

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Alice Bradford
Petitioner

v.

Docket No. CR-21-0336

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Alice Bradford, *pro se*

Appearance for Respondent:

Ashley Freeman, Esq.

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF DECISION

Petitioner's appeal of MTRS decision not to include an "Extended Learning" stipend as "regular compensation" for retirement purposes was untimely. Even if it had not been, the stipend was properly excluded from the calculation of her retirement allowance because it was not included in her collective bargaining agreement as required by 807 CMR § 6.01. Additionally, MTRS's decision to reduce the creditable service the Petitioner earned from March-June 2005 was proper as was the decision to reduce her retirement allowance and recoup the overpayment made to her.

DECISION

INTRODUCTION

This appeal concerns two determinations by the Massachusetts Teachers' Retirement System ("MTRS"): first, that the additional pay that the Petitioner received for "Extended Learning" in three school years- 2013 to 2014, 2014 to 2015, and 2015 to 2016 (which were the

Petitioner's highest years of earnings) did not qualify as "regular compensation" for retirement purposes; second, that the Petitioner's retirement allowance was improperly calculated when it was first paid and was necessarily adjusted (and an overpayment recouped) when the Petitioner's creditable service was finally verified. The MTRS filed a Motion to Dismiss the Petitioner's appeal on the first issue on the grounds that the appeal was not timely filed. For the reasons set forth below, I am granting the MTRS's Motion to Dismiss. I am also affirming its decision to recalculate the Petitioner's retirement allowance based on the amount of creditable service the Petitioner earned as finally determined. The Petitioner has raised one additional issue which, as I explain below, I find is not before me.

DALA issued a scheduling order to the parties, advising the parties that this matter would be decided without a hearing. See 801 CMR § 1.01(10)(c). I admit into evidence Respondent's exhibits as Exhibits 1-13 and those exhibits submitted by the Petitioner that are not duplicative of the Respondent's exhibits which I have marked Exhibits 14, 15 and 16. I note that the Respondent filed a pre-hearing memorandum; DALA's records do not contain a pre-hearing memorandum filed by the Petitioner. The Petitioner has made various notations on the documents that are otherwise part of the record. I will consider them to be her submission to DALA to the extent that they demonstrate the position she takes on the issues in this appeal. I marked those for identification as Pleading A. I marked the MTRS's Pre-Hearing Memorandum Pleading B, MTRS's Motion to Dismiss Pleading C, and the Petitioner's response thereto as Pleading D. I have included an exhibit list at the end of this decision to simplify identification of the exhibits in the record.

FINDINGS OF FACT

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties’ written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Alice Bradford, whose date of birth is in 1955, is a retired member of the Massachusetts Teachers’ Retirement System (“MTRS”). She retired effective June 30, 2021. The Petitioner was a school nurse. (Exhibits 1, 2 and 5).
2. On her retirement application, received at the MTRS on March 26, 2021, the Petitioner listed the following creditable service related to her service as a school nurse¹:

Shirley Public Schools, Substitute School Nurse from “1998-2000”
Westford Public Schools, Substitute School Nurse from “1998-2000”²
Westford Public Schools, School Nurse from “9-2000 to 6-14-2002”
Worcester Public Schools, School Nurse from “3-5-2005 to 6-18-2018”
LABBB Collaborative, 1:1 Nurse from “9-2018 to 3-20-19”³
McAuliffe Charter School, School Nurse from “7-1-2000 to 6-18-2021”

(Exhibit 1).

3. On her retirement application, the Petitioner listed her mailing address as being in

¹ The Petitioner also listed public employment at Boston City Hospital from 1977-79 that she indicated she “would not purchase.” (Exhibit 1).

² These periods as a substitute school nurse were described as “50%” FTE. The remainder of her service was described in the retirement application as full time.

³ The entry for the month in which the Petitioner’s service ended is handwritten and unclear. The Respondent’s records indicate that the Petitioner’s service at the LABBB Collaborative began on September 24, 2018 and ended on March 22, 2019, a fact which the Petitioner does not dispute. In any event, the exact dates of her service at the LABBB Collaborative are not material to this appeal.

Shrewsbury, MA. The retirement application has a space asking for an “**Alternate Address**”. The form states, “If you will be residing at an address other than the one listed in line g (for example, a summer or retirement address) during the next several months, please list it below.” This part of the Petitioner’s retirement application is blank. (Exhibit 1). Emphasis in original.

