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BARBARA KIDD

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:	
BARBARA KIDD	**DOCKET NO: 26.09-102300J**

INITIAL ORDER

This contested case came to be heard on August 24, 2009 and October 7, 2009 in Nashville, Tennessee, before Administrative Judge Margaret R. Robertson, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Ramsey B. Leathers Jr., Assistant General Counsel, Department of Finance and Administration, represented the Bureau of TennCare. The Grievant, Barbara Kidd, was present and was represented by Colin B. Calhoun and M. Ben Moore of the Nashville Bar.

The subject of this hearing was Petitioner's appeal of termination for alleged incompetency in the performance of her duties and for the good of the service. After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that the Grievant's performance of her duties remained at an unacceptable level after 16 months of training experience and opportunities, and that termination was an appropriate decision in this case, both because Grievant was incompetent in the performance of her duties, and because her inability to perform her duties independently placed an undue burden on the unit, requiring another employee to duplicate her work.

FINDINGS OF FACT

1. Grievant Barbara Kidd graduated from the Ft. Saunders Presbyterian Hospital of Nursing in Florida in 1970 and immediately began working as a nurse in clinical settings. For most of her career she continued to work in clinical settings providing direct patient care. At various times in her clinical career, she also performed administrative duties; for example, she served as charge nurse with administrative responsibilities in addition to clinical responsibilities.

2. Ms. Kidd moved to Tennessee in 1995. Prior to her move, she worked for the State of Texas for ten years, including a number of years in which she worked with a section of the Texas Medical Foundation on a contract with the federal government to review Medicare documentation for pre-admission screening. In 1992, she worked for the State of Texas reviewing Medicaid documentation. She performed reviews of acute care and long term care facilities, reviewed documentation of billing for procedures and for eligibility determinations for children.

3. In 1995, Grievant left Texas to move to Tennessee to be closer to family and to live in an environment that was more healthful for her husband. She found work at Middle Tennessee Mental Health Institute, where she performed direct patient care for children and adolescents. The job responsibilities required weekend shifts and overtime, which she felt she was not physically able to do. In addition, her husband was not well, and she needed to be with him on the weekends. She applied for a position as a Public Health Nurse Consultant II with the Division of Developmental Disabilities Services

(DDDS)[1] of the Bureau of TennCare, a job she assumed in July of 2006. Her primary duties in that position were assisting in drafting procedures and crosschecking the proposed procedures against state and federal regulations.

4. In 2007, the functions of some Bureau of TennCare divisions, including long term care services, were reorganized and consolidated. After having served one year at DDDS, Grievant was informed that she would be transferred to the Pre-Admission Evaluation (PAE) unit of the Bureau of TennCare. Grievant said she had heard rumors about management at that unit, but was confident she could do whatever was expected of her and accepted the transfer. In her new position, Grievant's duties would require her to review PAEs and Preadmission Screening/Annual Resident Reviews (PASARRs). These duties appear similar or related to administrative duties she had performed in Texas and with DDDS.

5. PAEs are long term care medical eligibility admission applications used for the purpose of requesting Medicaid coverage or eligibility determination for services in a nursing facility or nursing home. Medicaid coverage in Tennessee is administered and delivered through the TennCare program. TennCare's Public Health Nurse Consultants, or "PAE Nurses," evaluate or review these admission applications to determine whether they are complete and whether the information provided, including supporting documentation, properly fulfills the criteria for approval for Medicaid coverage of the services requested. A PAE application may be approved, denied, or sent back to the nursing facility for correction or completion of information absent or in error.

[1] DDDS has since been renamed the Division of Intellectual Disabilities Services (DIDS).

6. Different eligibility criteria for Medicaid reimbursement apply depending on the level of care intended to be provided to an individual in a nursing facility. To receive Medicaid reimbursement for Level I care, the individual receiving care must be determined by the Tennessee Department of Human Services to be financially eligible. Also, the individual must meet the criteria for medical necessity of the care requested and of the need for inpatient nursing care. To demonstrate medical necessity of nursing home care, it must be shown that care in a nursing facility is expected to improve an individual's physical or mental condition, prevent deterioration in health or delay progression of a disease or disability. The care must be ordered and supervised continually by a physician. It must be a type of care that must be provided on an inpatient basis and must require licensed nursing care daily. In addition, the individual must be unable to perform the needed nursing care for himself and must be unable to perform one or more of the following, including independent transfers, mobility, feeding, toileting, expressive/receptive communication, or medicine administration, or require behavioral interventions or skilled nursing or rehabilitative services.

