

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Bonnie Carr,**  
Petitioner

v.

Docket No. CR-21-0060  
Date: April 5, 2024

**Massachusetts Teachers'  
Retirement System,**  
Respondent

**Appearance for Petitioner:**

Bonnie Carr, *pro se*

**Appearance for Respondent:**

Ashley Freeman, Esq.  
MTRS  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129

**Administrative Magistrate:**

Kenneth J. Forton

**SUMMARY OF DECISION**

Petitioner, a vocational technical teacher, applied to purchase vocational service under G.L. c. 32, § 4(1)(h½). MTRS must rely on DESE records to determine eligibility to purchase vocational service. For two years, MTRS encouraged Petitioner to correct her DESE vocational service records, which were missing some service dates, but she failed to do so. MTRS issued an invoice for the service that it could verify with DESE records, but Petitioner failed to purchase the service or set up a payment plan within 180 days of the date of the invoice. MTRS correctly barred Petitioner from purchasing her service at a later date, as § 4(1)(h½) offers only one opportunity to purchase vocational service.

**DECISION**

Petitioner Bonnie Carr timely appeals under G.L. c. 32, § 16(4) the January 12, 2021 decision of Respondent Massachusetts Teachers' Retirement System (MTRS).

MTRS determined Ms. Carr was ineligible to purchase her prior vocational service under G.L. c. 32, § 4(1)(h½) because she missed the statutory 180-day deadline to respond to MTRS's invoice.

On July 7, 2021, DALA informed the parties that Ms. Carr's appeal appeared to be one that could be resolved on written submissions under 801 CMR 1.01(10)(c) and ordered them to submit legal memoranda and proposed exhibits. Neither party objected to the magistrate's order. On February 4, 2022, MTRS submitted its memorandum and four proposed exhibits. On March 4, 2022, Ms. Carr submitted her memorandum and three additional proposed exhibits. On July 25, 2023, however, DALA determined that the appeal actually could not be decided on the papers and consequently ordered the parties to file additional papers and argument to aid in resolving several disputed issues of fact. On August 23, 2023, Ms. Carr submitted her further pleadings and six exhibits. On September 27, 2023, MTRS submitted its further pleadings and two exhibits. I then ordered the parties to appear for an evidentiary hearing, which took place on February 28, 2024. Ms. Carr was the only witness. I admitted into evidence exhibits P1-P6 and R1-R2. The parties made oral closing arguments, whereupon the administrative record closed.

**FINDINGS OF FACT**

Based on the exhibits and testimony, I make the following findings of fact:

1. Bonnie Carr is a member of the MTRS. (Ex. P2a.)
2. In January 1993, Ms. Carr began teaching office technology at Greater Lawrence Technical School. (Ex. P2a.)

3. Before Ms. Carr began teaching, she worked three jobs related to the subjects that she eventually taught. From March 1, 1988 to August 31, 1989, she worked as an accountant for Beth Israel Hospital. From October 1989 to July 1991, she worked as an accountant at the Wang Center. From August 29, 1991 to September 23, 1992, she worked as a financial analyst at Coopers & Lybrand. (Ex. P1a.)

4. In 1992, Ms. Carr applied for her vocational technical teacher license from the Department of Elementary and Secondary Education (DESE). DESE received letters from her former employers verifying her work experience, which was required for licensure. All of the letters listed dates of employment. The Wang Center letter's dates were highlighted with a Hi-Liter marker. (Ex. P1a.)

5. In the 2000s, DESE digitized Petitioner's paper records, including her employment verification letters. The highlighted dates of employment on the Wang Center letter came through the scanner as blacked-out, making it impossible to determine her dates of employment there. (Ex. P1a.)

6. In October 2013, Ms. Carr applied to purchase creditable service based on her vocational work experience under G.L. c. 32, § 4(1)(h½). Her application covered her work at Beth Israel, Coopers & Lybrand, and the Wang Center. (Ex. P2a.)

7. For vocational experience purchases, MTRS verifies the member's prior vocational employment by relying on the member's records with DESE because § 4(1)(h½) allows only the purchase of employment that "was required as a condition of the member's employment and licensure under regulations of the department of education." G.L. c. 32, § 4(1)(h½); 801 CMR 14.03.

