



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the matter of Social Service
Assistant (C0840T), Bergen County

CSC Docket No. 2019-2059

Appointment Waiver

ISSUED: JUNE 14, 2019 (JET)

Bergen County requests permission not to make an appointment from the certification for Social Service Assistant (C0840T), Bergen County.

By way of background, Anna Nieradka was provisionally appointed to the subject title on October 3, 2016. The resulting examination was announced with a closing date of November 20, 2015 and subsequently promulgated containing 20 eligibles on March 17, 2016 and expired on March 16, 2019. A certification was issued on October 11, 2016 (OL161175) which contained the names of the 20 eligibles. Nieradka's name did not appear on the certification. Nieradka's provisional appointment was discontinued effective January 23, 2019 as she was appointed as a Community Service Worker. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement prior to its administration.

By letter dated March 12, 2019, the appointing authority requested an appointment waiver. It explained that the provisional was removed as she was incorrectly appointed to the subject title. However, it requested that no costs be assessed as it still plans to use the list. Although the appointing authority states that it still plans to use the list, there is no evidence that it requested an extension and it did not name any candidates that it plans to appoint. Additionally, the Division of Agency Services (Agency Services) confirmed that a new certification has not been issued for the subject title.

A review of agency records reveals that there are currently no employees serving provisionally in the subject title with Bergen County.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated due to the appointing authority's appointment of a provisional employee to the subject title. However, after the OL161175 certification was issued, the appointing authority removed the provisional appointee who was serving in the subject title as she did not meet the needs of the appointing authority. Additionally, the list expired on March 16, 2019 and it did not request an extension of the subject list. As there is no longer a provisional appointee serving in the subject title and the appointing authority did not indicate the names of any candidates that it plans to appoint, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. While the Civil Service Commission (Commission) recognizes that the only provisional employee in the subject position was appointed to another position, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Furthermore, the fact that the appointing authority cannot now utilize the subject list is not sufficient justification to waive the costs. Therefore, although the appointing authority has shown sufficient reason for not making an appointment from the subject eligible list, under these circumstances, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing

authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 12th DAY OF JUNE, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Michele Popkin
Kelly Glenn
Records Center
Beth Wood