7. Mistaken approval of an ineligible PAE obligates the Bureau of TennCare to pay for services that should not be covered. An error resulting in denial of a qualifying PAE deprives an applicant of coverage for necessary nursing care, and probably prevents the applicant from getting the level of care that he needs. These are serious errors.

8. Preadmission Screening/Annual Resident Reviews are used to determine whether an individual exhibits or may have mental illness or mental retardation, in which case federal law may require that placement be in a program that can provide the

specialized services appropriate to these conditions. An individual who requires specialized services may not be approved for services in a facility that does not provide those specialized services which, by law, must be made available.

9. Upon employment in the PAE unit, PHNCs are assigned to a trainer to be taught how to conduct a PAE evaluation. Upon mastering a particular level, the PHNC is released by her trainer to process that level of PAEs independently with continued supervision for other levels. On her first day, July 16, 2007, Ms. Kidd was assigned to trainer Reba Hitchcock.

10. Ms. Hitchcock has been employed in the PAE unit for more than eight years. In addition to being a trainer, Ms. Hitchcock has supervised the processing of PAEs for the entire East Grand Region and processes Level I and Level II PAEs herself on a daily basis. Her performance is considered to be exemplary by her supervisors and peers. Throughout Ms. Hitchcock's course of employment to date, she has provided training for at least four other nurse employees, including one whose training overlapped with that of Ms. Kidd. Some of the nurses trained by Ms. Hitchcock have gone on to become trainers. All of her trainees except Grievant became independent on Level I PAEs at least within two months of when they began training.

11. Ms. Hitchcock has 40 years' experience as a Registered Nurse, during which time she was engaged in clinical nursing, taught LPN programs and other health-related vocational courses in vocational and technical school settings, including York Institute, for 18 years, and later trained for and independently conducted Level I and II PAEs for the Bureau of TennCare, conducted clinical on-site PAE visits to nursing homes

and worked with the PAE appeals process. She had previously received training in teaching methodology at Tennessee Technical University in Cookeville, Tennessee.

12. On the first day, Ms. Hitchcock gave Ms. Kidd a packet of materials, the New Nurse Training Packet given to all PAE trainees, went over the materials verbally with her for about an hour and a half, and then sent Ms. Kidd to her desk to review and study the materials.

13. In addition to the New Nurse Training Packet, Ms. Kidd was also given during her training, as are all PAE trainees, a copy of the PAE Workshop Packet, materials given out to participants in a PAE workshop for providers which is intended to help providers understand how to fill out the PAE authorization forms and submit the required medical documentation to facilitate PAE evaluation and approval. The experienced PAE nurses rotate the responsibility of conducting provider workshops and explaining the materials in the packet. New PAE nurses in training also attend these workshops for update, review, and clarification of areas that trouble them. The workshops are held one day at the end of each month.

14. Also used in training Grievant and other PAE Nurse trainees is a form called Items Specific to PAE Review Training. This form lists all of the elements that are a part of the PAE process, and is used by the trainer to document the dates that various concepts or procedures were introduced to the trainee. The form maintained by Ms. Hitchcock regarding the training of Ms. Kidd includes listings of all the dates on which Ms. Kidd attended provider workshops and other forms of training, such as Microsoft Word, HIPPA, Interchange and Edison, and the electronic PASRR process.

15. After three weeks of training, in spite of Ms. Kidd's prior experience, Ms. Hitchcock became very concerned that Ms. Kidd was not progressing as she should in understanding how to review the PAE documents. Ms. Hitchcock observed that Ms. Kidd made the same mistakes over and over to a degree not usually seen in trainees by that time. They had practiced repetitively with hundreds of cases, and yet Ms, Kidd seemed unable to apply Medicaid rules in a consistent fashion. Ms. Hitchcock sent a memo to Ms. Deborah Coleman, the unit manager, providing a summary of her concerns and examples of the types of errors Ms. Kidd repetitively made. She also gave an abbreviated lesson again of what must be done and set as a goal for Ms. Kidd the completion of 15 correct PAE reviews on that date and success on Level I PAEs by the end of week 4. A document of instructions and review of frequent errors and the correct action was given to Ms. Kidd.

