



STATE OF NEW JERSEY

In the Matter of E.R., Ann Klein
Forensic Center, Department of
Health

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

CSC Docket No. 2026-1157

Administrative Appeal

ISSUED: May 20, 2026

E.R. requests permanency in the title of Social Worker 1, Psychiatric, and other relief.

As background, pursuant to the Civil Service job specification, the title of Social Worker 1, Psychiatric, requires a Master’s degree in Social Work; one year of experience in social case work, involving responsibility for gathering and analyzing social information from clients, the determination of their needs, and the planning and administration of treatment plans geared toward the needs of the individual clients; and registration as a Licensed Social Worker (LSW) in the State of New Jersey. Applicants may be in the process of obtaining said registration as long as there is evidence of a passing score on the licensure exam and that the application has been submitted. Further, a review of the job specification indicates that the Social Worker 1, Psychiatric, title is in the competitive division, signifying that permanent appointment in this title is subject to competitive testing.

The appellant received a provisional appointment, pending open competitive examination procedures, to the title of Social Worker 1, Psychiatric, effective July 29, 2023, with the Ann Klein Forensic Center (AKFC), Department of Health (DOH). On December 4, 2023, the appellant applied for an open competitive examination for Social Worker 1, Psychiatric (S1270E). This examination was administered as an assembled test on June 29, 2024. The appellant did not appear for the examination. On April 1, 2025, the appellant applied for another open competitive examination for Social Worker 1, Psychiatric (S0284G). The examination was administered as an

assembled test on April 14, 2026. The resulting eligible list issued on May 13, 2026, with an anticipated promulgation date of May 21, 2026 and an expiration date of May 20, 2028. The appellant ranks ninth.

In her appeal to the Civil Service Commission (Commission), filed November 5, 2025, the appellant presents a number of arguments and requests:

- The failure to provide notice of provisional appointment undermines Civil Service protections.¹
- The denial of a fair and reasonable opportunity to test is improper. When illness prevents an employee from attending an examination, the make-up rules and candidate notice procedures are critical.²
- Excessive delay in testing creates an unlawful, indefinite provisional condition. Administrative delay cannot become a mechanism that traps licensed professionals in prolonged provisional status for multiple years.
- The inconsistent use of resume review/“Write-In” practices is arbitrary and capricious. Specifically, the appellant here notes that Title 4A permits different examination/evaluation methods in appropriate circumstances, including evaluation of education, training or experience. *See N.J.A.C. 4A:4-2.2*. However, per the appellant, it must be applied consistently and with documented standards. Selective “resume review” outcomes for some Social Workers, while others are held to an “exam/list pathway” with prolonged delays, is unequal treatment on its face unless the DOH/AKFC and this agency can document a lawful, rational basis for the distinction.
- There has been unequal treatment of Licensed Clinical Social Workers compared to other licensed clinical disciplines. Licensed Clinical Social Workers perform essential clinical functions within a forensic hospital alongside other licensed disciplines (nursing, psychology, psychiatry), yet Social Workers appear to be uniquely subject to an exam/list-based permanency pathway that can remain stalled indefinitely due to symbols “under review” and delayed list

¹ The appellant submits documentation at the time she first accepted appointment to demonstrate that notice that her appointment was only provisional was not provided.

² The appellant provides an August 22, 2024 email to this agency stating that she was unable to take the test administered on June 29, 2024 and asking if her credentials could be evaluated regarding her permanent status. She has not provided any evidence that she attempted to ask for a make-up test within five days after the test was administered as indicated on the test administration notice that was mailed to her.

issuance, while other licensed disciplines attain permanent status through credential/appointment processes that are not dependent on delayed examinations/lists in the same way. The appellant argues that courts have long recognized that differential treatment of employees performing comparable professional functions, without a statute- or regulation-based justification, is impermissible. *Terry v. Mercer County Bd. of Chosen Freeholders*, 86 N.J. 141 (1981).³

The appellant adds that as she is a Licensed Clinical Social Worker, she has already completed graduate-level education; supervised clinical experience; and two national licensing examinations required for clinical licensure, yet she is still being required to take an additional Civil Service examination for the Social Worker 1, Psychiatric, title. She states that psychiatrists, nurses, psychologists, and program coordinators on her team were not required to take a Civil Service examination to be made permanent.

