COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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**MARYANNE CARPENTER**, Fax: (617) 626-7220

 Petitioner **www.mass.gov/dala**

 Docket No: CR-15-350

 *v.* March 3, 2017

**STATE BOARD OF RETIREMENT**,

 Respondent

**Appearance for Petitioner:**

*Pro se*

25 Taft Avenue

Mendon, MA 01756

**Appearance for Respondent:**

 Candace L. Hodge, Esq.

 State Board of Retirement

 One Winter Street, 8th Floor

 Boston, MA 02108-4747

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY OF DECISION**

The State Board of Retirement properly classified the Petitioner in Group 2, because her regular and major duties require her to have the care, custody, instruction or other supervision of persons who are mentally defective or mentally ill. G.L. c. 32, § 3(2)(g). Classification in Group 2 disqualifies her from the Employee Retirement Incentive Program (ERIP). Acts 2015, c. 19, § 3(c)(I).

**DECISION**

Pursuant to M.G.L. c. 32, § 16(4), the Petitioner, MaryAnne Carpenter, appealed from the June 18, 2015 decision of the Respondent, State Board of Retirement (Board), to classify her in Group 2 rather than Group 1, thereby making her ineligible for participation in the Employee Retirement Incentive Program (ERIP). Ms. Carpenter appealed the Board’s decision to the Contributory Retirement Appeal Board (CRAB) on July 3, 2015.

On January 17, 2017, the Board submitted a Pre-Hearing Memorandum. Also on January 17, 2017, Ms. Carpenter filed a request that the Division of Administrative Law Appeals (DALA) decide her appeal upon written submission pursuant to 801 CMR 1.01(10)(c). By an Order dated January 18, 2017, the parties were given until March 3, 2017 to submit memoranda and proposed exhibits. On February 15, 2017, Ms. Carpenter submitted legal arguments and proposed exhibits; I have marked her submission “A” for identification. I marked the Board’s January 17, 2017 Pre-Hearing Memorandum “B” for identification.

From the record and documents submitted by the parties, I enter the following nine exhibits into evidence:

Exhibit 1: Letter from the Board advising Petitioner that she was classified as Group 1, rendering her ineligible for the Employee Retirement Incentive Program (ERIP), 6/18/2015;

Exhibit 2: Petitioner’s appeal to DALA, 7/3/2015, and letter from Nancy Marshall describing the Petitioner’s duties, 6/26/2015;

Exhibit 3: Petitioner’s 2015 ERIP Application Payroll Certificate/Sick Vacation Payment Consent Form, 5/12/2015;

Exhibit 4: Letter from Board requesting Petitioner to complete Group Classification Questionnaire, 5/27/2015, Petitioner’s 2015 ERIP Application Group Classification Questionnaire, 6/1/2015;

Exhibit 5: Petitioner’s addendum to the Group Classification Questionnaire, date unknown;

Exhibit 6: Petitioner’s Form 30, 7/1/2011;

Exhibit 7: Petitioner’s Age Competency Form, 7/12/2013;

Exhibit 8: Petitioner’s Employee Performance Review Form FY 2013-2014, first page, 7/12/2013; and

Exhibit 9: Petitioner’s Superannuation Retirement Application, letter from Board advising Petitioner of the beginning of retirement benefits, 7/6/2015.

**FINDINGS OF FACT**

From the Petitioner’s testimony and the exhibits submitted into evidence, I make the following findings of fact:

1. MaryAnne Carpenter began working as a Recreational Therapist I in the Patient Care Unit at the Department of Public Health (DPH)’s Tewksbury Hospital on September 9, 2001, and retired on June 30, 2015. (Exhibit 9.)
2. At the time of her retirement, Ms. Carpenter’s supervisor was Nancy Marshall. (Exhibits 2 and 8.)
3. Ms. Carpenter worked with the Tewksbury Hospital patients with physical and mental disabilities, providing them with daily activities such as bowling, cooking, games, crafts and music. Some of the patients were from the Department of Developmental Services (DDS). (Exhibit 2.)
4. On May 14, 2015, the Board received Ms. Carpenter’s 2015 ERIP Application Payroll Certificate/Sick Vacation Payment Consent Form. (Exhibit 3.)
5. On May 27, 2015, the Board forwarded a 2015 ERIP Application Group Classification Questionnaire to Ms. Carpenter, requesting that she return the completed form to the Board. The Board received the completed Questionnaire on June 5, 2015. (Exhibit 4.)
6. The following one-paragraph addendum was attached:

In the position of Recreational Therapist I, I provide daily activities for DPH patients, presently most but not all are from the DDS population. This involves planning some group activities and setting goals for those groups. I also assist with other groups by setting up, assisting patients sometimes with hand over hand help, escort patients on and off unit, encouraging participation in the groups, and following up with documentation.

