

B-17



STATE OF NEW JERSEY

In the Matter of P.H., Department of
Human Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Administrative Appeal

CSC Docket No. 2017-282

ISSUED: APR - 5 2017 (WR)

P.H., a Regional Staff Nurse, Medical Assistance appeals the decision of the Department of Human Services which denied her request to participate in the Donated Leave Program.

By way of background, in order to be eligible for donated leave, *N.J.A.C. 4A:6-1.22(b)ii* requires the applicant to have a period of disability of 60 or more working days. In the instant matter, the appellant submitted paperwork from her doctor which indicated that she needed to be absent from work three times per week, five hours per each episode, from March 31, 2016 to September 30, 2016. Accordingly, the appointing authority deemed the appellant's request as one for intermittent leave and denied her request.

On appeal, the appellant states that she suffers from a variety of illnesses, which require her to undergo dialysis three times a week, have balloon angioplasty every two to three months and miss one to three days of work per week. In particular, the appellant states that she has End Stage Renal Disease (ESRD), which she contends is a catastrophic injury that does not require a prolonged absence from work. The appellant also contends that a recent hospitalization in September 2016 involved a "significant threat to life or function." Finally, the appellant states that while she was able to schedule her next balloon angioplasty on a Friday and use the weekend to recover, another hospitalization would cause financial difficulties. In support of her appeal, the appellant submits various medical forms which detail her condition. She also submits personnel forms, including documents which indicate that she was approved for intermittent leave under the Family and Medical Leave Act in 2014. It is noted that the appellant received donated leave in 2013.

In response, the appointing authority reiterates that donated leave requires an absence from work for 60 days or longer. Additionally, it states that intermittent leave is permitted only when one returns from an approved donated leave. The appointing authority contends that the appellant's condition did not meet the requirements for her current participation in its donated leave program, and therefore maintains that her request was properly denied.

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.

In the instant matter, the appellant's circumstances do not meet the established criteria for participation in the donated leave program. Initially, *N.J.A.C.* 4A:6-1.22 does *not* provide for "intermittent" donated leave. Rather, the intent of the donated leave program 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, since "intermittent" donated leave is not provided for in *N.J.A.C.* 4A:6-1.22 and the donated leave program was intended to provide additional leave time for employees expected to require a prolonged absence from work who have exhausted all accrued leave time, the use of "intermittent" donated leave is clearly not contemplated by the rule. Rather, it has evolved based on limited exceptions to the donated leave rule authorized by the former Commissioner of Personnel in those cases where an employee returning from a prolonged leave of absence required an additional, medically defined, finite period of time to transition back into the workplace. Thus, while the use of additional, short-term 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).

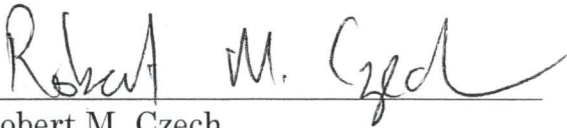
For the foregoing reasons, the appellant does not meet the regulatory criteria to participate in the donated leave program.

ORDER

Therefore, it is ordered that this appeal be denied.

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 5th DAY OF APRIL, 2017

A handwritten signature in dark ink, appearing to read "Robert M. Czech", is written over a horizontal line.

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