4. MTRS records describe the Petitioner’s service, in relevant part, as follows:

<u>School District</u> ⁴	<u>From</u>	<u>To</u>	<u>Amount</u>	<u>Type</u>
Westford Public	6/1/1999	12/31/1999	0.144	Credited
Middlesex Cty RS	9/14/2000	12/31/2000	0.2972	Credited
Westford Public	9/1/2001	6/30/2002	1	Credited
Worcester Public	3/14/2005	6/30/2018	13.3567	Credited ⁵
LABBB Collab.	9/24/2018	3/22/2019	0.5654	Credited
McAuliffe Charter	7/1/2020	6/30/2021	1	Credited

(Exhibits 7 and 9).

5. By letter dated June 15, 2019, the MTRS wrote to the Middlesex County Retirement Board and requested information about Ms. Bradford’s contribution history while employed at Westford Academy as a school nurse. The letter inquired about her employment from “9/1/2000 to 5/31/2001”, which would have been the 2000-2001 school year. (Exhibit 12).
6. In response, the Middlesex County Retirement System (“MCRS”) transferred the

⁴ I have abbreviated the names of the employing entities or applicable retirement systems, which were, in chronological order, the Westford Public Schools, the Middlesex County Retirement System (during which time the Petitioner appears to have worked at Westford Academy as a school nurse), the Westford Public Schools, the Worcester Public Schools, the LABBB Collaborative and the Christa McAuliffe Regional Charter Public School.

⁵ The amount of creditable service that Ms. Bradford accrued during this time is the issue in this appeal- this figure is the amount after the reduction that MTRS determined was necessary. Ms. Bradford was originally credited with 13.6567 years of service with the Worcester Public Schools during this time.

- funds it had on account that were attributable to Ms. Bradford. However, the transfer represented service only from September 14, 2000 to December 31, 2000. The total amount transferred was \$214.91, which was \$0.13 less than it should have been for the 3 months and 17 days of creditable service for which MCRS accepted liability pursuant to G.L. c. 32, § 3(8)(c). (Exhibit 13).
7. Ms. Bradford was credited with proportional creditable service during this time. (Exhibit 7; Exhibit 9).
 8. From September 1, 2001 to June 30, 2002, Ms. Bradford was credited with a full year of creditable service for her work in the Westford Public Schools. (Exhibit 7; Exhibit 9).
 9. Following a break in service, Ms. Bradford worked at the Worcester Public Schools from March 14, 2005 to on or around June 30, 2018, a fact which she does not dispute. (Exhibit 7; Exhibit 9). The amount of creditable service that Ms. Bradford accrued during this period is the service that MTRS reduced.
 10. In three academic years, 2013 to 2014, 2014 to 2015, and 2015 to 2016, Ms. Bradford received a stipend for “Extended Learning” or “Extended Day” which paid her a pro-rated annual stipend of \$12,150.00 (the stipend was \$45/hour for a school day extended by 90 minutes per day for the 180 days that pupils attended school). She received this stipend for working when pupils attended an extended school day. (Exhibit 1).
 11. This stipend was the subject of a side letter agreement that apparently was entered into on or around October 20, 2011. Per that agreement, beginning with the 2012-2013 school year, the nurses who were assigned to work the extended pupil session

days were entitled to the stipend. The record contains only one page of the side letter agreement and does not include the agreement's signature page. Ms. Bradford did not receive this stipend until the 2013-2014 school year. Id.

12. When Ms. Bradford's retirement allowance was first calculated, MTRS determined that the stipend she received for "Extended Learning" was not "regular compensation" for retirement purposes and so notified her to her address of record in Massachusetts by letter dated July 6, 2021. That letter included an appeal right, advising the Petitioner that she needed to file an appeal within 15 days if she wanted to challenge MTRS's determination. (Exhibit 3). The Petitioner filed an appeal of this decision via facsimile ("fax") on September 3, 2021. (Pleading A).
13. When Ms. Bradford's retirement allowance was originally calculated, the MTRS credited her with 13.6567 years of service with the Worcester Public Schools and total creditable service of 16.6 years. (Exhibit 2).
14. Upon further review of Ms. Bradford's MTRS records and verification of the benefit she was receiving, MTRS issued a second "Notice of Estimated Retirement Benefit" dated August 27, 2021. The letter was sent to the Petitioner at a different address, in Florida, which remains her present address.⁶ The notice informed her that the amount of creditable service she had accrued totaled only 16.333 years, not the 16.6 years previously stated. (Exhibit 5).
15. Accompanying this notice was a letter explaining that Ms. Bradford's retirement allowance had been overpaid as a result of this error and informing her that her