(Exhibit 5.)

1. The Form 30 job description for Recreational Therapist I at the time of Ms. Carpenter’s ERIP application provided the following “General Statement of Duties and Responsibilities”:

Using a customer service focus, individuals in this position assess patients to determine individual therapeutic recreational abilities and needs, set goals and objectives for patients according to assessment. Plan, organize and provide individual and group therapeutic recreation to meet goals of patients, motivate patients in therapeutic recreation activities and evaluate therapeutic recreation activities for effectiveness. Works collaboratively as a member of an interdisciplinary team. Performs related duties as required.

(Exhibit 6.)

1. The Form 30 provided the following “Detailed Statement of Duties and Responsibilities”:
2. Develop individual patient therapeutic recreation goals and objectives upon completion of assessment of patient’s abilities and interests.
3. Implement Therapeutic Recreation Activities for chronic care patients ranging in age from 20-100+ years of age: plan, organize, schedule, and evaluate therapeutic recreation activities to achieve goals.
4. Motivate patients to participate in Therapeutic Recreation Activities. Counsel patients as to what leisure activities are available. Escort and/or transport patients to activities as necessary.
5. Work collaboratively and cooperatively with peers and interdisciplinary colleagues.
6. Consult with and provide feedback to clinical team as to patient participation and progess in therapeutic recreation programs through patient care conferences or other forms of communication.
7. Maintain attendance records, monthly progress notes, and other documentation as required.
8. Attend and participate in regularly scheduled staff meetings.
9. Participate in patient field trips and special events. Assist in organizing and planning of these as required.
10. Make supply needs known to supervisor.
11. Compliance with all applicable state and federal laws including the Health Insurance Portability and Accountability Act (HIPAA) regulations which govern the privacy and confidentiality of information about patients.
12. Performs job related duties as required.

(Exhibit 6.)

8. The Form 30 also indicates that the Recreational Therapist I position has no staff reporting to it, and lists no required experience in management or supervision of subordinate employees. (Exhibit 6.)

9. According to Ms. Carpenter’s FY 2013-2014 Employee Performance Review Form (EPRF), she met her supervisor’s expectations in job performance. In the January 9, 2014 mid-year progress review, Ms. Marshall wrote, “Maryanne has been able to adapt activities to the change in patient population.” In the May 8, 2014 annual review, Ms. Marshall wrote, “Maryanne does an excellent job working with the DDS patient population.” (Exhibit 8.)

10. According to the Form 30 and the EPRF, Ms. Carpenter’s regular and major job duties required her to supervise a therapeutic environment for her patients. In her addendum to the ERIP Questionnaire, Ms. Carpenter wrote of her patients, “most but not all are from the DDS population.” (Exhibit 4.)

11. On June 18, 2015, the Board notified Ms. Carpenter of its decision to classify the Recreational Therapist position in Group 2, thus making her ineligible for participation in ERIP. (Exhibit 1.)

12. On July 3, 2015, Ms. Carpenter appealed the Board’s decision to DALA. (Exhibit 2.)

13. On July 6, 2015, Ms. Carpenter applied to the Board for superannuation retirement. She retired upon a superannuation retirement benefit on June 30, 2015. (Exhibit 9.)

**CONCLUSION AND ORDER**

The Board’s denial of Ms. Carpenter’s application for ERIP is affirmed. Ms. Carpenter is ineligible to participate in ERIP because her position is properly classified in Group 2. To be eligible for ERIP, an employee must be employed by an executive department, be a member of the State Employee Retirement System, and be classified in Group 1 pursuant to G.L. c. 32, § 3(2)(g). Acts 2015, c. 19, § 3(c)(I).

 ERIP was established by Chapter 19 of the Acts of 2015 to decrease state expenditures by reducing the number of high-earning executive department employees. ERIP applications were accepted from May 11, 2015 through June 12, 2015, with the eligible employees retiring effective June 30, 2015.

G.L. c. 32, § 3(2)(g) classifies members into groups for retirement purposes. Group 1 includes “[officials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G.L. c. 32, § 3(2)(g). Group 2 includes, in relevant part, “employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of … persons who are mentally ill or mentally defective … .” *Id*.

