 2015
- R-2 30-Day Training Progress Report
- R-3 Memorandum, dated January 14, 2016
- R-4 Board's letter, dated February 29, 2016
- R-5 Memorandum, dated February 29, 2016
- R-6 Board's letter, dated March 7, 2016, and Resolution
- R-7 (Not in Evidence)
- R-8 30-Day Evaluation
- R-9 60-Day Evaluation
- R-10 90-Day Evaluation
- R-11 Memorandum, dated June 3, 2016
- R-12 Position History for Employee
- R-13 (Not in Evidence)
- R-14 (Not in Evidence)
- R-15 Referrals for Case Correction