⁶ There is no information in the record as to how MTRS became aware of this Florida address, when that happened or exactly when Ms. Bradford may have relocated to Florida.

monthly retirement allowance would be reduced by \$39.75 per month going forward. She was also informed that she owed MTRS \$79.50 (representing two months of the overpayment that she received before the error was discovered) and that this amount would be recovered by reducing her monthly retirement allowance by \$39.75 for the months of September and October 2021. This letter did not include an appeal right. (Exhibit 6).

16. By submission received via fax at DALA on September 3, 2021, Ms. Bradford appears to have filed an appeal of the August 2021 MTRS decision.

Procedural History

The Petitioner in this case is *pro se* and compiled the documents that she submitted in connection with the appeal, but she did not submit a memorandum in support of her position on the issues in the case. So that it is clear what she submitted and what DALA reviewed in rendering this decision, I am including a brief procedural history with some related background pertaining to the documents in the record because it is those documents that contain notations appearing to outline the argument that the Petitioner has made in support of her appeal.

Included in the materials DALA received via fax from the Petitioner were a copy of the MTRS letter dated August 27, 2021, a copy of the MTRS “Notice of Estimated Retirement Benefit” dated the same day, materials pertaining to post-retirement earnings and the “critical shortage” waiver for eligible retirees, copies of the MTRS service tracker with an MTRS beginning date of 9/01/2001 and a handwritten end date of “6/30/” but the year is not legible, along with a notation under the heading “Total Credited Service” of “17.5” written under the MTRS’s record total of 16.3637. Also included in the fax was another copy of Exhibit 13, and a copy of Exhibit 3 with handwritten notations that appear to state, “read side agreement” [sic],

and “retirement should be based on average of \$79,000 for calcul [sic] of benefit.” The submission included another copy of salary material provided with Exhibit 1 and the side letter agreement also included with Exhibit 1.⁷

Following the submission of the Petitioner’s appeal, the matter was determined to be one that could be resolved without a hearing pursuant to 801 C.M.R. §1.01(10)(c). The Petitioner did not submit a brief. The Respondent submitted a brief and a Motion to Dismiss the appeal of the determination that the amounts paid to the Petitioner for the “Extended Learning” stipend as untimely. The Respondent argued that the Petitioner’s appeal was not timely because it was filed 59 days after the Petitioner was notified of the MTRS’s determination, outside of the 15-day timeline outlined in G.L. c. 32, §16(4).⁸

The Petitioner filed a response to the MTRS’s motion.⁹ In it, the Petitioner stated,

[A]t the time I received the July 6 letter, I was in the process of moving from Massachusetts to Florida and did not receive the letter until later. I had been in communication with MTRS prior to my move and believed any determination on my retirement benefits would take several months so I was not expecting any important time sensitive documents in the mail...I think an exception should be made to the 15 day requirement...if DALA has authority to make an exception.

The letter goes on to state,

I previously submitted a number of documents. Some of these relate to the creditable service issue. I understand that MTRS is not arguing that my appeal of that issue is untimely...I do not believe that MTRS’s calculation of my employment at Westford Public Schools includes all my full-time service. Upon review I am certain you will find the various errors that show my retirement funds were not calculated correctly as my creditable service at Westford Public Schools

⁷ There was no letter from the Petitioner in the fax received at DALA. To the extent that the documents contain notations that might shed light on the Petitioner’s positions on the issues presented, I have marked this fax as Pleading A. I asked for but did not receive a copy of the Petitioner’s appeal letter to DALA, which is not in DALA’s file. Having received no copy of the correspondence I did not mark the letter as an exhibit and will make my ruling based upon the documents included in DALA’s file.

⁸ Pleadings B and C.

⁹ Pleading D.

was not fully included for contribution.

