



**STATE OF NEW JERSEY**

In the Matter of Administrative  
Analyst 4 (S1250D), Statewide

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

CSC Docket No. 2024-1271

Appointment Waiver

**ISSUED:** February 28, 2024 (AMR)

The Department of Community Affairs requests permission not to make an appointment from the September 25, 2023 certification for Administrative Analyst 4 (S1250D), Statewide.

The record reveals that the Department of Community Affairs provisionally appointed Joseph Fusco, Jr., pending open competitive examination procedures, to the subject title effective March 28, 2022. An examination was announced with a closing date of September 21, 2022, that resulted in a list of 35 eligibles promulgating on September 21, 2023, and expiring on September 20, 2025. It is noted that Fusco was separated from his provisional position when he was appointed to the unclassified title of Deputy Executive Director effective October 7, 2023. Additionally, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, stating that it had intended to appoint Fusco to the subject title. However, prior to the certification date, the Executive Director of the Urban Enterprise Zone advised that he was seeking a restructure. A vacancy for a Deputy Executive Director was created and Fusco was being considered for this position. On August 30, 2023, Fusco had been selected for appointment. Moreover, the appointing authority requested that the selection costs

be waived since either the Department of Community Affairs or another State agency may be able to utilize the subject eligible list prior to the September 20, 2025 expiration date.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$8,285. Despite the opportunity, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

## CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Fusco. After a complete certification was issued, the appointing authority requested an appointment waiver stating that it had intended to appoint Fusco to the subject title. However, prior to the certification date, the Executive Director of the Urban Enterprise Zone advised that he was seeking a restructure. A vacancy for a Deputy Executive Director was created and Fusco was being considered for this position. Fusco had eventually been selected for appointment effective October 7, 2023. Thus, in conjunction with the fact that there are no provisionals currently serving with the appointing authority, there is a sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Commission notes that the list in question will not expire until September 20, 2025, and the appointing authority may be able to use the list in the future. Furthermore, the examination was announced statewide. Thus, the list is of such duration and scope as to make utilization by this or other State appointing authorities probable. Accordingly, under the particular

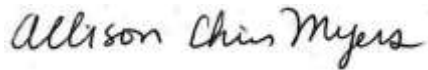
circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event that the subject eligible list is not utilized by its expiration date of September 20, 2025, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made against the appointing authority.

**ORDER**

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 28<sup>TH</sup> DAY OF FEBRUARY, 2024



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