Further, the appellant argues that given that the job specification for Social Worker 1, Psychiatric, was revised in October 2022 to include registration as a Licensed Social Worker in the State of New Jersey among the requirements, the salary range does not reflect modern licensed clinical social work practice.

The appellant requests that the following documents be produced for the record: the notice and explanation she received at onboarding indicating that her appointment was provisional; the examination make-up policy and candidate notice provided to her; the written step placement criteria used at hire for Social Worker 1, Psychiatric; any documentation showing whether recruitment, incentive, differential, or exception programs were applied for other hires in the same title (including Salary Regulations/Compensation Compendium, Section 3 – Special Incentive Salary Programs); the approvals/justifications for any such exceptions; and the documented basis for her step placement and appointment handling compared to similarly situated Social Workers.

The appellant seeks the following relief at minimum:

1. Require DOH/AKFC to produce proof-of-delivery of the provisional notice and explanation allegedly provided to her at hire or make an explicit finding that it was not provided.

³ The New Jersey Supreme Court noted: “This is a civil rights case that calls for an examination of the nature and scope of the statutory remedial powers of the Director of the Division on Civil Rights under the Law Against Discrimination, *N.J.S.A. 10:5-1 et seq.* The appeal focuses upon the power of the Director to award remedial relief in the form of promotion and retroactive seniority on behalf of three public employees in order to rectify employment discrimination practiced upon them on account of their sex, contrary to *N.J.S.A. 10:5-12(a).*” 86 N.J. at 143.

2. Produce the make-up examination policy and the candidate notice process (*N.J.A.C.* 4A:4-2.9) and require proof of the notice delivered to her.
3. Require DOH/AKFC to produce documentation regarding step placement criteria and any special incentive/exception programs used for other Social Worker hires (including Salary Regulations/Compensation Compendium, Section 3);
4. Issue written guidance establishing a clear, uniform, and timely path to permanent appointment for licensed Social Workers currently awaiting examination, consistent with Civil Service principles; and
5. Given that multiple licensed Social Workers have remained in provisional status beyond one year due to testing and list delays outside of their control, order immediate permanency (or an immediate Commission-approved corrective permanency mechanism) for all licensed Social Workers at the AKFC who have been waiting more than one year for the examination/list process to be completed.

The appellant also advises that she has submitted her retirement, effective August 1, 2026.⁴

It is noted that the appellant states that she raised concerns regarding bullying and requested an investigation on religion and unequal treatment. She maintains that relevant protections include the New Jersey Law Against Discrimination and Title VII of the Civil Rights Act of 1964. However, the appellant specifies that she is not asking the Commission to adjudicate a discrimination claim in this docket.

Despite the opportunity, the AKFC did not submit any response.

CONCLUSION

The *New Jersey Constitution*, Article VII, sec. 1, par. 2, provides that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made

⁴ The appellant asks what is the purpose of her sitting for the Social Worker 1, Psychiatric (S0284G), examination, which was administered on April 14, 2026, given her pending retirement. In response, it was the appellant's choice to sit or not sit for that test. However, she cannot achieve permanent status without passing a competitive examination. Further, the appointing authority could potentially discontinue her provisional appointment prior to her expected retirement date if she has not achieved permanent status.

according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law.

N.J.S.A. 11A:3-2 provides that the career service shall have two divisions, the competitive division and the noncompetitive division. The Commission shall assign and reassign such titles to each division and may provide for movement, including promotion, of employees from one division to the other.

N.J.A.C. 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commission that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met: (1) competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job; (2) certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or (3) there is a need for immediate appointments arising from a new legislative program or major agency reorganization.

N.J.S.A. 11A:4-13a provides that regular appointments shall be to a title in the competitive division of the career service upon examination and certification or to a title in the noncompetitive division of the career service upon appointment. The appointments shall be permanent after satisfactory completion of a working test period.