Group classification is “properly based on the sole consideration of [the member’s] duties.” *Maddocks v. Contributory Retirement Appeal Bd*., [369 Mass. 488](http://sll.gvpi.net/document.php?id=sjcapp:369_mass_488), 494 (1975). A member’s duties are largely determined by consulting his or her title or job description. *See Gaw v. Contributory Retirement Appeal Bd.*, [4 Mass. App. Ct. 250](http://sll.gvpi.net/document.php?id=sjcapp:4_mass_app_ct_250), 256 (1976). In fact, because she elected to proceed on written submissions only and has declined to testify at an evidentiary hearing, the only evidence I can rely on is Ms. Carpenter’s job description. Of course, proceeding on written submissions does not alterMs. Carpenter’s burden to prove her case by a preponderance of the evidence. *See Lisbon v. Contributory Retirement App. Bd*., [41 Mass. App. Ct. 246](http://sll.gvpi.net/document.php?id=sjcapp:41_mass_app_ct_246), 255 (1996).

 The Board classified Ms. Carpenter’s position in Group 2 based on its determination that her regular and major job duties required her to “have the care, custody, instruction or other supervision of … persons who are mentally ill or mentally defective … .” Ms. Carpenter belonged in Group 2 if her regular and major duties involve direct patient care. *See Serafin v. State Bd. of Retirement,* CR-06-160 (DALA 2008). Furthermore, if Ms. Carpenter’s position was primarily supervisory in nature, one would expect to see this reflected in the sections of the Form 30 dealing with “Direct Reporting Staff” or “Qualifications Required at Hire.” This further supports the Board’s classification of the position in Group 2.

In her written submissions, Ms. Carpenter argues that she did not have direct care or supervision of “prisoners or persons with mental illness or disabilities.” She stated if direct care were needed, she was required to call a nurse or a nurse’s aide.

The overall impression given from the duties listed on the Form 30 is that Ms. Carpenter’s position is primarily concerned with supervising those with mental illness or defects, and Ms. Carpenter has submitted no evidence to suggest that the Form 30 does not accurately reflect the duties of her position and should therefore be ignored. The Form 30 indicates that the position has no subordinate staff that report to it, and the required qualifications make no mention of required experience managing or supervising subordinate staff.

According to the Form 30 and the EPRF, Ms. Carpenter’s regular and major job duties required her to supervise a therapeutic environment for her patients. In her addendum to the ERIP Questionnaire, Ms. Carpenter wrote of her patients, “most but not all are from the DDS population.” In the EPRS, Ms. Marshall wrote, Maryanne does an excellent job working with the DDS patients.” I infer that these patients from DDS are developmentally disabled.

DALA has upheld cases where retirement boards classified petitioners working with DDS or DMH patients or patients with mental illness as Group 2. In *Mahon v. State Bd. of Retirement*, the Administrative Magistrate found that the petitioner, despite having a supervisory title of Recreation Therapist III, worked the majority of his time working with mentally ill or mentally defective persons at the Fernald School and was thus entitled to Group 2 classification for retirement purposes. *Mahon v. State Bd. of Retirement,* CR-00-98 (DALA 2001). In *Evans v. State Bd. of Retirement*, the Administrative Magistrate found that the petitioner who was responsible for 30-36 DMH clients suffering from severe mental illness, was properly classified in Group 2. *Evans v. State Bd. of Retirement,* CR-03-647 (DALA 2004). In another ERIP case, a DDS RN II was classified in Group 2. The Administrative Magistrate found the RN II’s primary responsibilities required her to have the care of persons who were mentally defective, was thus properly classified in Group 2, and ineligible for enhanced retirement benefits under ERIP. *Shea v. State Bd. of Retirement*, CR-02-146 (DALA 2003).

Ms. Carpenter emphasizes that the Board’s decision to classify her as Group 2 was an abrupt change, because she had been told she was classified in Group 1 upon her hire. She also believes that co-workers working on the same floor, holding the same position as she, were classified in Group 1. She further states that she retired on June 30, 2015 in order to comply with the ERIP requirements. There is no evidence to support these contentions.

Chapter 19 of the Acts of 2015, the Employee Retirement Incentive Program, allows certain eligible Group 1 employees to receive enhanced retirement benefits.  The Act applies only to  Group 1 employees.  Since Ms. Carpenter was properly classified in Group 2, she was not eligible to retire under ERIP.

The decision of the State Board of Retirement classifying Ms. Carpenter in Group 2 for retirement purposes and thereby deeming her ineligible to retire with the enhanced benefits

afforded by Chapter 19 of the Acts of 2015 is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate