



STATE OF NEW JERSEY

In the Matter of S.H., Department of  
Law and Public Safety

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2799

Request for Rule Relaxation

ISSUED: APR 07 2017 (JET)

The Department of Law and Public Safety, on behalf of S.H., requests the relaxation of the provisions of *N.J.A.C.* 4A:6-1.22 so as to permit S.H. to receive more than the 260 donated leave days allowed to a recipient.

S.H. is an approved recipient of donated leave and is currently participating in the program. The appointing authority indicates that S.H. previously participated in the program, receiving and utilizing approximately 254 days of donated leave from November 14, 2014 through October 1, 2015. Further, the appointing authority avers that S.H.'s condition requires her absence from February 13, 2017 through August 25, 2017 and she is approved to receive donated leave for that time. However, she will exhaust the 260-day maximum in the near future, as she only has 45 hours of donated leave time remaining. Due to her catastrophic condition, the appointing authority requests that S.H. be permitted to receive more than the 260 days of donated leave for an additional six months through September 7, 2017. In support, the appointing authority submits a March 27, 2017 letter, requesting to extend S.H.'s lifetime maximum donated leave for an additional six months through September 7, 2017. The appointing authority states that S.H. has been counseled on applying for Disability Retirement and the rule relaxation request is being made in order to allow her to submit her papers to the Division of Pensions and Benefits. The appointing authority maintains that it will not be in support of any further rule relaxation requests for donated leave beyond September 7, 2017.

*N.J.A.C.* 4 A:6-1.22 (Donated Leave Program) states, in pertinent part, 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.

*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.

### CONCLUSION

Initially, *N.J.A.C.* 4A:6-1.22(d)1 was amended effective June 21, 2010. See 42 *N.J.R.* 12(a), 42 *N.J.R.* 1166(a). Prior to the amendment, the rule allowed a recipient no more than a 180-day maximum of donated leave. However, given that the former Merit System Board (Board) and then the Civil Service Commission (Commission) relaxed the rule by decision on numerous occasions to permit employees to receive more than the 180-day maximum, the Department of Corrections petitioned this agency to amend the rule to increase the lifetime maximum to 260 days. In proposing this increase, the Commission noted that "both employees and appointing authorities would benefit from greater predictability regarding the number of days employees eligible for donated leave may receive." It observed that the "amendments would provide a more realistic ceiling, based on several years of experience with the program, and thus reduce or eliminate the need for processing rule relaxation requests." Accordingly, the Commission adopted an amendment to *N.J.A.C.* 4A:6-1.22(d) and raised the ceiling to 260 from 180 on the number of donated leave days a recipient may receive.

In this case, the Department of Law and Public Safety seeks approval to allow S.H. to receive more than the 260 donated leave days up through September 7, 2017. In support of its request, the appointing authority indicates that S.H. has an approved leave of absence through August 25, 2017 and that her prognosis is terminal. In other words, the appointing authority requests that S.H. receive up to an additional six months of donated leave. As noted above, the Commission amended *N.J.A.C.* 4A:6-1.22(d) in 2010 and raised the ceiling from 180 to 260 the number of donated sick or vacation days which a leave recipient may receive. The amendments were aimed at providing greater predictability regarding the number of days employees eligible for donated leave may receive and providing a realistic ceiling so that both appointing authorities and employees could make any necessary arrangements for such things as continued employment and staffing needs.

However, the appointing authority has indicated that S.H. needs additional time in order to complete the Disability Retirement application process and it will not support requests for additional donated leave after September 7, 2017. In this case, S.H.'s Disability Retirement application should have been filed within the 260-day time frame as one of the intentions of raising the donated leave ceiling was to provide additional time to make such arrangements. Other viable options, such as filing for Disability Retirement must be considered by the employee and appointing authority prior to exhausting the 260-day lifetime maximum of donated leave and the failure to do so in the future will not be a basis on which to relax the rules. However, based on the particular circumstances presented in this case, good cause has been established to relax the provisions of *N.J.A.C.* 4A:6-1.22 to permit S.H. to receive more than 260

donated leave days up to the date of approval of her disability retirement but to no later than September 7, 2017, whichever comes first.

**ORDER**

Therefore, it is ordered that this request 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 5<sup>th</sup> DAY OF APRIL, 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: S.H.  
Mirella Bednar  
Kelly Glenn