16. Ms. Hitchcock reviewed mistakes with Ms. Kidd on a regular basis. She tried numerous approaches to teaching the process, but without success. Ms. Kidd remained confused. Ms. Hitchcock advised Ms. Coleman that Ms. Kidd's errors were sufficiently significant that she could not approve her for independence in reviewing Level I PAES. The trainee who began after Ms. Kidd had already been released to do Level I PAEs independently. Ms. Hitchcock had Ms. Kidd attend the provider PAE workshops when they occurred, to review and to receive training from other PAE nurses who conducted the workshops. Ms. Kidd attended these workshops on July 31, 2007; August 28, 2007; September 25, 2007; January 17, 2008; February 12, 2008, March 25, 2008, August 26, 2008 and October 28, 2008. In these workshops, providers are

instructed as to the PAE process, medical criteria, Medicaid rules and PAE guidelines, and have the opportunity to ask questions for clarification. A after participating in the workshop, they are anticipated to be able to complete PAE applications in a manner reasonably consistent with the requirements so that the applications can approved or disapproved with minimal reconsideration.

17. Examples of the types of errors the Grievant frequently made included such things as:

- Failure to recognize when an application was a "duplicate" PAE for a given patient and to handle it accordingly.

- Erroneous referral of PAEs which have "yes' answers to Mental Illness/Mental retardation questions or documentation of aggressive, violent or suicidal behaviors for Level II PASRR referral, irrespective of the answer on page 5.

- Failure to apply PAE criteria for approval/denial correctly rather than making decisions based on comments such as "she seems real sick," "she's on a lot of medications'", "I think she really needs to be there."

- Failure to use the proper form of denial language from the model given, including incorrect language, leaving out critical information, writing in a disorganized fashion.

- Failure to use proper administrative procedures (does not put initials in log book, takes staples out of PAE, staples work progress card to PAE, follow procedures regarding retro request dates.)

- Inability to follow through on notifying nursing homes what additional information or correction is needed, remembering what to do with information when it comes in.

- Difficulty following the same directions that have been given before.

- Erroneous approval of PAEs for date more than 30 days prior to request date without confirmation of eligibility.

- Failure to consistently use the earlier of the PAE request date or physician referral date for approval. Instead utilized a "future" date on some occasions.

18. Because of ongoing errors and lack of attaining independent status to review PAEs, Ms. Kidd did not receive positive job evaluations from her trainer or supervisor. She had received a Job Performance Plan on July 30, 2007. On August 24, 2007 she received an oral warning with a written follow-up concerning failure to follow directions consistently in evaluating PAEs, to understand and apply Medicaid rules and federal PASRR rules and failure to seek clarification from her trainer. She was advised that improvement would be required in all areas of deficit. No improvement had been achieved by September 20, 2007. On September 20, 2007, she received an oral warning regarding excessive absence from her desk during the day, shutting off her computer and ceasing work before the end of the work day, and engaging in excessive personal calls during the day. On November 14, 2007, in an interim performance review, it was found that despite continued training, practice and feedback, her performance in most areas of her job plan was either marginal or unacceptable. Only her performance in cooperating with coworkers was considered good. On December 10, 2007, she received a formal written warning with the opportunity to request a review by the appointing authority.

19. Ms. Kidd received more concerted training, practice and feedback in the months that followed. She received summaries of the errors she made. She attended more provider workshops. She was taken off certain duties because it was concluded by observation that she was unable to correctly portray the Medicaid, PAE and PASRR rules to others. On March 19, 2008, Ms. Coleman met with Ms. Kidd regarding her ongoing

unacceptable work performance. She was provided with a summary of error examples in evaluating PAEs and give copies of the errors to use for future reference. One of the criticisms of her work was that she seemed unable to take notes of the recurring problem areas and then refer back to her notes for guidance in similar situations.

20. In a letter dated June 20, 2008, Commissioner Goetz communicated a decision to place the Grievant on two days suspension for inefficiency or incompetency in the performance of duties because of her consistent failure to make progress in mastering the PAE review process. She was notified that she could request a meeting with designee Patty Killingsworth to appeal the decision if she chose to do so. Ms. Kidd signed the letter on June 27, 2008. Apparently that meeting took place on July 1, 2008, after which Ms. Killingsworth made a determination to uphold the two day suspension, which was subsequently served on July 9-10, 2008.

