



**STATE OF NEW JERSEY**

In the Matters of Richard Oliva and  
Supervisor of Patients' Accounts 1  
(S1043A)

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

CSC Docket Nos. 2023-541 and  
2023-2629

List Cancellation  
Appointment Waiver

**ISSUED: June 28, 2023 (AMR)**

Richard Oliva appeals the cancellation of the February 15, 2022 certification (OS220065) of the eligible list for Supervisor of Patients' Accounts 1 (S1043A). Additionally, Trenton Psychiatric Hospital, Department of Health, requests permission not to make an appointment from the August 30, 2021 (OS210310) and February 15, 2022 certifications (OS220065) of the subject eligible list. These matters have been consolidated due to common issues presented.

By way of background, the record reveals that Trenton Psychiatric Hospital provisionally appointed Sherry Taylor, pending open competitive examination procedures, to the subject title effective April 1, 2019. An examination was announced with a closing date of November 21, 2019, that resulted in a list of 18 eligibles, promulgating on August 26, 2021 and expiring on August 25, 2024. The eligible list was certified on August 30, 2021 (OS210310) to Trenton Psychiatric Hospital and contained 15 names. It is noted that Taylor did not appear on the certification. Oliva was tied in the third rank on the subject eligible list and fourth on the certification. The certification was returned on January 19, 2022. In disposing of the certification, the appointing authority removed one eligible for no longer being interested in the position, retained the remaining 14 eligibles who were either considered reachable or not reachable for appointment on the certification, and made no appointments. However, the appointing authority had offered employment to the first and second ranked eligibles, but they declined. The appointing authority also noted on the certification that Taylor "has been displaced effective 12/31/21." Taylor's provisional appointment was terminated effective December 31, 2021. The certification disposition was approved by the Division of Agency Services, now the Division of Human Resource Information Services, on February 1, 2022. A second certification of

the subject eligible list was issued on February 15, 2022 (OS220065) to Trenton Psychiatric Hospital containing 15 names. On this certification, Oliva ranked third. The appointing authority returned this certification on July 21, 2022, requesting its cancellation, and had advised candidates by letter, dated July 20, 2022, that “[d]ue to the amount of time that it took to process the certification we have requested that it be canceled.” As noted, Taylor was no longer serving provisionally in the subject title. Furthermore, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

On appeal, Oliva disputes the creation and cancellation of the February 15, 2022 certification (OS220065). He notes that he tested for the position, ranked fourth on the August 2021 certification, and interviewed in November 2021. He was told that the appointing authority selected a candidate in the top three, which he understood “considering the Rule of Three.” Oliva states that he then ranked third on the February 2022 certification and questions whether someone was appointed in November 2021, why the subject eligible list was certified again in February 2022, whether there was a vacancy in November 2021, whether there is a current vacancy, whether there was a second round of interviews as he asserts that the appointing authority contacted eligibles below him on the second certification for a copy of their resumes, and why the February 15, 2022 certification (OS220065) was canceled.

In its request, Trenton Psychiatric Hospital explains that Taylor had been separated from employment, effective December 31, 2021, and no appointments from the August 30, 2021 (OS210310) certification were made due to her separation. Moreover, the appointing authority indicates that it has no additional vacancies for a Supervisor of Patients’ Accounts 1. It further states that, on February 15, 2022, a second certification (OS220065) was issued. However, it asserts that this certification must have been generated in error, as it did not request this action. The appointing authority submits that it returned the second certification on July 21, 2022 for it to be canceled. Therefore, the appointing authority requests permission not to make an appointment from the August 30, 2021 certification (OS210310) and February 15, 2022 certification (OS220065) of the subject eligible list.

It is noted that the appointing authority’s request for an appointment waiver was acknowledged. It was found that the Division of Agency Services improperly approved the disposition of the August 30, 2021 certification.

## 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 as the result of the provisional appointment of Taylor. After a complete certification was issued on August 30, 2021 (OS210310), Trenton Psychiatric Hospital returned the certification noting that Taylor had been “displaced” and was separated from the subject title effective December 31, 2021. Although offers of employment were extended to the first and second ranked eligibles, they declined, and no appointments were made. At that juncture, the appointing authority should have requested a waiver of the appointment requirement. In other words, the Division of Agency Services should not have approved the disposition of the certification, and it should have advised the appointing authority that a waiver was required at that time. Further, it appears that the second certification was issued in error, and perhaps was an attempt to rectify the situation of the first certification, as the appointing authority states that it did not request one. Nonetheless, in reviewing the record as it currently stands, the Civil Service Commission (Commission) finds that the appointing authority is requesting permission not to make an appointment from either certification of the subject eligible list, the provisional employee has been separated from the subject title, there are currently no other employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority, and no additional vacancies are available as reported by the appointing authority. Therefore, based on the foregoing, there is sufficient justification for an appointment waiver, and both certifications should be canceled.

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, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Commission notes that the list in question will not expire until August 25, 2024 and the appointing authority may be able to use the list in the future. Furthermore, the examination was announced statewide for all departments. Thus, the list is of such duration and scope as to make utilization by this or other State appointing authorities probable. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event the appointing authority fails to utilize the subject eligible list by its expiration date of August 25, 2024, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. It is noted that the cost of the selection process is \$8,285.

With regard to Oliva’s appeal, the questions he has raised have been answered, namely that no appointments were made in November 2021 from the August 30, 2021 (OS210310) certification and there is no longer a vacancy that will be filled as the

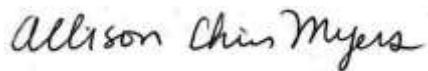
provisional employee has been separated. There are also no additional vacancies with the appointing authority at this time. Further, despite whether resumes were collected after the second certification (OS220065) was issued, the appointing authority requested that the certification be canceled, and under the circumstances set forth above, the Commission finds that cancellation of the certification is proper. Therefore, there is not a sufficient basis to grant Oliva's appeal challenging the cancellation of the certification. Nonetheless, the Commission notes that Oliva may have an opportunity to be certified again prior to the expiration of the eligible list, which will not occur until August 25, 2024. Lastly, while the Commission is perplexed as to the appointing authority's notice to eligibles regarding the February 15, 2022 certification indicating "[d]ue to the amount of time that it took to process the certification we have requested that it be canceled," as that certification appears to have been issued in error, and the reason for its cancellation has been outlined herein, that notice is of no moment.

### ORDER

Therefore, it is ordered that Richard Oliva's appeal be denied. It is further ordered that the request for the waiver of the appointment requirement be granted, the August 30, 2021 certification (OS210310) and February 15, 2022 certification (OS220065) of the Supervisor of Patients' Accounts 1 (S1043A) eligible list be canceled, and no selection costs presently be assessed.

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 28<sup>TH</sup> DAY OF JUNE, 2023




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