Upon submission of the MTRS's brief and motion and the Petitioner's response to the motion, the record closed.

DISCUSSION

There seems to be some difference of opinion between the parties as to which issue or issues are actually on appeal in this case. I will address each in turn.

I. **The Petitioner's "regular compensation" for retirement purposes and the timeliness of that appeal.**

The MTRS filed a motion to dismiss the Petitioner's appeal on the issue of whether an "Extended Learning" stipend she received should be considered "regular compensation" for retirement purposes.

By letter dated July 6, 2021, MTRS staff notified the Petitioner that the additional payments that she received for staffing the pupils' "Extended Learning" (a longer school day) would not be included in the salary average used to calculate her retirement allowance because it did not qualify as "regular compensation" for retirement purposes. The Petitioner appealed this determination but the MTRS argues that the appeal was untimely because it was not filed within the timeframe set forth in G.L. c. 32, § 16(4), which requires that, "...any person when aggrieved by any action taken or decision of the retirement board" file an appeal of that determination "within fifteen days of notification of such action or decision of the retirement board..." The MTRS's July 6, 2021 letter provided the Petitioner with information on how to appeal the determination that MTRS had made. The Petitioner does not appear to dispute that she did not

file her appeal of this decision within the statutorily prescribed timeline, because her response to MTRS's motion states only that "...an exception should be made to the 15 day requirement...if DALA has authority to make an exception."

The MTRS's July 6, 2021 letter was sent to the Petitioner's then-current address in Shrewsbury one week after her retirement date, and the Petitioner's retirement application did not include an "alternative address" that the MTRS could have used to send the notification. DALA received the Petitioner's appeal by fax on September 3, 2021¹⁰, nearly two months after the MTRS sent its notification to her. In Massachusetts, the regular course of mail is presumed. Tobin v. Taintor, 229 Mass. 174 (1918); Gaynor v. State Board of Retirement, CR-19-0109 (DALA decision October 22, 2021; no CRAB decision). Therefore, the Petitioner must present evidence to overcome this presumption. Tobin, *supra*. The Board's evidence of mailing is "prima facie evidence...the notice was sent and received[.]" Id. at 176.

The Petitioner argues that she was in the process of moving to Florida in or around the time that the notice was sent, and that she received the notice "later" without specifying the date of receipt.¹¹ The burden of proof is on the Petitioner to show when she received it. Blanchette v. Contributory Retirement Appeal Board, 20 Mass. App. Ct. 479, 483 (1985); Baron v. State Board of Retirement, CR-08-409 (DALA decision December 14, 2012; no CRAB decision) (Petitioner bears burden of proof to show she satisfies each requirement to be granted relief); Pomeroy v. Plymouth County Retirement Board, CR-15-258 (DALA decision January 14, 2022;

¹⁰ The MTRS filed a motion to dismiss relying in part on the date of the Petitioner's appeal letter. DALA never received an appeal letter from the Petitioner and did not receive this attachment to MTRS's motion, but the documents it did receive in support of the appeal were faxed to DALA's offices and date-stamped on September 3, 2021. I am relying on those documents to make this determination.

¹¹ The Petitioner does not argue that she never received the notice.

no CRAB decision) (discussing the same in the context of post-retirement earnings). The Petitioner has not provided evidence of the date that she received the letter from MTRS in Florida and has not offered any evidence to show that her appeal was timely from the date of her receipt of the notification in Florida.

When an appeal is not timely filed, it must be dismissed because DALA lacks jurisdiction to consider the matter. Flynn v. Contributory Retirement Appeal Board, 17 Mass. App. Ct. 668, 669 (1984) ("the thirty-day limitation upon the filing of actions seeking review of administrative agency action is jurisdictional in nature and, hence, not susceptible to extension"); Garret v. Board of Assessors, 43 Mass. App. Ct. 911, 911 (1997) (citation omitted) ("As a matter of policy, we have not, even if there is substantial hardship to an owner, permitted equitable principles to supersede jurisdictional requirements of administrative boards."); Herrick v. Essex Regional Retirement Board, 68 Mass. App. Ct. 187, 189-90 (2007); Falmouth v. Civil Service Commission, 64 Mass. App. Ct. 606 (2005). When there is a lack of jurisdiction, "waiver or consent cannot confer it." Second Bank-State St. Trust Co. v. Linsley, 341 Mass. 113, 116 (1960); Garret, 43 Mass. App. Ct. at 911; Flynn, 17 Mass. App. Ct. at 670; Insurance Co. of North America v. Commissioner of Insurance, 327 Mass. 745, 758 (1951). In the circumstances of this case, I find that the Petitioner's appeal was untimely and must be dismissed as a result.

