



**STATE OF NEW JERSEY**

In the Matter of A.K., Department of  
Human Services

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

CSC Docket No. 2025-832

Discrimination Appeal

**ISSUED: January 15, 2025 (SLK)**

A.K., a Program Specialist 2, Social Human Services with the Division of Mental Health Services, Department of Human Services, appeals the determination of a Department of Human Services Deputy Commissioner which found that the appellant was not subjected to disability discrimination under the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.K. alleged that M.T., a Manager 2, Human Resources discriminated against her based on disability by denying her request for an Americans with Disabilities Act (ADA) accommodation. The investigation revealed that M.T. denied the allegation. During the investigation, A.K.'s supervisor, R.E., a Medical Director, stated that A.K.'s duties could not be performed remotely. Specifically, R.E. noted that overseeing and managing critical initiatives under direct supervision, overseeing contracts with providers of sponsored training, and acting as a liaison with State and county prevention programs could not be performed remotely and these were essential duties which could not be removed. Additionally, R.E. stated that while working remotely, A.K. could not make the necessary connections that are important for contracts, including the necessity to follow up with fiscal, legal, and funding projects. Further, R.E. indicated that moving forward, A.K. could work a hybrid schedule and she should be in the office three days per week to have weekly meetings with him to ensure that projects are not delayed. Therefore, the investigation did not substantiate a violation of the State Policy.

On appeal, A.K. presents that she began experiencing health problems in 2023. Further, after learning about certain symptoms that A.K. was experiencing and understanding that she commuted over one hour to work (47.1 miles) each way, her physical therapist determined that it was unsafe for her to drive long distances, and in his clinical opinion report, he suggested that she be allowed to work remotely for 30 days to avoid the long commute and allow her easier access to physical therapy and other specialists.

A.K. notes that at the start of the COVID-19 pandemic, she was instructed to work at home which lasted 18 months. Thereafter, in December 2022, she went on leave and when her leave ended, her doctor instructed her to work from home due to medical complications while under her care. Accordingly, A.K. requested an ADA accommodation to work from home which was approved. Further, she had monthly follow-ups with her doctor who continued to support her working from home full-time until February 2024, when her doctor indicated that she was well enough to return to work.

A.K. indicates that her duties have not changed since she was first hired in May 2019 and there have not been any updates to her responsibilities that require her to be in the office. She describes her job duties as managing critical initiatives under direct supervision, overseeing contracts with providers of sponsored trainings, and acting as a liaison with State and county prevention programs which had been performed remotely for 28 months since the start of her employment with the appointing authority. A.K. also states that meetings with providers to discuss sponsored trainings and critical initiatives have been conducted virtually since returning to the office after the COVID-19 pandemic. She provides that making connections that are important for contracts including follow-ups with fiscal, legal, and funding are also conducted virtually. Moreover, R.E. has directly supervised her while she was working remotely. A.K. argues that since she was approved and able to work from home during the COVID-19 pandemic and in 2023, the same parameters should apply to her new medical disability. She contends that the appointing authority's alleged disregarding of her medical necessities is a violation of the State Policy given the lack of differences in each situation stated above. She emphasizes that she has the same job duties in 2023 when her first accommodation was approved as she has now when her second request for an accommodation was denied by claiming that these job duties needed to be conducted in the office. She also requests to be removed from the medical certification that she was placed on her due to submitting a certain number of sick hours due to health issues on June 6, 2024, to be removed from the essential employee status that she was assigned on June 25, 2024, and to be reassigned to a Department of Human Services location within the mileage that her physician approves.

In reply, the appointing authority states that A.K. was unable to effectively perform all her essential job duties while working remotely full-time. It notes that

R.E. completed an Essential Functions Worksheet where he indicated that overseeing and managing critical issues under direct supervision, overseeing contracts with providers of sponsored training, and acting as a liaison with State and county prevention programs could not be completed remotely. Specifically, R.E. stated that A.K. was not fully performing her position effectively because some projects did not get done. Further, while she attended some meetings, she did not provide training. Additionally, R.E. provided that during A.K.'s absence, he was doing a lot of her work. R.E. indicated that when A.K. is not in the office she cannot make the necessary connections that are important so contracts and the necessary follow up with fiscal, legal and funding for projects are not delayed. R.E. stated that A.K. could work a hybrid schedule and she should be in the office three days per week to have weekly meetings with him to ensure that projects are not delayed, and work is being done. In other words, A.K.'s request to work remotely full-time was not denied because her duties changed, but because she was not able to complete certain essential functions while working remotely. The appointing authority highlights that the ADA does not require an employer to grant an accommodation request when such a request places an undue hardship on the employer. In this case, R.E. demonstrated that A.K.'s working fully remote placed an undue hardship on the employer by not conducting trainings, not following up with fiscal, legal and fundings for projects, and R.E. having to perform certain aspects of A.K.'s duties himself. Therefore, while the appointing authority acknowledges that sometimes it is necessary for an employee to perform someone else's duties on a temporary basis, this type of accommodation cannot go on indefinitely as such an arrangement places an undue burden on the department.

Additionally, the appointing authority acknowledges that it permitted A.K. to work remotely full-time for 28 months and is currently allowing her to work remotely two days per week. Further, it states that accommodation requests are reviewed on a case-by-case basis and are fact-specific. However, the appointing authority emphasizes that it is not guaranteed that it can grant a request for an accommodation just because an earlier request, which was based on different circumstances, was granted.