21. On August 21, 2008, Ms. Kidd received an annual evaluation, the overall level of which was considered unacceptable. Specifically, she received ratings of unacceptable for evaluation and adjudication of PAEs, evaluation of PAEs for PASRR referral, maintenance of community and provider relations, following directions and communication skills. She received ratings of good on measures of documenting field interviews, attendance and punctuality, cooperating with coworkers and use of working time, which represented improvement in some of these areas. Ms. Kidd disagreed with the ratings of unacceptable. She commented on the evaluation that the fault lay with the fact that she had not been trained in a logical fashion; she had been subjected to verbal

and mental harassment which had affected her physically, making her workplace hostile. She announced her intention to locate an alternative work position.

22. On November 6, 2008, Grievant received a letter notifying her of the Bureau's intent to terminate her employment due to incompetency in the performance of her duties, because there had not been demonstrable improvement in her performance since the two day suspension. The termination letter included reference to a recent incident in which the Grievant had allegedly recorded the name of another approving nurse, other than her supervisor, on a duplicate PAE, which should not bear a notation of approval at all because it is a duplicate. Recording someone else's name without attribution is not professional or ethical.

23. A due process hearing was conducted with Commissioner's Designee Patti Killingsworth on November 12, 2008. Ms. Killingsworth concurred with the disciplinary decision to terminate the Grievant. Termination was deemed necessary because after 16 months of training, Ms. Kidd was still unable to competently perform entry level duties required of a Public Health Nurse Consultant; unable to work independently; and unable to fully discharge all essential functions of her position, thus placing an undue burden on others employed in the PAE Unit.

24. At Grievant's request, a Level IV hearing before Commissioner's Designee Lorraine Buerhaus was held on February 25, 2008. After considering the information provided at the hearing, the Designee upheld the termination, concluding that the Bureau was entitled to terminate Ms. Kidd from employment in the bureau of TennCare and was not required to place her in another position within the Bureau. The Designee held that

in this case the Grievant should be terminated for the good of the service because of her inability to perform the duties of her position and because that inability placed a significant burden on the unit to compensate for and correct her work, resulting in an untenable situation. She was coded as ineligible for rehire by the Bureau of TennCare, but could be considered by other state agencies for hiring. Grievant subsequently filed a request for a Level V hearing, which resulted in this contested case proceeding. Grievant appealed from the Level IV decision, requesting this Level V hearing.

25. At her hearing, Grievant did not dispute that she had been unable to grasp the requirements of her duties sufficiently to perform them independently over the 16 month course of her employment with the Long Term Care Unit of the Bureau of TennCare. Nor did she dispute that the State complied with all the requirements to provide due process and appropriate notice of the charge against her and properly applied progressive discipline in her case. Instead, Grievant argued that the training she received was not uniquely tailored to a way that she could best learn to enable her to grasp and integrate all of the requirements that apply to the review of PAEs and PASRRs so that she could consistently perform the reviews in an accurate manner. Ms. Kidd also alleged that Ms. Hitchcock, her trainer, did not vary the style or training to fit her needs when asked to do so, did not provide as much one-on-one assistance as was needed or expected, did not give clear explanations when asked questions and increasingly discouraged spontaneous contact and oral questions, instead telling Grievant to look again or to assemble a pile of files with post-it notes indicating her questions. She also alleged that Ms. Hitchcock spoke disparagingly to her, made a joke of her difficulties

grasping the task, and through other similar behavior made the workplace a hostile environment. Ms. Kidd maintained that, with her years of experience as a nurse, and working with Medicare and Medicaid regulations, she was capable of learning the task for which she was hired if only the proper form of instruction was made available to her. In addition, Grievant contends that Ms. Coleman was derelict in failing to provide Grievant with a new trainer, thus acting in a manner not in Ms. Kidd's best interests.

CONCLUSIONS OF LAW

1. The Department of Finance and Administration is the Petitioner in this matter, the party that initiated the proceedings, and as such, it is assigned the "burden of proof." The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the "greater weight of the evidence," or "the more probable conclusion, based on the evidence presented." The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Finance and Administration must prove, by a preponderance of the evidence, that the Grievant was inefficient or incompetent in the performance of her duties, as set out in State statutes, and Departmental Rules, Regulations and Policies, and, if so, whether the disciplinary action of termination is appropriate. The Department has met its burden of proof.

2. Rule 1120-10-.06, TENN. COMP. R. & REGS, provides as follows:

> **EXAMPLES OF DISCIPLINARY OFFENSES**. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.
>
> (1) Inefficiency and incompetence in the performance of duties
>
> * * *
>
> (24) For the good of the service as outlined in T. C. A. 8-30-326.