Even if I had found that the Petitioner's appeal related to this issue was timely, the Petitioner would not prevail on the merits of her claim. As an initial matter, the Petitioner filed neither a letter of appeal nor a memorandum in support of her position- the extent of her argument seems to be marking a copy of Exhibit 3 with handwritten notations that appear to state, "read side agreement" [sic], and "retirement should be based on average of \$79,000 for

calcul [sic] of benefit.” As such, she does not elaborate on the legal basis on which she relies in her argument.

However, the Petitioner’s argument is unavailing when one examines the MTRS regulations and existing case law. Regular compensation for additional services performed by a teacher “include[s] salary payable under the terms of an annual contract for additional services so long as: (a) The additional services are set forth in the annual contract; (b) the additional services are educational in nature; (c) the remuneration for these services is provided in the annual contract; (d) The additional services are performed during the school year.” 807 CMR § 6.02(1). “[A]nnual contract,” as used in G.L. c. 32, § 1, is defined as “the collective bargaining agreement for the unit that governs the rights of the members whether it is a one year or multi-year agreement.” 807 CMR § 6.01. The requirement that additional services be included in a written contract establishes “a safeguard against the introduction into the computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems. (The safeguard is needed especially where the public entity that negotiates a collective agreement is not the one that will have to find the funds to pay the continuing retirement benefits above the avails of employee contributions).” Boston Ass'n of Sch. Administrators & Sup 'rs v. Boston Retirement Board, 383 Mass. 336, 341 (1981).

In Kozloski v. Contributory Retirement Appeal Board, 61 Mass. App. Ct. 783, 785-787 (2004), the Appeals Court affirmed MTRS’s authority to define the term “annual contract,” holding that it served the valid purpose of relieving MTRS staff of the obligation to “sift through a multiplicity of alleged oral or side agreements” to determine whether any particular payment is “regular compensation” for retirement purposes. In dismissing side agreements as unreliable, the Court suggested that the only relevant factor was that a stipend is omitted from a collective

bargaining agreement; the reasons why a stipend was omitted from a collective bargaining agreement were irrelevant. Id. at 788; see also Vellante v. Contributory Retirement Appeal Board, Civil Action No. 03-0184 (Mass. Sup. Ct. Feb. 6, 2004), aff'd 62 Mass. App. Ct. 1122 (2005) (Court concluded that, while Kozloski deals with oral side agreements, the same rationale applies to written side agreements, as well); Macdonald v. Massachusetts Teachers' Retirement System, CR-10-710 (DALA decision February 20, 2015; no CRAB decision).

For those reasons, even if the Petitioner's appeal had been timely, MTRS properly excluded the Extended Learning stipend from the calculation of her retirement allowance.

II. The Petitioner's creditable service

The issue properly before DALA is the MTRS's recalculation of the Petitioner's retirement allowance once it determined that the estimated benefit she had received had been overpaid because her creditable service with the Worcester Public Schools had not been properly calculated. When MTRS further reviewed the amount of Ms. Bradford's initial payments in the summer of 2021, MTRS staff determined that, for the first few months of her service with the Worcester Public Schools, she had been erroneously credited with more service than she had actually accrued. Specifically, the MTRS notified her that from March 14, 2005 to June 30, 2018 she had accrued 13.3567 years of service, not 13.6567 years of service. The creditable service that was reduced was the creditable service earned during the 2004-2005 school year when Ms. Bradford began work on March 14, 2005 and then worked until the end of the school year, June 18, 2005. (For the remaining service with the Worcester Public Schools, Ms. Bradford accrued a full year of service in each year because she worked for the full school year from 2006-2018.)

The MTRS notified the Petitioner of this reduction in her creditable service by letter dated August 27, 2021, but the letter did not include an appeal right. Notwithstanding that, the Petitioner filed an appeal of the MTRS's August 27, 2021 determination that was received at DALA on September 3, 2021. The question arises whether the lack of an appeal right on the August 2021 MTRS correspondence means that the MTRS determination was not an "appealable decision" within the meaning of Barnstable County Retirement Board v. Public Employees' Retirement Administration Commission, CR-07-0163 (CRAB decision on remand February 17, 2012).