8. In a letter dated April 22, 2016, MTRS informed Ms. Carr that her application was being put “on hold” because it could not verify her employment at the Wang Center. The letter stated that MTRS “will reactivate your request as of the date that we receive this information; until then, your request will remain ‘on hold’ and will not be processed.” (Ex. P1d, P3a.)

9. In an email dated February 10, 2017, MTRS requested that Ms. Carr follow up with the Wang Center to complete the service verification. MTRS alternatively offered to let Ms. Carr purchase her total of 2.75 years at Beth Israel and Coopers & Lybrand only. MTRS also informed her that this would bar the purchase of the remaining 0.25 years possible under § 4(1)(h½). (Ex. P3b.)

10. The February 10, 2017 email also informed Ms. Carr that “[p]er law you only have 180 days from the date of the first invoice to purchase your vocational buyback.” (Ex. P3b.)

11. In another email dated July 10, 2017, MTRS, following up on a phone conversation with her, asked Ms. Carr to follow up with DESE to correct her employment records to reflect her Wang Center employment. (Ex. P3d.)

12. In a letter dated January 24, 2018, MTRS informed Ms. Carr that DESE still was unable to verify her Wang Center work experience. It stated that the request “will remain ‘on hold’ and will not be processed” until it received confirmation of her Wang Center employment from DESE. MTRS again urged Ms. Carr to help DESE correct its records. (Ex. R1.)

13. On April 5, 2018, MTRS mailed a service purchase invoice to Ms. Carr. It covered 2.7561 years at Beth Israel from March 1988 to September 1989 and Coopers &

Lybrand from August 1991 to September 1992. It did not include the Wang Center employment. The invoice stated that Ms. Carr had 180 days to respond to the invoice and included the following direction:

\*If you do not EITHER purchase your service within 180 days of the invoice mailing date or by your date of retirement, whichever comes first, OR sign up for our installment payment plan within 180 days of the invoice mailing date and complete your payment within the five-year installment term or by your date of retirement, whichever comes first, you will NOT be able to purchase this service at a later date.

MTRS offers no explanation why it issued the invoice after notifying Ms. Carr that her application would be placed on hold. (Ex. P4a.) (Emphasis in original.)

14. An enclosed sheet gave further instructions. It stated that Ms. Carr had three options: complete the purchase with a lump sum, elect to participate in a five-year payment plan, or decide not to purchase the service at all. The instructions continued:

However, remember that in order to purchase your voc-exp service, you must EITHER:

- make full payment for your service purchase within 180 days of the mailing date of your invoice or by your date of retirement, whichever comes first, OR
- sign up for our installment plan within 180 days of the mailing date of your invoice and complete your payments within the five-year period of the installment plan, or by your date of retirement, whichever comes first.

If you do not *either* purchase your service now or sign up for our installment plan within 180 days of the invoice mailing date, you will NOT be able to purchase this service at a later date.

(Exhibit P4a.) (Emphasis in original.)

15. In Ms. Carr's case, the 180-day due date was October 2, 2018. (Ex. P4a.)

16. Ms. Carr received the invoice. (Testimony.)

17. On the same date that the invoice was mailed, as a courtesy MTRS attempted to send an email to Ms. Carr informing her that the invoice had been mailed and that she had 180 days to comply with it, by either paying the lump sum or beginning a payment plan. Due to a typographical error in the email address, this email was not received by Ms. Carr. (Ex. P4b.)

18. Ms. Carr did not pay the invoice in a lump sum or set up the installment plan. (Testimony.)

19. Following up on a telephone conversation, on January 6, 2021, Ms. Carr wrote to MTRS on January 11, 2021. She explained that she had misunderstood the invoice options and thought that, if she did not follow the listed options, she would merely have to pay a higher interest rate, not miss out on the opportunity to purchase any of her vocational experience. She enclosed another vocational service purchase application. (Exs. P6a, R2.)

20. In a letter dated January 12, 2021, MTRS informed Ms. Carr that she was ineligible to purchase her prior vocational work experience because she did not complete the purchase within 180 days of the April 5, 2018 invoice covering the same service. (Ex. P5a.)

21. On January 18, 2021, Ms. Carr timely appealed MTRS's decision.

22. In a letter dated February 4, 2021, the Wang Center confirmed that Ms. Carr was employed there from October 1989 through July 1991. (Ex. P6a.)

23. On May 10, 2021, Ms. Carr applied again to purchase the same vocational experience service. This third application included a letter from the Wang Center confirming her dates of employment. (Ex. 6b.)