Concerning A.K.'s request to be removed from medical certification, *N.J.A.C. 4A:6-1.4* and negotiated contracts provide that an employee who has excessive absenteeism may be placed on "Medical Certification" in which they are required to provide acceptable medical evidence for future absences for illness or injury which exhausts all earned sick time earned in that calendar which does not otherwise require a doctor's original certificate. It presents that if A.K. used more than a full year's allowance of sick time by June 6, 2024, she should be placed on medical certification. The appointing authority notes that medical certification only requires A.K. to provide acceptable medical evidence once a year's allowance of sick time has been exhausted and only for the remainder of the 12-month period. It states that this

is not a negative employment consequence, and the appointing authority has legitimate business reasons to enforce its sick leave procedures.

Referring to A.K.'s designation as an essential employee, the appointing authority provides that her position fits the legal definition of an essential employee under *N.J.S.A. 34:15-31.11* as her works involves "social services, and other services." It indicates that being an essential worker does not change A.K.'s duties, but it enables her supervisor to make decisions as to whether her position is operationally necessary during each particular State of Emergency invoked by the Governor. The appointing authority states that her change in status does not impact whether she is able to use sick time, vacation, or other leave. Therefore, the appointing authority argues that her change to designate her position as being essential is not discriminatory.

Regarding A.K.'s request to work in-person at a Department of Human Services' location within the driving range that her physician approves instead of her current office, it states that her physician suggested that she work at a location that is less than a 45-minute drive. However, the investigation revealed that R.E. stated that A.K. needs to be in the same office as him so that he can directly supervise her duties, which include managing and overseeing critical initiatives, including contracts with providers of sponsored training. It presents that A.K. is the only person who holds the position of Suicide Prevention Coordinator, and there is no one to step in when she is away. Further, the appointing authority notes that the other regional offices are not within a 45-minute drive of where she lives.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon disability will not be tolerated. *N.J.A.C. 4A:7-3.2(n)1* provides that the burden of proof shall be on the appellant.

*N.J.A.C. 4A:6-1.4(d)* provides that an appointing authority may require proof of illness when an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period.

Under the ADA, the term "reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions

of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. A reasonable accommodation may include, but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See* 29 *C.F.R.* § 1630.2(o) (1999).

Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See* 29 *C.F.R.* § 1630.2(p). Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself. This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with the disability. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 *C.F.R.* § 1630.2(o) and 29 *C.F.R.* § 1630.9.

It is noted that in providing an accommodation, an employer does not have to eliminate an essential function or fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without a reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. *See* 29 *C.F.R.* 1630.2. *See also Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995) (No reasonable accommodation of Police Sergeant's disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating the Sergeant after he was rendered paraplegic in skiing accident); *Albertson's Inc. v. Kirkingburg*, 527 *U.S.* 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation's visual acuity standards was not a "qualified" individual with a disability under the ADA).

Initially, it is noted that A.K. states in her appeal that her full-time remote work was approved "until February 2024 when my [doctor] found that I was well

enough to return to work.” Therefore, there is no basis to not require A.K. to come into an office and the only issue in this regard is whether she can be accommodated by having her in-person work be at a location closer to her home to allow her to have a commute within the timeframe her physician recommends.<sup>1</sup> However, as the appointing authority indicates that it does not have a location that fits that recommendation, this request is moot. Regardless, even if such a location did exist, the record indicates that R.E., A.K.’s supervisor, indicated that he needs her to be in the same office as him three days a week so that she can perform the essential duties of her position. The investigation revealed that R.E. indicated that A.K.’s essential duties included overseeing and managing critical issues under direct supervision, overseeing contracts with providers of sponsored training, and acting as a liaison with State and county prevention programs and these duties could not be completed remotely. Specifically, R.E. stated that A.K. was not fully performing her position effectively while working full-time remotely because some projects did not get done. Further, while she attended some meetings, she did not provide training. Additionally, R.E. provided that during A.K.’s absence, he was doing a lot of her work. R.E. indicated that when A.K. is not in the office she cannot make the necessary connections that are important so contracts and the necessary follow up with fiscal, legal and funding for projects are not delayed. It is noted that A.K. has not submitted any evidence to refute R.E.’s statements. Therefore, the current record reveals that it would impose undue hardship on the appointing authority to accommodate A.K.’s request to not have to work in the office three days a week, and she was not subjected to a violation of the State Policy when the appointing authority denied her request.

Concerning A.K.’s request to be removed from medical certification, *N.J.A.C.* 4A:6-1.4(d) does not signify that if A.K. is legitimately sick she cannot take sick leave beyond the yearly allotment. Regardless, it is at an appointing authority’s discretion to implement these provisions and in this case, A.K. has presented no evidence that it being imposed on her is in violation of the State Policy or otherwise improper. Further, the appointing authority has a legitimate business reason to monitor the use of sick time in excess of a year’s allowance to prevent potential abuse of such time.

Referring to A.K.’s designation as an essential employee, A.K. has not argued nor has she submitted any evidence that her position does not meet the statute’s definition as an essential employee. Moreover, there is no evidence that this designation was imposed improperly based on any of the protected categories found in the State Policy. As such, it cannot be found that this designation violates the State Policy.

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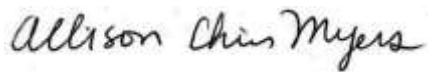
<sup>1</sup> The appointing authority indicates that A.K.’s physician suggested that her commute be no longer than 45-minutes. However, on appeal, A.K. did not state what the mileage was that her physician recommended, nor did she provide any documentation to support that claim.

**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 15<sup>TH</sup> DAY OF JANUARY, 2025



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