Generally, in order to be an "appealable decision" within the meaning of G.L. c. 32, § 16(4), a notice must expressly inform the parties that it is an appealable decision and give notice to the parties of the right to appeal, including the time to appeal and to what entity the appeal must be sent. Id. However, in certain circumstances when a member has timely appealed a Board action, the appeal may move forward even where the notification letter lacks an appeal right. Lutes v. Clinton Retirement Board, CR-07-1100, (DALA decision January 20, 2012; affirmed in relevant part by CRAB November 16, 2012) (noting that the inclusion of an appeal right is designed to protect the member's rights as litigants and permitting an otherwise timely appeal to go forward was proper); see also Frazel v. Boston Retirement Board, CR-15-63 (DALA decision March 3, 2017; no CRAB decision.) I find that the Petitioner's appeal of the MTRS's August 27, 2021 reduction in her creditable service (and therefore her retirement allowance) is properly before DALA and that DALA has jurisdiction to decide it. It seems prudent to decide the issue related to the Petitioner's creditable service in conjunction with the existing (though untimely) appeal of what "regular compensation" was used to calculate her retirement allowance and I do so in order to conserve administrative resources.

The MTRS initially credited the Petitioner with 13.6567 years of creditable service during her tenure with the Worcester Public Schools from March 14, 2005 to June 18, 2018, which it later discovered should only have been 13.3567 years of creditable service. When the Petitioner's creditable service was reduced, by necessity, so was the amount of the retirement allowance that she was entitled to be paid.¹² Consequently, from and after the date of the MTRS's determination, the Petitioner's retirement allowance was reduced by \$39.75/month (gross). MTRS also recouped the overpayment made to the Petitioner in the two months that she was paid prior to the error being discovered- the total amount recouped was \$79.50.

The reduction in creditable service occurred when MTRS verified how the first partial year of the Petitioner's service with the Worcester Public Schools was credited. The Petitioner does not dispute that her service during the first year of her tenure in the Worcester Public Schools began on March 14, 2005 and lasted through the end of that first school year, June 18, 2005. I find that the MTRS decision to reduce Ms. Bradford's creditable service during this time was proper and supported by the law.

The MTRS has duly enacted regulations governing the award of creditable service, specifically 807 CMR § 3.02 and 3.04. The former provides, in pertinent part,

All persons defined as teachers who earn their salary during the school year from September to June shall, irrespective of the manner in which their salary is paid, be allowed a year's credit for each full school year of service and one-tenth of a year for each full month of service rendered during a school year. All such service may be pro-rated in accordance with 807 CMR 3.04.

In accordance with the MTRS's regulation and practice, the Petitioner was credited with the 17 days she actually worked in March 2005 and then 1/10th of a year for each of the full months of

¹² See generally, G.L. c. 32, § 5, which discusses the factors used to calculate a superannuation retirement allowance- the member's applicable age factor, average annual rate of regular compensation, and the amount of creditable service that the member has accrued.

April, May and June 2005 that she worked for a total of 0.3567 years of creditable service during that time. There is no provision of G.L. c. 32 that would permit the Petitioner to be credited with the amount of service that MTRS initially awarded her, which was more than 6 months of service from mid-March to June 2005.¹³

The Petitioner does not meaningfully dispute the MTRS's reduction of this creditable service, which I find was not only proper but was required by law. General Laws c. 32, § 20(5)(c)(2) provides, in pertinent part,

(2) When an error...is made in computing a benefit and, as a result, a member...receives from the system more or less than the member...would have been entitled to receive...had the error not been made, the error shall be corrected and as far as practicable...future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid.

