

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

<b>RYAN BRABSON,</b>	)	
	)	
Employee/Grievant,	)	
	)	<b><u>Docket No. 21-07-811</u></b>
v.	)	
	)	
<b>DELAWARE DEPARTMENT OF SERVICES FOR</b>	)	<b>DECISION AND ORDER</b>
<b>CHILDREN, YOUTH AND THEIR FAMILIES,</b>	)	
<b>DIVISION OF YOUTH REHABILITATIVE SERVICES,</b>	)	
	)	
Employer/Respondent.	)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:30 a.m. on October 21, 2021, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** W. Michael Tupman, Chair; Paul R. Houck, Jacqueline D. Jenkins, Ed.D, and Sheldon N. Sandler, Esq., Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Ilona Kirshon  
Deputy Attorney General  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator

Ryan Brabson, *pro se*  
Employee/Grievant

Zi-Xiang Shen  
Deputy Attorney General  
on behalf of the Department of  
Services for Children, Youth and  
Their Families

## **BRIEF SUMMARY OF THE EVIDENCE**

Ryan Brabson, the employee/grievant, offered twenty-seven (27) documents into evidence, of which twenty-four (24) were admitted and marked as Grievant Exhibits 1 – 17, 19 – 22, 24 – 25, and 27.

The Department of Services for Children, Youth and Their Families (DSCYF), Division of Youth Rehabilitative Services (DYRS), offered eight (8) documents into evidence, of which three (3) were admitted and marked as Agency Exhibits D, E, and G.

Mr. Brabson testified on his own behalf and called the following witnesses: Michelle Darling, DSCYF/DYRS Chief of Community Services from September 2017 until July 2021, and Joe Bryant, the current DSCYF/DYRS Chief of Community Services who assumed the position on September 14, 2021.

The Agency called one witness: Renee Cicone, Deputy Director, DSCYF/DYRS, who is currently serving as the Acting Director of DYRS.

## **FINDINGS OF FACT**

Mr. Brabson is employed by the Community Services Unit of DYRS in the Family Services Program Support Supervisor classification (#MDD103).<sup>1</sup> He performs his duties under the operating title of Regional Manager,<sup>2</sup> with a badge and business card exhibiting that title.<sup>3</sup> Mr. Brabson reports directly to the Chief of Community Services. The Community Services Unit does not employ anyone in the classification of Family Services Program Support Manager (#MDD104).<sup>4</sup>

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<sup>1</sup> Grievant Exhibit 1.

<sup>2</sup> Transcript pp. 35-36.

<sup>3</sup> Grievant Exhibits 5 and 6.

<sup>4</sup> Grievant Exhibit 2; Transcript p. 24-25, 38-39; 143-144.

Over time the responsibilities of Regional Managers have expanded beyond the duties set forth in the Family Services Program Support Supervisor classification.

The Board finds the Regional Managers supervise a staff of 14 to 20 persons which includes Family Service Supervisors and subordinate Juvenile Probation and Parole Officers. They have statewide responsibilities.<sup>5</sup> In addition, the Regional Managers perform the following duties which are defined as Essential Functions for incumbents within the Family Services Program Support Manager classification:

1. Manages and directs the development of programs for children and families and ensures programs conform with Federal/State regulations and departmental goals and objectives. This involves overseeing that a program is being used the way it is intended to be used and making adjustments and/or recommendations for how services can continue to adapt to meet the needs of the population that is being served.
2. Is instrumental in helping the Chief with developing a strategic plan that focuses on updating policies relating to juvenile probation.
3. Directs budget development through making recommendations for enhancing programming or eliminating programming, and directly approving or identifying changes in funding for particular services.
4. Evaluates programs, long-term goals and the needs of targeted populations, directs implementation of approved programs, and ensures program objectives are met. This involves sitting on bimonthly committees where services are evaluated for a particular service provider and then making recommendations, as well as overseeing implementation of those recommendations, to address the population based off the outcomes of those bimonthly meetings.
5. Reviews RFPs and grant applications for technical soundness and conformance to departmental goals and objectives, and sits on RFP panels.
6. Serves in an advisory capacity to community service organizations, such as Group Violence Intervention.
7. Determines staff training needs and provides directly or arranges for needed training by having regional meetings on a regular basis to address training needs of the region at the time and to develop that training. In addition, he participates in global statement training for motivational intervening for probation officers.
8. Develops section's plans, goals and objectives and works with other section managers to integrate into an overall service plan. In addition, he works

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<sup>5</sup> Grievant Exhibit 2. Mr. Brabson has three direct reports and also oversees the performance of sixteen employees who are supervised by his direct reports.

with other individuals in management roles across the Department within different Divisions in order to educate and develop plans for delivering appropriate services to juveniles under DYRS supervision.<sup>6</sup>

Insofar as there are no incumbents in the Family Services Program Support Manager classification to perform the essential functions of that position, and these job duties need to be performed for the Unit to function, it has devolved to the Regional Managers to perform most if not all of the essential functions of a Family Services Program Support Manager.<sup>7</sup>

