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**FILED**

**JUN 11 2013**

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**SHERRILYN D. ANDERSON**

**APPELLANT**

**VS.**

**NO. 12-061**

**MISSISSIPPI DIVISION OF MEDICAID**

**RESPONDENT**

**ORDER**

Before the Mississippi Employee Appeals Board is the appeal by Sherrilyn D. Anderson (hereafter "Anderson" or "Appellant") of her termination by the Mississippi Division of Medicaid (hereafter "MDOM"). A hearing was held on Anderson's appeal on May 10, 2013.

Having considered the testimony of all witnesses who testified at the appeal hearing and having considered all exhibits introduced into evidence, this tribunal enters the following Order.

**FINDINGS OF FACT**

1. At all material times, Anderson was an employee of the MDOM.
2. By Memorandum dated December 2, 2011, Robert Robinson, Executive Director of the MDOM, directed that all Division of Medicaid employees provide Medicaid's Human Resources an official transcript, or a copy of their degree, by January 31, 2012.
3. Medicaid's Human Resources did not receive Anderson's official transcripts, or verification of her degree(s), by January 31, 2012.
4. By email on March 30, 2012, Jennifer Washington, of MDOM's Human Resources, advised Anderson that Human Resources had not received her educational background information as directed by Robert Robinson in his December 2, 2011,

Memorandum. The March 30, 2012, Washington email to Anderson directed Anderson provide the information no later than the close of business of April 2, 2012.

5. On March 30, 2012, Anderson responded to Washington's March 30, 2012, email with the question "What do you need?"

6. On April 2, 2012, Anderson sent another response to Jennifer Washington's March 30, 2012, email which stated ". . . what do I need to do for one of the schools that have closed? The other two transcripts have been ordered from [REDACTED] and [REDACTED] Do I need to send you information regarding the ordered request?"

7. On April 11, 2012, Washington sent Anderson an email that informed Anderson that Medicaid's Human Resources was making a "final request."

8. On April 19, 2012, Washington forwarded Anderson another email. Washington's April 19, 2012, email stated "Documentation must be received by the close of business Friday, April 27, 2012. Thanks."

9. On July 10, 2012, [REDACTED] Community College forwarded a copy of Anderson's transcript to Jennifer Washington at the MDOM.

10. Anderson's [REDACTED] Community College transcript reflected she attended [REDACTED] Community College in the Fall, 1981, Summer, 1996, and Spring, 2003. The transcript further reflected her total hours passed were 10 and that Anderson's GPA at [REDACTED] Community College was [REDACTED].

11. Medicaid's Human Resources, some time after April 19, 2012, received Anderson's transcript from [REDACTED] University.

12. Anderson's [REDACTED] University transcript reflected she attended [REDACTED] University the second semester of the school year 1981 - 1982 and the first Summer semester in 1982.

13. Anderson's [REDACTED] University transcript reflects on May 12, 1982, Anderson was suspended "one semester and placed on scholastic probation upon re-entry."

14. Anderson's [REDACTED] University transcript reflects she "resigned" on September 23, 1982, from [REDACTED] University and her academic probationary status continued.

15. Anderson's [REDACTED] University transcript reflects that the total semester hours Anderson earned at [REDACTED] University was 3 and that the total quality points Anderson received were [REDACTED]

16. On May 12, 1995, Anderson submitted an application for employment with the State of Mississippi. Anderson represented on that application that she had received and completed sixty (60) total semester hours credit from [REDACTED] University and had obtained a GPA of [REDACTED] at [REDACTED] University.

17. On May 12, 1995, when Anderson submitted an application for employment to the State of Mississippi, Anderson had not completed 60 semester hours at [REDACTED] University, nor had she obtained a GPA of [REDACTED]

18. At the time Anderson submitted her application for employment on May 12, 1995, with the State of Mississippi, Anderson had only completed 3 hours at [REDACTED] University and was on probationary status with that university.

19. On May 31, 1996, Anderson submitted an application to the State of Mississippi for the position of Accounting/Auditing Technician. Anderson's May 31, 1996, application for the Accounting/Auditing position represented that she had attended [REDACTED] University during the years 1982 through 1984 and that she had completed 60 semester hours. Anderson also represented on her May 31, 1996,

application that she had a [REDACTED] GPA from [REDACTED] University for her course work at that university.

20. At the time Anderson submitted her May 31, 1996, application for the Accounting/Auditing Technician position, Anderson had not completed sixty (60) semester hours at [REDACTED] University. She had only completed 3 semester hours.

21. At the time Anderson submitted her May 31, 1996, application for the Accounting/Auditing Technician position, Anderson did not have a [REDACTED] GPA at [REDACTED] University, but was actually on academic probation from [REDACTED] University.

22. On August 20, 1998, Anderson submitted an application to the State of Mississippi for the position of "Medicaid Program Development Specialist." On her August 20, 1998, application, Anderson represented that she had obtained a [REDACTED] GPA at [REDACTED] University.

23. On August 20, 1998, when Anderson submitted her application for the position of Medicaid Program Development Specialist, Anderson had not obtained a 3.0 GPA at [REDACTED] University, but was, in fact, on academic probation at [REDACTED] University.

