



STATE OF NEW JERSEY

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

In the Matter of B.M., Department of
Law and Public Safety

Administrative Appeal

CSC Docket No. 2018-1228

ISSUED: MARCH 28, 2018 (WR)

B.M., a Deputy Attorney General 4 appeals the decision of the Department of Law and Public Safety which terminated his approval to participate in the Donated Leave Program (DLP) intermittently.

By way of background, the appellant was approved to participate in the DLP intermittently in 2015 on the account that he suffers from Multiple Sclerosis (MS). However, in response to *In the Matter of P.H.*, (CSC, decided April 5, 2017), the appointing authority informed the appellant that he was no longer able to participate in the donated leave program intermittently, effective October 28, 2017.

On appeal, the appellant contends that his medical condition unequivocally meets the requirements set forth in *N.J.A.C. 4A:6-1.22* for participation in the DLP. He asserts that there is no express provision in that rule that requires an employee to be absent from work for a continuous period of 60 or more work days. The appellant states that his medical condition requires him to miss work four or five days per month. He also states that unpredictable and debilitating flare-ups caused by his medical condition make it difficult to perform daily functions. The appellant also states that he is being penalized because MS does not fit cleanly into the “finite” disability period. The appellant requests that if his appeal is denied, he be permitted to use the leave that has already been donated to him if or when he participates in the DLP in the future.

Despite the opportunity, the appointing authority did not respond.

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 27th DAY OF MARCH, 2018

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