N.J.A.C. 4A:4-2.9(a) provides, in pertinent part, that make-up examinations for general promotional testing may be authorized for the following reasons: (1) error by this agency or appointing authority; (2) serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons; (3) documented serious illness or death in the candidate's immediate family; (4) natural disaster; (5) prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; (6) when required for certain persons returning from military service (*see N.J.A.C.* 4A:4-4.6A); and (7) other valid reasons.

N.J.A.C. 4A:4-2.9(e) provides, in pertinent part, that except as provided in *N.J.A.C.* 4A:4-4.6A, a candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in *N.J.A.C.* 4A:4-2.9(a), as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination

notice in case of one of the valid reasons set forth in *N.J.A.C.* 4A:4-2.9(a), as applicable, of which a candidate is aware upon receipt of the examination notice, except that the candidate shall follow the procedures set forth in *N.J.A.C.* 4A:4-4.6A, where applicable.

N.J.A.C. 4A:4-2.2 states that this agency has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given competitive title.

N.J.A.C. 4A:2-1.1(b) provides, in pertinent part, that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

The appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

Initially, the appellant's complaint that no notice of provisional appointment was provided to her at onboarding in July 2023 is untimely as the appellant did not appeal until November 5, 2025. *See N.J.A.C.* 4A:2-1.1(b). Moreover, the complaint is no longer viable. In this regard, when the appellant applied for the examination for Social Worker 1, Psychiatric (S1270E), on December 4, 2023, she knew or should reasonably have known that she was holding the position provisionally. Therefore, any claim that the appellant makes regarding the unfairness of her lack of notice regarding her provisional status should have been filed on or about 20 days from December 4, 2023. Thus, whether the AKFC provided the appellant with a provisional notice at onboarding is irrelevant at this juncture. In any event, the title of Social Worker 1, Psychiatric, is allocated to the competitive division, where achieving permanency is subject to the Civil Service examination process, *see N.J.S.A.* 11A:4-13a, and any asserted lack of awareness of such fact at onboarding does not affect said allocation. Moreover, it is noted that the appellant, albeit provisionally, has benefited by being able to serve as a Social Worker 1, Psychiatric, without going through competitive testing.

Additionally, there is no basis to provide relief with respect to the test administered on June 29, 2024 for Social Worker 1, Psychiatric (S1270E). The appellant claims that she could not appear due to illness; that she was never notified of the make-up examination policy; and that she was improperly denied a fair and reasonable opportunity to test. However, these issues have not been timely raised. *See Appeal of Syby*, 66 *N.J. Super.* 460 (App. Div. 1961); *Atlantic City v. Civil Service Commission*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Board of Education*, 90 *N.J.* 145 (1982). In that regard, more than one year and four months passed between the test date, June 29, 2024, and the date the instant appeal was filed, November 5, 2025, and, in the interim, the appellant filed for a new

examination in April 2025. Therefore, as any request for relief with respect to the June 29, 2024 test is untimely, and the appellant has not presented persuasive reasons for the delay, no relief on that issue is warranted. *See N.J.A.C. 4A:2-1.1(b)*. Nevertheless, for informational purposes, a review of agency records found that a physical “Notification to Appear for Examination” was mailed to the appellant on June 12, 2024 at the address she had listed on her S1270E examination application. That notice included the following language:

Make-up Requests: Make-up requests, with supporting documentation, must be submitted in writing within five days of receipt of this notice to be considered. In situations involving death, natural disasters or an illness that occurs on or immediately before the test date, make-up requests must be made in writing within five days after the test date. Requests for make-ups based on medical grounds must include written documentation from your doctor explaining in layman’s terms why you are unable to take the test on the specified test date. Requests will be denied if documentation is insufficient or incomplete. Mail all materials to NJCSC - Make-up Unit, PO Box 310, Trenton, NJ 08625-0310.