24. On October 31, 2008, Anderson submitted an application for employment with the MDOM for the position of "Medicaid Program Administrator."

25. On Anderson's October 31, 2008, application for the position of "Medicaid Program Administrator, Anderson represented that she had (1) completed twenty-five (25) semester hours at [REDACTED] Junior College, (2) that she had completed sixty (60)

semester hours at [REDACTED] University, and (3) that she had obtained a [REDACTED] GPA at [REDACTED] University.

26. On October 31, 2008, Anderson had not received/completed twenty-five (25) semester hours at [REDACTED] Junior College.<sup>1</sup>

27. On October 31, 2008, Anderson had only completed 10 semester hours at Hinds Junior College.

28. On October 31, 2008, Anderson had not completed sixty (60) semester hours at [REDACTED] University, nor, as of that date had she obtained a [REDACTED] GPA.

29. The Mississippi State Employee Handbook (July, 2012) provides that "falsification of records, such as, but not limited to . . . employment application, or other official state documents," constitutes a Group III, No. 4 Offense.

30. Anderson's May 31, 1996, application, and her October 31, 2008, application contained material false statements and Anderson's false statements on each of those two applications constituted falsification of records, a Group III, No. 4 Offense within the meaning of the Mississippi State Employee Handbook (July, 2012).

31. Mississippi Medicaid Employees handle sensitive information and hold positions of trust within State government.

32. Anderson was terminated by letter dated September 25, 2012, with an effective termination date of September 28, 2012. Anderson's September 25, 2012, termination letter provided the following:

. . . it has been determined that you did indeed commit two  
(2) **Group III No. 4 Offenses** as referenced in the

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<sup>1</sup> The undersigned hearing officer takes judicial notice that [REDACTED] Junior College and [REDACTED] Community College are the same entity.

Mississippi State Employee Handbook. The Group III Offense is under Sub-Section 4 – “falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents.” Therefore, your employment with the Division of Medicaid will be terminated at the close of business Friday, September 28, 2012.

Specifically – On May 31, 1996, you submitted a State of Mississippi Employment Application to the Mississippi State Personnel Board (MSPB) for an Accounting Auditing Technician declaring you attended [REDACTED] Community College (CC); attended [REDACTED] University and earned 60 semester hours; and attended [REDACTED] Business College and graduated with a Certificate.

On October 31, 2008, you submitted a second State of Mississippi Employment Application to MSPB for a Medicaid Program Administrator declaring you attended [REDACTED] CC and earned 25 semester hours; attended [REDACTED] University earned 60 semester hours; and attended [REDACTED] Business College and graduated with a Certificate.

Once Human Resources received your transcripts from the registrar’s offices, you attended [REDACTED] CC and earned 10 semester hours; and attended [REDACTED] University and earned 3 semester hours and 10 semester hours in transfer credit. Based on the information presented to me, you knowingly and intentionally falsified your State Employment Applications in order to qualify for employment with the DOM.

All employees of Medicaid are public servants employed and compensated by the State of Mississippi. As an employee of Medicaid, a high degree of trust and confidence has been placed in you and in the position in which you serve. Employees should be mindful of this trust and are expected to conduct themselves in such a manner as to reflect this trust. The agency has a duty to the State of Mississippi to not tolerate behavior that may damage the integrity of the Medicaid Program. Therefore, based on the information presented to me, I find that to continue your employment would constitute negligence in regard to the agency’s duties to the public or to other state employees.

**This action is in accordance with the Mississippi State Employee Handbook (July 2012) Chapter 7 - Discipline, Corrective Action and Separation of Employment, Schedule of Offenses and Authorized Disciplinary Action, Section C. Group III Offense. This section states the following:**

**Acts and behavior in this group are of the most serious nature. Commission of one (1) Group Three Offense may be disciplined by the agency with a written reprimand and/or may result in suspension without pay up to thirty (30) working days, demotion, or dismissal.**

### **CONCLUSIONS OF LAW**

**As the Appellant and employee, Anderson has the burden of proof/persuasion that the allegations upon which her termination were based are either (1) untrue or, (2) if true, the actions taken by the MDOC in terminating her were not justified for the conduct that she engaged in. See, *Mississippi State Personnel Board Policy and Procedures Manual* 10.7.21(C).**

**The Mississippi Supreme Court has stated that the administrative rule which places the burden of proof/persuasion on the employee is not merely semantics. Specifically, the Mississippi Supreme Court stated in *Richmond v. Mississippi Department of Human Services*, 745 So. 2d 254 (Miss. 1999) the following:**

**The statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127.**

Having considered the testimony of all persons who testified at the appeal hearing, and having considered all exhibits introduced into evidence, this tribunal finds that Anderson failed to meet her burden of proof/persuasion that MDOM's allegation that she committed "falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents" were untrue and failed to meet her burden of proof that her continued MDOM employment could not be considered negligence to the public or other State employees. The reasons for that opinion follow.