### CONCLUSIONS OF LAW

Merit Rules 3.2 states:

**3.2 Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.**

An increase in the volume of work assigned to an employee by itself does not constitute working out of class.<sup>8</sup> However, where, as here, an employee performs a substantial portion of the duties of a higher classification for a period greater than 30 calendar days, the employee is entitled to be compensated at the higher rate of pay. “An employee is working out of class when the duties assigned him are not those specified in the specification for the class in which he is

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<sup>6</sup> The current Chief of Community Services for the Division of Youth and Rehabilitative Services testified his experience with Regional Manager job duties is limited to about a month. He confirmed that Mr. Brabson supervises more than ten people, has statewide responsibilities, ensures programs conform with Federal/State regulations and departmental goals and objectives and that he performs the essential functions listed in number 4. He testified that he has not been in the position long enough to be able to speak to management and direction of program development (first part of number 1), or numbers 2 and 3, and he did not testify to numbers 5-8.

<sup>7</sup> Renee Ciconte, the Deputy Director of the Division of Youth Rehabilitative Services, testified that Mr. Brabson was properly functioning as a Family Services Program Support Supervisor, but agreed that the Regional Managers perform some of the functions of the Family Services Program Support Managers. Transcript at p. 168.

<sup>8</sup> *Sharon Bertin v. DHSS/DDDS*, MERB Docket No. 20-10-789 at p.4 (September 23, 2021).

incumbent. Rather, he is performing, for an extended period of time, the full range of duties enumerated in another class specification.”<sup>9</sup> In order to prevail, Mr. Brabson must establish that “there is another existing class with duties, responsibilities, and qualifications which is more consistent with what the employee actually does.” *Id.* While Mr. Brabson may not be performing all of the job specifications of Family Services Program Support Manager, “the Board does not believe this should be a mechanical process based on the number or percentage of the job specifications performed, or the percentage of time spent on each one. Rather, the Board believes it more appropriate to take a ‘totality of the circumstances approach’.”<sup>10</sup>

Based on the totality of circumstances presented by the evidence in the record, the Board concludes as a matter of law that Mr. Brabson met his burden to prove that he is serving in a higher position for purposes of Merit Rule 3.2.

The Merit Rules place a time limitation on retroactive remedies as follows:

**18.10 Retroactive remedies shall apply to the grievant only and, for a continuing claim, be limited to 30 calendar days prior to the grievance filing date. Any financial settlement shall be reduced by the amount of the grievant's earnings during the period covered by the settlement regardless of source, excluding part-time income which was received prior to the separation.**

Accordingly, Mr. Brabson is entitled to backpay at the rate of compensation for a Family Services Program Support Manager (#MDD104), commencing 30 calendar days prior to the date on which he filed his grievance<sup>11</sup> and continuing for as long as he performs the Family Services Program Support Manager duties set forth in the Findings of Fact section of this decision.<sup>12</sup>

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<sup>9</sup> *Id.*, citing to *Jenkins v. Delaware Department of Health and Social Services*, MERB Docket No. 07-01-380 at p. 5 (May 15, 2008).

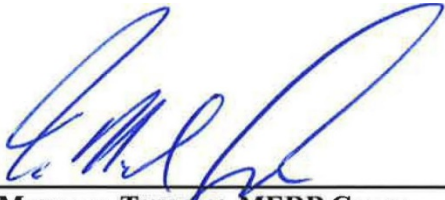
<sup>10</sup> *Dorn v. Department of Finance, State Lottery Office*, Docket No. 16-01-646 at p. 6 (August 25, 2016).

<sup>11</sup> Mr. Brabson’s Merit Grievance was dated April 20, 2021.

<sup>12</sup> To the extent that Mr. Brabson seeks critical reclassification of the position and pay grade to a higher position and paygrade as a remedy, Budget Epilog language in SB 240, Section 8(e), states that “[C]ritical reclassification requests and pay grade determinations shall not be appealed to the Merit Employee

**DECISION AND ORDER**

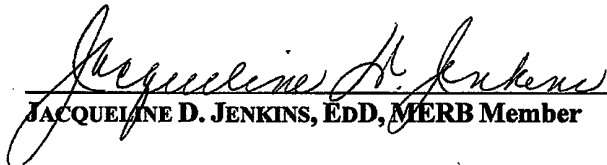
It is this 1<sup>st</sup> day of December 2021, by a vote of 4-0, the Decision and Order of the Board to grant the grievance and award backpay commencing March 21, 2021 and continuing for as long as Mr. Brabson continues to perform Family Services Program Support Manager duties.



**W. MICHAEL TUPMAN, MERB CHAIR**



**PAUL R. HOUCK, MERB Member**



**JACQUELINE D. JENKINS, EDD, MERB Member**



**SHELDON N. SANDLER, ESQ., MEMBER**

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Relations Board” precluding the Board from granting such relief. See also *Morton v. Department of Treasury*, Docket No. 13-12-598 (September 19, 2014).