3. The terms "inefficiency" and "incompetence" are used in this Rule as they are in common daily usage. Webster's New World Dictionary of the American Language equates "inefficiency" and "incompetence" with "ineffectiveness" and "failing to meet requirements."

4. T.C.A. 8-30-326(a) provides that [A]n appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby. Subsection (b) requires that when an employee is dismissed "for the good of the service," the notice of termination must outline in detail how the service will be benefitted by such termination.

5. Rule 1120-10.02 TENN. COMP. R. & REGS, provides as follows:

> A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority *whenever legal or just cause exists.* The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. An executive employee serves at the pleasure of the appointing authority. (Emphasis added)

6. The Department has met its burden to show by a preponderance of the evidence that Grievant Barbara Kidd was unable to perform the duties of her job at an acceptable level of competency after sixteen (16) months of personal training, opportunity and practice. Indeed, Grievant does not contest this conclusion at the outset. Instead, Grievant argues that her inability to do the job after sixteen months is directly the

fault of the Department for not giving her a different trainer, for not changing the training procedures to something that might be more effective for her personally, and for allowing her trainer to speak to and of her in a disparaging manner that, to her, constituted a hostile workplace environment that impaired her ability to perform. Grievant requests reinstatement, assignment of a new trainer and the opportunity to try to master the tasks of the position, back pay, benefits and attorney fees.

7. There simply is no evidence that the information Grievant needed to master requires a particularly individualized training experience. Indeed, providers are expected to grasp much of the same information in brief workshops, and a number of other employees were able to become adequately proficient in the review process after just a couple of months, most of those employees having been trained by the same trainer about whom Grievant objects.

8. The nature of Grievant's errors and difficulties makes it more likely that the issue lay with problems the Grievant herself experienced in remembering, organizing and processing the information she was given. Even at the hearing, Grievant was unable to express the purpose of a PAE, an essential concept underlying how one would evaluate the sufficiency of a PAE. Nor does it appear that she was able to remember from one time to the next how something was typically done or what instructions she had been given, or how to be consistent in her application of what she had been told or shown. Examples were given of Grievant receiving specific minute specific instructions for changes to make on a document, and returning the document without having followed those direct instructions.

9. Grievant disclosed no legally recognized disability nor requested particular accommodation for a disability. Stating that the trainer did not train her in the way that would be best for her to learn does not constitute notifying her employer of a disability and requesting appropriate accommodation. Not does it suffice to explain what changes in instructional procedures Grievant believed would facilitate her learning, except that she was clear that she would like a different trainer. Grievant's request for a different trainer or a different training methodology because of her inability to succeed did not impose on the Department an obligation to change her trainer. She did also testify that she was disappointed that her trainer did not take her through the application process one step at a time one-to-one. But it appears her trainer did so initially, but did not repeat that procedure regularly for the full sixteen months.

10. Grievant actually did have exposure to a number of different trainers. In addition to her assigned trainer, Ms. Hitchcock, Grievant had access to other experienced PAE reviewers who supervised her in Ms Hitchcock's absence. She also attended a number of provider seminars that dealt with many of the same topics and procedures, as taught by other trained reviewers, so she had access to variety in their explanations, directions, and methods of presentation and feedback. She was encouraged to keep a record of her questions or errors and the answers or corrections so that she could refer back to them when the same situation came up again. This gave her the opportunity to restructure what she was told into a format that would be most useful to her, but she appeared unable to do so. Thus Grievant received training experience in a variety of learning modalities, from a variety of training sources and processes. If she had

experienced unusual responsiveness to another individual, task or learning context that might have been more successful for her, there is no evidence of it. There is also no evidence that Grievant ever articulated what needed to be different in her training, other than to have a different trainer, to increase the likelihood that she could succeed. The record before us does not explain why Grievant was unable to master the PAE review process but it does clearly show that she did not succeed in doing so. As that was her job responsibility, it must be concluded that she was incompetent in the performance of her duties. An inability to do the work of the position renders one unfit to occupy the position. Therefore, termination from that position was an appropriate disciplinary action.