Anderson, over a period of approximately thirteen years, submitted four applications for employment or promotions with the Medicaid Division of the State of Mississippi. Those applications were dated May 12, 1995, August 31, 1996, August 20, 1998, and October 31, 2008. Anderson's September 25, 2012, termination letter alleged that Anderson falsified her May 31, 1996, application when she falsely stated on the State of Mississippi employment application to the Mississippi State Personnel Board (MSPB) that she had earned sixty (60) hours at [REDACTED] University. Anderson's termination letter also alleged she falsified her October 31, 2008, application when she represented on the application that she earned sixty (60) semester hours, when she had in truth only earned three (3) semester hours at [REDACTED] University.

Anderson does not dispute that the hours she stated on her application are incorrect and that her application overstates her educational accomplishments. In her defense for the overstatements, Anderson contends that she did not recall exactly the number of semester hours she earned at [REDACTED] Community College or [REDACTED] University. Anderson further alleges that she was told by Ms. Linda Dunson,

her supervisor when she submitted her first application in May, 1995, something to the extent "just put something down for the educational hours." According to Anderson, Dunson also told her that the completed hours could be checked later if there was a need. Dunson did not testify at the appeal hearing and Anderson's statement of what Dunson allegedly told her is hearsay. Accordingly, this tribunal does not give Dunson's alleged, uncorroborated testimony, any weight.

Anderson testified at her hearing that she relied on her previous applications as a benchmark for her subsequent applications and that while her hours may have been stated incorrectly, she did not intend to mislead MDOM. As noted in the Findings of Fact portion of this Order, Anderson's termination letter lists as grounds for termination falsifying her semester hours on her May 31, 1996, application and her October 31, 2008, application. The MDOM did not, in Anderson's termination letter, allude to incorrect semester hours represented on her May 12, 1995, application. Nor did Anderson's termination letter allude to the fact that all of Anderson's applications reflected that Anderson represented she graduated from [REDACTED] University with a [REDACTED] GPA when she actually was on scholastic probation at [REDACTED] University, each time she submitted her four applications. Because Anderson's termination letter does not list falsification of her May 12, 1995, application as grounds for her termination, or that Anderson falsified any of her applications by stating she had obtained a [REDACTED] GPA at [REDACTED] University, this tribunal cannot consider those facts as a substantive basis for upholding Anderson's termination. However, such facts may be considered by this tribunal as impeachment of Anderson, and in this tribunal's evaluation of her credibility.

Anderson has not provided a credible explanation of why she stated on her four applications that she had obtained a [REDACTED] GPA at [REDACTED] University when in truth she was on scholastic probation at that college during all times material to issues raised in this proceeding. This tribunal does not find credible that Anderson did not know at the time she completed her May 31, 1996, application, and her October 31, 2008, application that she did not hold a [REDACTED] GPA at [REDACTED] University, and that she did not know that she was on academic probation at that institution. This is not a situation where a person may have had a GPA close to [REDACTED] and simply rounded up or made a good faith statement that her GPA was [REDACTED]. Also, significant to this tribunal is the fact that Anderson's transcript reflects she last attended [REDACTED] Community College in the spring of 2003, five years before her October, 2008, MDOM application was submitted. Anderson knew, or should have known in the spring of 2003, how many semester hours she had completed at [REDACTED] Community College as of that date, i.e., ten hours. Yet, five years later she represented on her October 31, 2008, application she had completed 25 hours at [REDACTED] Junior College, an overstatement of her hours by 150 percent.

Even more significant is Anderson's overstatement on both her May 31, 1996, and her October 31, 2008, applications that she had completed 60 hours at [REDACTED] University when in truth she had only completed 3 semester hours. In essence, Anderson overstated her completed semester hours twenty fold. These facts, when coupled with Anderson's representation that she had a [REDACTED] GPA at [REDACTED] University when she was actually on academic probation at that university, compels this tribunal to reject her explanation for the overstatement of education information to MDOM and find that Anderson did not meet her burden of

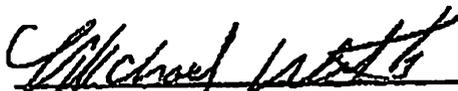
proof/persuasion that she did not falsify her application as alleged by the MDOM. Likewise, Anderson did not meet her burden of proof/persuasion that MDOM's continued employment could not constitute negligence by the MDOM to the public or other State employees. Anderson held a position of trust with MDOM and the MDOM could be determined to be negligent if it continued to retain Anderson in her position. Further, Anderson did not meet her burden of proof that the MDOM's termination of her was not justified under the circumstances. The Employee Appeals Board may, in certain cases, reduce an employee's punishment if the punishment is too severe. See Section 10.7.24(B) Mississippi State Personnel Board Policy and Procedures. This tribunal does not, under the evidence and facts of this proceeding, find that MDOM's decision to terminate Anderson was improper.

For all of the foregoing reasons, Anderson's termination from MDOM is **AFFIRMED**. Anderson's appeal is **DISMISSED**, with prejudice.

SO ORDERED THIS THE 10 DAY OF June, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By:



MICHAEL N. WATTS  
Presiding Hearing Officer