When the language of a statute is plain and unambiguous, there is no reason to look beyond it to determine its meaning. State Board of Retirement v. Boston Retirement Board, 391 Mass. 92, 94 (1984). Here, as indicated by the use of the word “shall”, G.L. c. 32, § 20(5)(c)(2) required the MTRS to correct the error it made in initially computing Ms. Bradford's benefit and required them to recoup the overpayment made to her. Bristol County Retirement Board v. Contributory Retirement Appeal Board, 65 Mass. App. Ct. 443, 449 (2006) (“The [statutory] language reflects a policy that neither a member nor a retirement system shall be prejudiced by record-keeping or

¹³ The Petitioner would not be entitled to receive more than 6 months of creditable service from mid-March to June 2005 (the amount MTRS originally awarded her during this time), because only approximately 3½ months elapsed during that period. She was credited with full-time service during that time, which is the amount she could have accrued. See e.g., G.L. c. 32, § 4(1)(a) (“Any member in service shall...be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.”)

calculation errors, and that, in such circumstances, benefits shall, if ‘practicable,’ be adjusted to correct the mistake. General Laws c. 32, § 20(5)(c)(2), is not a forgiveness statute.”)

Moreover, had MTRS failed to correct Ms. Bradford’s creditable service, it would have provided Ms. Bradford a benefit greater than she was entitled to receive, which is impermissible. Clothier v. Massachusetts Teachers’ Retirement Board, 78 Mass. App. Ct., 143, 146 (2010). In Clothier, the Appeals Court rejected the argument that MTRS was required to continue paying a benefit that was originally calculated to include a service purchase that the plaintiff should not have been permitted by law to make, stating,

...entitlement to retirement benefits and the amount of such benefits is governed entirely by G. L. c. 32. Because the statute defines and limits the benefits to which Clothier and other like retirees are entitled, those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by the TRB or any of its employees. Id. (Internal citations omitted.)

Here, Ms. Bradford is similarly entitled only to the benefit that was authorized by law and that she earned while an MTRS member- no more, no less. The MTRS acted properly in this circumstance by reducing the creditable service Ms. Bradford earned from March to June 2005, reducing her resulting retirement allowance and recouping the overpayment made to her.

III. Ms. Bradford put forth arguments which are not properly before me.

Next, I turn to the matters which I find are not before DALA. Ms. Bradford’s main complaint with MTRS’s determination of her creditable service lies not with the adjustment it made but with the creditable service she accrued while working in the Westford Public Schools. She notes in her submission that, “I do not believe MTRS’s calculation of my employment at Westford Public Schools includes all my full time service...[u]pon review I am certain you will find the various errors that show my retirement funds were not calculated correctly as my

creditable service at Westford Public Schools was not fully included for contribution.”¹⁴ The MTRS credited the Petitioner with the service as a substitute school nurse that she accrued from June 1, 1999 through December 31, 1999 on a pro-rated basis, which she does not appear to dispute, and also provided her with a full year of creditable service during the September 1, 2001-June 30, 2002 school year with the Westford Public Schools when she worked for the entire school year. The issue, therefore, appears to lie with the 2000-2001 school year.

At that time, Ms. Bradford was apparently working at Westford Academy and contributing to the Middlesex County Retirement System. Ms. Bradford has noted on a copy of one page of the MTRS memorandum that the 0.2972 years of service with which she was credited “should be 1.” This presumably means one year of creditable service, but there is no indication as to why she believes this to be the case.¹⁵ She has provided a letter from the Westford Public Schools dated May 2, 2022 stating that she was employed “as a School Nurse in the Westford Public Schools from August 30, 2000 through June 30, 2002”.¹⁶ The letter does not state whether her employment was full or part-time and does not state the school(s) at which she worked. *Id.*

The MTRS records in evidence include the request letter MTRS sent to the Middlesex County Retirement Board seeking a transfer of Ms. Bradford’s account pursuant to G.L. c. 32, § 3(8)(a). MTRS requested information regarding the period of employment of “09/01/2000 to

¹⁴ Pleading D.

¹⁵ Exactly how Ms. Bradford is arguing that this would total the 17.5 years of service she is apparently asserting she has accrued is not clear. Her service was reduced to 16.333 years when MTRS adjusted her benefit. She appears to argue only that she should receive a full year of service during the 2000-2001 school year. This would not total the 17.5 years that she suggests she accrued.

¹⁶ As stated, Ms. Bradford has been credited with a full year of service for the 2001-2002 school year.