A review of agency records also found that the appellant had emailed staff of this agency on August 22, 2024, 54 days after the test, stating: “I was unable to take the civil service test on [June 29, 2024]. What is the process of reapplying for the evaluation of my credentials for permanent status for my position.” The email was sent well after the five-day period for requesting a make-up; makes no mention of illness; and only asks about the process of *reapplying*. Further, it is noted that the appellant has provided no documentation that indicates that she was so incapacitated due to illness that she could not have reached out to this agency in a timely fashion indicating that she was unable to attend due to illness. Similarly, she has provided no documentation from a doctor that explains why she was unable to take the test as scheduled.⁵

Further, the appellant argues that because her provisional appointment as a Social Worker 1, Psychiatric, has exceeded one year, she should be made permanent in the title. The Commission is unpersuaded. In *O’Malley v. Department of Energy*, 109 *N.J.* 309 (1987), our Supreme Court concluded that a long-term provisional employee was not entitled to retain his provisional position without complying with the examination procedures set forth in *N.J.S.A. 11A:1-1 et seq.* In *O’Malley*, the employee provisionally occupied a position for more than two years before he was

⁵ By way of this determination, the appellant’s request for production of the notice of the make-up examination policy has been satisfied through the reiteration of the notice given to candidates as well as the citation of the make-up examination rules. Nevertheless, for the reasons discussed, there is no relief to be provided on this issue.

returned to his former permanent title. No examination was conducted during this time period. The employee contended that the failure to give a timely examination vested him with the automatic right to retain his provisional position. The Court rejected this claim:

Neither the original act nor the 1986 Act expressly created such a right in favor of provisional employees. In addition, nothing in the legislative history suggests that the Legislature intended to create such a right. It is the welfare of the public, not that of a particular provisional employee, that underlies civil service legislation. We believe it would thwart the legislative intent to allow a provisional employee to retain his or her position merely because the Commission could not offer a timely test.

* * *

In the present case, however, we are persuaded that the legislative goal of appointments based on merit and fitness is the paramount consideration. *With respect to provisional employees, that goal is met by competitive examinations, not by holding a position beyond the time prescribed by the Legislature.* *Id.* at 316-317 (emphasis added).

In *Kyer v. City of East Orange*, 315 N.J. Super. 524 (App. Div. 1998), the court determined that the City of East Orange's (East Orange) actions in denying Kyer, a seven-year employee, the opportunity to ever achieve permanent status in her competitive career service position, contrary to the Civil Service Act, were so egregious that they warranted a unique remedy:

It is our view that a delicate balance must be struck between the public and private interests that are subject to prejudice when a governmental entity fails to comply with its statutory obligations. Estoppel is not the answer. First, the Supreme Court has precluded that solution. Second, unqualified persons may thereby be afforded an improper route to permanency. But by the same token, it is no solution to leave remediless the well-qualified, experienced, high-performing, long-term provisional employee who is unaware that her position is not permanent, who in all likelihood would have easily achieved permanency but for the municipal negligence, and whose summary discharge from employment is as obviously unfair and arbitrary as this jury found plaintiff's to be. *Id.* at 532-533.

Accordingly, the court transferred the case to this agency to retroactively determine whether Kyer would have qualified for the competitive career service position she provisionally held for seven years and, if so, "to fashion an appropriate remedy." *Id.* at 534. Ultimately, the former Merit System Board determined that,

notwithstanding Kyer's years of service or the misdeeds of East Orange, she was not entitled to a permanent appointment since she did not meet the open competitive requirements for the position at the time the provisional appointment was initially made. *See In the Matter of Ruby Robinson Kyer* (MSB, decided May 4, 1999).

In this matter, the appellant cannot be considered to be a permanent Social Worker 1, Psychiatric, simply because she served in the title provisionally beyond one year. *See e.g., N.J.S.A. 11A:4-13a*. The appellant has no property interest in her provisional position that would give her a mandatory right to permanent appointment. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494, 497 (App. Div. 1990) (a candidate on an eligible list only has an expectancy interest in appointment); *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984) (“[t]he only benefit inuring to such a person is that so long as that list remains in force, no appointment can be made except from that list.”); *see also, N.J.A.C. 4A:4-4.8(a)3* (appointing authority may choose any of the top three eligibles for permanent appointment).

Furthermore, the facts in this matter are distinguishable from those in *Kyer, supra*. In this regard, there is no indication in the record that the appellant was ever informed that she had become permanent in her Social Worker 1, Psychiatric, position. Kyer, in contrast, had been *specifically erroneously informed* by her employer that she was a permanent employee. Moreover, two examinations have been given. Accordingly, the appellant has not established that she is entitled to be made permanent in the title of Social Worker 1, Psychiatric, based on her provisional service.