11. Grievant's complaint that Reba Hitchcock was derogatory toward her and her work must be addressed. It is clear that Ms. Kidd and Ms. Hitchcock had ample reason to be frustrated in their symbiotic relationship. While it is entirely understandable that Ms. Hitchcock might become very frustrated when Grievant continued to make the same mistakes after a lengthy period of time, it is neither professional nor appropriate for Ms. Hitchcock to speak in a derogatory or insulting manner to Ms. Kidd or about Ms. Kidd to others in the workplace. While it can be understood that Ms. Kidd's failure to make progress and repetition of errors must have been very upsetting to them both, that does not excuse inappropriate behavior on the part of Ms. Hitchcock. This behavior is reported to have occurred some months after Ms. Kidd had joined the unit and considerably exceeded the time frame in which most trainees master at least Level I PAE reviews, so it is not the source of Ms. Kidd's inability to perform her duties. Rather, the

reverse is more likely to be true. Ms. Kidd's inability to master the task prompted expressions of frustration on the part of Ms. Hitchcock. That Ms. Hitchcock's derisive behavior was inappropriate does not alter the fact that, despite sixteen months of opportunity, Ms. Kidd still simply could not do the job. The issue in this hearing is not whether Ms. Hitchcock should be censured for unprofessional conduct, but whether the Department has adequate grounds to terminate Ms. Kidd.

12. That Ms. Hitchcock raised her voice to Ms. Kidd and used a sharp tome was corroborated by another TennCare employee who was trained by the same trainer and had the same responsibilities as Ms. Kidd and shared office space with Ms. Kidd and Ms. Hitchcock. Ms. Alice Ann Harris, who testified to hearing Ms. Hitchcock raise her voice to Ms. Kidd, was herself determined by an administrative judge to have committed a significant breach of application of the rules for processing PAEs on two distinct occasions and ultimately received a 90 day suspension as discipline for her negligence, but the Department's decision to terminate her was not upheld in her Level V Civil Service Appeal. (See Tennessee Department of Finance and Administration, Bureau of TennCare v. Alice Ann Harris, Docket No. 26.09-100131J, Initial Order entered February 25, 2009) Yet Ms. Harris's case appears to differ significantly from that of Ms. Kidd in that Ms. Harris was reportedly able to grasp the process and perform her responsibilities on a regular basis. Her discipline was administered for a concrete breach of performance of those responsibilities, but it was not typical of her performance. Ms. Kidd, on the other hand, never attained a pattern of success in consistent application of the rules and procedures for review of PAEs.

13. The second ground on which Ms. Kidd's termination was based was "for the good of the service." The letter dated November 13, 2008 informs Ms. Kidd that Commissioner Goetz has received a recommendation from her supervisors that her employment be terminated due to incompetency in the performance of duties, and details the allegations that support the charge of incompetence in the performance of duties. He states in summary, "Your failure to complete these other assigned tasks has resulted in fellow staff being assigned a larger caseload, which is not fair to them and cannot continue. To further reiterate, we cannot continue to utilize a staff member to serve as your professional trainer indefinitely. Other nurses trained by your nurse-trainer have successfully performed Level 1 and Level 2 PAEs within a six month time frame; some even more quickly. . . . Based upon the aforementioned information, we can no longer continue your employment with the Bureau of TennCare." The letter continues, giving directions for how to appeal this preliminary decision.

14. Subsequent to a due process hearing initiated by the November 3, 2008 letter expressing the intent to terminate, Grievant received a letter from Commissioner Goetz dated November 19, 2008, in which the Commissioner states that, based on the information presented, including in the due process hearing, it is his decision that Ms. Kidd "be dismissed from this department for the good of the services pursuant to T.C.A. 8-30-326 and the Rules of the Tennessee de3partment of Personnel, Chapter 1120-10.06(24)." He further states "[B]ased on the above, the Bureau of TennCare feels that the continuation of your employment compromises the integrity of the Division of Long Term Care, Pre-Admission Evaluation process, and negatively impacts the work unit as a

whole." The commissioner's letter explains in satisfactory detail that the service will be benefitted by no longer maintaining an employee who not only cannot do the duties of the position, but necessitates that other employees take on additional duties in order to complete their mission without the help of someone in Grievant's position. The State has met its burden to show that Grievant's dismissal is for the good of the service. But even if this had not been so, it is sufficient that the State met its burden to show that termination was the appropriate action due to Grievant's incompetence in performing her duties over all after a sixteen month trial period. The Grievant's level of inability to perform competently the duties of her position after sixteen months merits dismissal in and of itself. You simply cannot justify paying someone to do a job if they are unable to do it independently at all and you must have someone else redo it regularly.

This Initial Order entered and effective this 1st day of March, 2010.

_____
Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 1st day of March, 2010.

_____
Thomas G. Stovall, Director
Administrative Procedures Division