24. On March 28, 2022, MTRS informed Ms. Carr that her May 10, 2021 application was denied because MTRS had already denied an earlier identical application. (Ex. P6b.)

### **CONCLUSION AND ORDER**

Creditable service is one of the components that determines a retirement system member's superannuation retirement allowance. The majority of creditable service is derived from membership service that accrues when a public employee works for a public employer. However, Chapter 32 provides several opportunities for members to purchase creditable service based on different kinds of employment, generally with public employers. See *Carr, et al. v. Framingham Retirement Bd. and PERAC*, CR-10-761, at \*7-9 (DALA May 18, 2012) (listing and general discussion of provisions allowing purchase or grant of service credit).

This appeal concerns one of the relatively rare provisions of the retirement law that allows certain members to purchase service credit based on employment outside the government. Under this provision, teachers in vocational-technical schools have an opportunity to purchase up to three years of

creditable service for any period or periods of prior work experience in the occupational field in which the member became a vocational-technical teacher and which was required as a condition of the member's employment and licensure under regulations of the department of education.

G.L. c. 32, § 4(1)(h<sup>1/2</sup>). Likely because this is one of the rare instances that a member can purchase service based on non-government employment, § 4(1)(h<sup>1/2</sup>) provides only one

opportunity<sup>1</sup> to complete the purchase:

Members in service of a retirement system who make application for this creditable service shall be notified by the retirement board of their eligibility for such creditable service, and, if they are eligible, shall also be notified by the retirement board that they have the following options: (1) to purchase the service in a lump sum within 180 days of the notice, or (2) to enter into an installment agreement within 180 days of the notice to pay for the service.

DALA decisions have consistently interpreted this passage to mean that a member has one 180-day window to complete her purchase either by paying it in a lump sum or by entering into an installment agreement to pay for the service. The 180 days starts when the member is notified of the statutory options in the form of an invoice for the service purchase. Once the 180 days pass, so has the opportunity to purchase the vocational work experience. *See Narcizo v. MTRS*, CR-21-0064 (DALA June 30, 2023); *Manzi v. MTRS*, CR-21-0257 (DALA Jan. 27, 2023); *Powers v. MTRS*, CR-10-287 (DALA Mar. 13, 2015).

The analysis here is straightforward. After Ms. Carr applied to purchase vocational experience service in 2013, MTRS ultimately approved the application in part after it could not confirm her Wang Center employment and issued an invoice for the purchase in 2018. It is undisputed that Ms. Carr did not pay the lump sum or request a

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<sup>1</sup> The purchase of military service, another kind of service outside of traditional government employment, is similarly narrow and restrictive. *See MacDonald v. Barnstable County Retirement Bd.*, CR-09-326, at \*6-7 (DALA Nov. 29, 2013) (general discussion of military service purchase). In 1996, the Legislature added the fourth paragraph of G.L. c. 32, § 4(h), which allows a veteran who has completed ten or more years of membership service to purchase up to four years of his military service by paying ten percent of his regular annual compensation when he entered the retirement system. *See Acts 1996, c. 71, § 2.* Along with this benefit, however, the Legislature included a requirement that veterans must apply for the creditable service within 180 days of being notified by their retirement boards of their eligibility. *See Acts 1996, c. 71, § 3.*



payment plan within 180 days of MTRS's invoice. Therefore, under G.L. c. 32, § 4(1)(h<sup>1</sup>/<sub>2</sub>), Ms. Carr is not entitled to purchase her vocational experience service.

Ms. Carr maintains that she is still eligible to purchase her vocational experience because the invoice was defective. She makes two main arguments in support of this contention. First, the invoice did not cover the three full years possible under the statute. This is an unfortunate misunderstanding of the statute and regulations. The purchase of vocational experience service may not exceed three years, but this does not mean that it must total three years to effectuate the purchase. 807 CMR 14.03 ("up to three years" available to purchase).