Turning to the issue of test mode, it is noted that *N.J.S.A. 11A:4-1* provides considerable discretion to this agency in the development and scoring of examinations for positions in the career service. *N.J.A.C. 4A:4-2.2* specifies that this agency has discretion in selecting the mode of examination. In this light, it is noted that the Division of Agency Services (Agency Services), upon review, concluded that an assembled examination was the best test mode for the Social Worker 1, Psychiatric (S0284G), examination in order to meet its mandate under the New Jersey Constitution.⁶ The appellant's appeal suggests that there have been some unspecified Social Worker examinations where an evaluation of education, training or experience was the test mode. However, such argument does not evidence that there has been an abuse of discretion in the selection of the test mode.

Additionally, the appellant complains that she works alongside certain other licensed employees who were able to achieve permanency without having to undergo an examination process. She argues that absent a statute- or regulation-based

⁶ To the extent that the appellant is questioning the test mode for the Social Worker 1, Psychiatric (S1270E), examination that was administered in June 2024, such claim is untimely. *See N.J.A.C. 4A:2-1.1(b)*.

justification, this constitutes impermissible differential treatment. Initially, it is not clear which employees or what specific job titles the appellant is comparing herself to as no specific employees or title codes are referenced. Regardless, it must be noted that the New Jersey Constitution provides, in pertinent part, that appointments in the civil service of the State shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive and that the Civil Service Act provides for a competitive division, where the examination and certification process applies. *See N.J.S.A. 11A:3-2 and N.J.S.A. 11A:4-13a.* It is further noted that Civil Service law and rules provide for a noncompetitive division, where the examination and certification process does not apply. *Id.* Titles may be allocated to the noncompetitive division pursuant to specific criteria. *See N.J.A.C. 4A:3-1.2(c).* As such, given this constitutional, statutory, and regulatory framework, there is no indication in the record that the appellant's being subject to a competitive examination process amounts to illegal differential treatment.

The appellant also suggests that the title of Social Worker 1, Psychiatric, warrants assignment to a higher salary range. *N.J.A.C. 4A:3-4.3* sets forth the procedures for requesting the reevaluation of a job title to determine the proper class code, which entails, in the first instance, submitting a detailed justification for the reevaluation to an employee's designated agency representative. As such, the appellant should follow the procedures as prescribed in *N.J.A.C. 4A:3-4.3* if she wishes to pursue an evaluation of the Social Worker 1, Psychiatric, salary.

In addition, the appellant's request for production of the written step placement criteria used at hire for Social Worker 1, Psychiatric; any documentation showing whether recruitment, incentive, differential, or exception programs were applied for other hires in the same title (including Salary Regulations/Compensation Compendium, Section 3 – Special Incentive Salary Programs); the approvals/justifications for any such exceptions; and the documented basis for her step placement and appointment handling compared to similarly situated Social Workers is a records request that should be pursued through Open Public Records Act procedures with DOH.⁷

Further, the appellant asks the Commission to issue written guidance establishing a clear, uniform, and timely path to permanent appointment for licensed Social Workers currently awaiting examination, consistent with Civil Service principles. In reply, the Commission notes that a Social Worker 1, Psychiatric (S0284G), examination was recently administered on April 14, 2026 and highlights that open competitive and promotional examinations are posted on this agency's website. *See N.J.A.C. 4A:4-2.1.*

⁷ It is noted that the Commission is not making a determination as to whether the documents referred to in the appellant's request would be disclosable under OPRA. Nonetheless, the appellant's request is a records request which the Commission does not govern.

Finally, the Commission acknowledges the appellant's indication that she is not asking the Commission to adjudicate a discrimination claim as part of this appeal. Nonetheless, the Commission notes that it does not investigate claims of discrimination in the first instance. However, the appointing authority's final determination of a discrimination complaint under the New Jersey State Policy Prohibiting Discrimination in the Workplace would be appealable to the Commission. *See N.J.A.C. 4A:7-3.2(m)*.

Accordingly, upon a thorough review of this matter, there is not a sufficient basis to grant the appellant the relief she seeks.

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 20TH DAY OF MAY, 2026



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