



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of K.W., Department of
Education

CSC Docket No. 2017-4023

Request for Rule Relaxation

ISSUED: **AUG 17 2017** (WR)

The Department of Education, on behalf of K.W., requests the relaxation of the provisions of *N.J.A.C.* 4A:6-1.22 so as to permit K.W. to receive more than the 260 donated leave days allowed to a recipient.

K.W. is an approved recipient of donated leave and is currently participating in the program after having been diagnosed with a catastrophic illness in 2015. She was on an approved leave of absence from May 12, 2015 through April 24, 2016 and, during this time, used 216 donated leave days. The appointing authority indicates that K.W. was again approved for donated leave on March 6, 2017 due to a relapse of her condition. K.W. has used 44 donated leave days and, as of June 20, 2017, reached the lifetime maximum of 260 days. The appointing authority states that employees have donated 134 days to K.W. thus far and it continues to receive inquiries regarding the ability to donate to her. The appointing authority notes that K.W.'s condition is terminal and that she is currently undergoing clinical trials, as traditional treatment methods have failed. The appointing authority claims that allowing K.W. to "remain on the donated leave program will alleviate the financial burden of paying full cost for her health and prescription benefits while she is undergoing clinical trials." Therefore, it requests that *N.J.A.C.* 4A:6-1.22 be relaxed to allow her to receive additional donated leave from June 20, 2017 through December 31, 2017.

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
DPF-439 * Revised 7/95

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 Education seeks approval to allow K.W. to receive more than the 260 donated days up through December 31, 2017. In support of its request, the appointing authority indicates that K.W. suffered a relapse of her condition in March 2017 and that her prognosis is terminal. In other words, the appointing authority requests that K.W. 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 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.

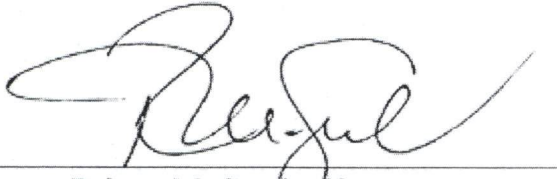
However, the appointing authority has indicated that K.W. is currently undergoing clinical trials. Further, K.W.'s condition relapsed in March 2017, almost one year after she returned to work in April 2016. Thus, although one of the intentions of raising the donated leave ceiling was to provide additional time to explore other viable options, such as filing for disability retirement, her return to work for almost a year followed by the relapse of her condition may not have made this possible. Therefore, 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 K.W. to receive more than 260 donated leave dates, but to no later than December 31, 2017. During this timeframe, K.W. and the appointing authority should make any necessary arrangements regarding her continued employment and its staffing needs as failure to do so will not be a basis in the future to relax the rule.

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 16th DAY OF AUGUST, 2017



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