05/31/2001”, noting an MTRS “start date of May 17, 2001”. *Id.* In response, the Middlesex County Retirement System transferred \$214.91 to MTRS. In a letter accompanying the transfer, MCRS informed MTRS that the funds represented Ms. Bradford’s full-time service with MCRS from September 14, 2000 to December 31, 2000. Thereafter, MTRS verified that the funds remitted represented the 3 months and 17 days of service for which the MCRS would accept liability pursuant to G.L. c. 32, § 3(8)(c)- in fact, MTRS staff documented that the funds transferred were “short by \$0.13” but MTRS nevertheless accepted the transfer.

Exactly what Ms. Bradford is arguing is incorrect about the creditable service awarded to her during the 2000-2001 school year is unclear. To the extent that she suggests that she should have been awarded one year of service during that year, I note that the MTRS requested information about her MCRS service during the entire 2000-2001 school year. The MCRS’s records substantiate that Ms. Bradford worked only from September 14, 2000 to December 31, 2000, as the funds that she contributed to MCRS correspond to only that length of service.¹⁷

However, there is also no evidence that Ms. Bradford has raised an issue(s) about the 2000-2001 school year with either the MCRS and/or the MTRS, and there is no evidence that either the MCRS or the MTRS (or both) have reviewed it or issued a determination with respect to any claim she might make. Because neither retirement system has issued an “appealable decision” on this issue (defined as discussed earlier) it is not before DALA at this time and I am not ruling on it.

¹⁷ As a contributory defined benefit retirement system, G.L. c. 32 generally authorizes the award of creditable service when a member remits retirement deductions because they have begun employment in a position which entitles them to membership in a retirement system, which is known as “membership service”, or where a member is entitled to purchase “creditable service” pursuant to a separate statutory authorization. *See*, generally, G.L. c. 32, §§ 1, 3 and 4.

For the reasons discussed above, I am dismissing Ms. Bradford’s appeal on the issue of whether the “Extended Learning” payments made to her were “regular compensation” as untimely filed. I am affirming the MTRS’s decision to adjust Ms. Bradford’s creditable service with the Worcester Public Schools during the 2004-2005 school year and MTRS’s decision to therefore reduce her retirement allowance. I am declining to rule on any issue(s) related to Ms. Bradford’s creditable service during the 2000-2001 school year with the Westford Public Schools because there is no “appealable decision” before DALA on that issue.¹⁸

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

Dated: October 20, 2023

Addendum—Exhibit List

1. Petitioner’s retirement application, parts 1 and 2, received March 26, 2021.
2. Notice of Estimated Retirement Benefit, dated July 6, 2021.
3. MTRS decision letter on “Extended Learning” payments dated July 6, 2021.
4. Email from an MTRS employee regarding communication to the Petitioner.
5. Notice of Estimated Retirement Benefit, dated August 27, 2021.

¹⁸ If Ms. Bradford wishes to pursue that matter, she would need to approach the MCRS and MTRS with a related claim and request a decision on it prior to any adjudication by DALA. Thereafter, her right to appeal any action or inaction by the retirement boards would be governed by G.L. c. 32, § 16(4).

6. MTRS notification letter regarding the overpayment of the Petitioner's retirement allowance dated August 27, 2021.
7. Internal MTRS creditable service tracker, printed June 30, 2021, including notations presumed to be made by an MTRS employee.
8. Internal MTRS retirement benefit calculation printed July 6, 2021, including notations presumed to be made by an MTRS employee.
9. Internal MTRS creditable service tracker, printed August 27, 2021.
10. Internal MTRS retirement benefit calculation printed August 27, 2021.
11. Petitioner's member account with dates of received contributions from August 26, 2009 to August 31, 2011.
12. Request letter from MTRS to Middlesex County Retirement Board dated June 19, 2015.
13. "Transfer of Member's Funds to Another Board" correspondence from Middlesex County Retirement System dated July 31, 2015.
14. Letter from the Westford Public Schools Administrative Offices dated May 2, 2021 documenting the Petitioner's service from September 1, 1998 to June 30, 2000.
15. Letter from the Westford Public Schools Administrative Offices also dated May 2, 2021, documenting the Petitioner's service from August 30, 2000 through June 30, 2002.
16. Partial email from Petitioner to Board counsel with a date of June 1, 2022 in the middle of the page, informing counsel that the Petitioner believed that her creditable service with the "Westford Public Schools" had not been properly awarded and arguing in part that her salary average should have included the stipend she references.