

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
200 FOLLY BROOK BOULEVARD
WETHERSFIELD, CT 06109

COMPLAINANT:

Maribeth Shields
77 Lori Drive
Milford, CT 06460

v.

RESPONDENT:

Alternatives Inc.
1297 Oxford Road
Oxford, CT 06478

Judith Meyer, Esq.
152 Simsbury Road
P.O. Box 451
Avon, CT 06001-0451

Dana B. Lee, Esq.
Grady & Riley, LLP
86 Buckingham Street
Waterbury, CT 06710

WAGE AND WORKPLACE STANDARDS DIVISION:

Anne F. F. Eisenman, Esq.
200 Folly Brook Boulevard
Wethersfield, CT 06109

CASE NO. FM 98-37

DATE MAILED: March 14, 2003

ORAL ARGUMENT: December 4, 2003

**APPEARANCES AT ORAL ARGUMENT BEFORE CONNECTICUT LABOR
DEPARTMENT COMMISSIONER CASHMAN:**

For the Complainant: None

For the Respondent: Dana Lee, Esq.

For Wage and Workplace Standards Division: Anne F.F. Eisenman, Esq.

FINAL DECISION

The undersigned, Shaun B. Cashman, Commissioner of the Connecticut Department of Labor, hereby issues his final decision in the matter of *Maribeth Shields v. Alternatives, Inc.*, Case No. FM 98-37. This decision is issued pursuant to Conn. Gen.

Stat. § 4-180, and Sections 31-1-8 and 31-51qq-47 of the Regulations of Connecticut State Agencies.

Following the issuance of the Proposed Decision of Hearing Officer Susan E. Leslie on December 14, 2001, the Wage and Workplace Standards Division requested an opportunity to file exceptions and to present oral argument before the Commissioner. In response thereto, the undersigned issued an order to the parties of record on October 11, 2002, scheduling oral argument to take place at the Connecticut Labor Department on December 4, 2002.

On December 4, 2002, the undersigned commenced a hearing affording each party an opportunity for oral argument pertaining to the Proposed Decision and to fully address any legal claims and exceptions thereto. At said hearing, counsel for the Wage and Workplace Standards Division and for the Respondent were fully heard and afforded the opportunity for rebuttal. Upon the close of the hearing, the undersigned took the matter under advisement.

Having had the opportunity to review the exceptions filed by the Wage and Workplace Standards Division, the oral argument of the parties present on December 4, 2002, and the entire administrative record and evidence in this matter, I hereby issue my final decision.

Specifically, I find no merit to the contention raised by the Wage and Workplace Standards Division that the Hearing Officer abused her discretion in concluding that the Respondent had no obligation to restore the Complainant to her original position as a coordinator or to an equivalent supervisory position pursuant to Conn. State Agencies Regulations § 31-51qq-24. I find sufficient evidence in the record to support the Hearing Officer's findings that the Complainant was appointed to fill an interim position in March 1998, and that because she was hired only for a specific term, the Respondent did not have an obligation to restore the Complainant upon the expiration of the term because the original position as it existed prior to the Complainant's leave no longer existed after June 30, 1998. Moreover, I conclude that there is sufficient evidence to support the Hearing Officer's findings that upon the expiration of the Complainant's term of employment, the Respondent had no duty to create an equivalent supervisory position for her.

In addition, I conclude that there is sufficient evidence in the record to support the Hearing Officer's conclusion that the Respondent did not discriminate or retaliate against the Complainant on the basis of her exercise of Connecticut Family and Medical Leave Act rights. Based on the record before her, it was reasonable for the Hearing Officer to conclude that: (1) there was no direct evidence of retaliation or discrimination against the Complainant; and (2) the strength of the Complainant's *prima facie* case and the probative value of the Respondent's legitimate non-discriminatory reasons for its alleged adverse actions did not permit the inference of intentional discrimination or retaliation by the Respondent to be found.

WHEREFORE, I affirm in whole and incorporate the Proposed Decision of the Hearing Officer, including the findings of fact and conclusions of law, issued December 14, 2001, as my final decision in this matter, a copy of which is attached hereto.

3/13/03
Dated


Shaun B. Cashman, Commissioner