Second, she argues that it was defective because it did not include her Wang Center employment. Under its vocational work experience regulation, MTRS will allow the purchase of service only if that service is included in DESE's records. 807 CMR 14.03. Once it receives the DESE records, MTRS notifies the member of her eligibility. G.L. c. 32, § 4(1)(h<sup>1</sup>/<sub>2</sub>). In the instant appeal, DESE records reflected Ms. Carr's Beth Israel and Coopers & Lybrand employment, but did not reflect her Wang Center employment because DESE had no legible record of it. MTRS informed Ms. Carr that it could not verify her Wang Center employment and asked her to follow up with DESE to correct her records. After this initial letter, MTRS asked Ms. Carr several more times to contact DESE to correct her records so that it could account for that service in its calculation. One such follow-up even discussed the possibility of moving forward with the purchase using only the 2.75 years of service that were available in DESE's records. There is no evidence that during the two years that her service purchase was pending Ms. Carr contacted DESE, the Wang Center, or MTRS to straighten out her employment

records. Consequently, MTRS issued an invoice covering the 2.75 years of eligible service with Beth Israel Hospital and Coopers & Lybrand that *were* in DESE's records. While Ms. Carr may have believed the invoice was defective, it very clearly stated what her options were. But, rather than take some initiative to sort out the problem, Ms. Carr decided to ignore the invoice and assume that another would be issued once she got around to correcting her DESE records. In the face of the clear directions on the invoice, it is unclear from the record on what she based that assumption.

To the extent that she is arguing that any additional "notice" other than the invoice itself was required under the statute, that interpretation would be another unfortunate misreading of the statute, which provides that once a member applies to purchase vocational experience, the MTRS will notify her of her eligibility for the service and her two options for purchasing it. Ms. Carr appears to argue that the email that never reached her was the notice that she required, but this email was merely a courtesy, albeit a failed courtesy, to let her know that the invoice had been mailed. The invoice itself provided all of the notice that § 4(1)(h<sup>1/2</sup>) requires. While it may have been confusing to receive the invoice after MTRS told her that her application would remain on hold, once she received the invoice it was incumbent upon her to clear up any misunderstanding.

Ms. Carr maintains, in the alternative, that even if it is determined that her other service is disqualified because it was already included in the MTRS invoice, she is nonetheless still entitled to purchase her Wang Center service. As discussed above, at the time that Ms. Carr first applied, DESE's records indicated she worked at the Wang Center but the verification's dates of employment were illegible. MTRS can verify only what is in DESE's records. 807 CMR 14.03; *see also Hartung v. MTRS*, CR-22-0195

(DALA Oct. 27, 2023). MTRS encouraged Ms. Carr several times to cure the defect in DESE's records before the invoice was issued. After two years of requests, MTRS moved forward with the information in DESE's records and sent Ms. Carr the invoice. Once the invoice was sent, the 180-day provision limiting the opportunity to purchase her vocational service began to run. With the issuance of the invoice, the opportunity to cure the defect regarding the Wang Center service was effectively foreclosed upon, as the dates of service were not in DESE's records, and MTRS's calculation could be based only on the DESE records. 807 CMR 14.03.

Ms. Carr claims that she contacted a member of MTRS after receiving the invoice. She states that she asked why she did not have the full three years on the invoice and if she would lose the opportunity to purchase the service after 180 days. She states that she was told she would not lose the opportunity, and that the consequence for missing the 180-day deadline would be that she would be charged a higher interest rate. Even if this conversation occurred, the statute defines and limits the benefits to which Ms. Carr is entitled, and these cannot be enlarged "even by an erroneous interpretation by the [Board] or any of its employees." *Wylie v. Hampden Cnty. Reg'l Retirement Bd.*, CR-15-184, at \*2 (CRAB Nov. 2018) (citing *Clothier v. Teachers' Retirement System*, 78 Mass. App. Ct. 143, 146 (2010)). Erroneous advice cannot change the statutory requirement to pay the invoice or set up a payment plan within 180 days of its receipt. To the extent that Ms. Carr is seeking equitable relief, DALA lacks equitable powers to excuse or authorize departures from the statute. See *Petrillo v. PERAC*, CR-92-731 (DALA Feb. 15, 1993), *aff'd* (CRAB Oct. 22, 1993).

This is a terribly unfortunate situation. Ms. Carr's actions or lack of action could be interpreted as reasonable. But, § 4(1)(h<sup>1/2</sup>) is strictly limited to one opportunity to purchase vocational experience. Ms. Carr did not take that opportunity, and there is no provision to revive it.

For the above-stated reasons, I conclude that Ms. Carr applied to purchase her vocational service, MTRS notified her of her eligibility to purchase the service, and she failed within 180 days to purchase the service by lump sum or by accepting a payment plan. She is therefore no longer eligible to purchase this service. Accordingly, the decision of the MTRS is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

Dated: April 5, 2024