

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Michael Carvalho,
Petitioner,

Docket No.: CR-21-0070

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Michael Carvalho, *pro se*

For Respondent: Yande Lombe, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner established that his regular and major duties as a Residential Supervisor C at the Department of Developmental Services (DDS) required direct care of people with intellectual and developmental disabilities. He oversaw DDS programs for 6-8 individuals living in residential homes. Although he had supervisory and administrative responsibilities, direct care provided to the residents was an essential component of his position and consumed the majority of his work time. Carvalho is therefore entitled to have this service classified in Group 2 under G. L. c. 32, § 3(2)(g).

DECISION

The petitioner, Michael Carvalho, appeals the decision of the State Board of Retirement (Board) to deny his application for Group 2 classification under G. L. c. 32, § 3(2)(g). I held an evidentiary hearing on June 5, 2023, which was recorded. Carvalho was the only witness. I admitted into evidence exhibits marked 1-13.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. Michael Carvalho worked for the Metro Residential Services division of DDS from 1984-2021. He initially worked as a direct support worker under various job titles,¹ then as a Residential Supervisor A/B from May 1993 through January 2005, and lastly as a Residential Supervisor C from February 1, 2005, until his retirement on July 31, 2021.² (Testimony; Exhibits 1, 7, 10.)
2. As a Residential Supervisor A/B, Carvalho provided support services to intellectually and developmentally disabled individuals in residential homes.³ He also supervised support staff, delegated staff responsibilities, and conducted staff meetings. He worked at several different locations during that period, but at no more than one property at a time. (Testimony; Exhibit 13.)

¹ Carvalho's specific job titles included Mental Retardation Worker I, Mental Retardation Worker II, and Habitation Coordinator I. (Exhibit 7.)

² The titles of the Residential Supervisor A/B and Residential Supervisor C positions were subsequently changed to Residential Supervisor I and Residential Supervisor II, respectively. The evidentiary record does not establish when these changes to the position titles went into effect. Carvalho referred to his positions under their former titles in both his Group 2 applications and his appeal letter, as did DDS in its certification of Carvalho's employment and the State Board of Retirement in its decision on Group 2 eligibility. For consistency and to avoid unnecessary confusion, I also refer to Carvalho's positions under their former titles throughout this decision, regardless of the official job title in effect at the time.

³ I refer to the individuals with disabilities as "residents" in this decision.

3. In 2002, Carvalho was reassigned to a home in Belmont, Massachusetts, that housed four residents in a two-unit, duplex-style building. (Testimony.)

4. In 2005, DDS needed a residential supervisor to cover a home in Waltham, which housed two wheelchair-bound residents with cerebral palsy. DDS assigned Carvalho to this location, in addition to his existing responsibilities at the two-unit residence in Belmont. Because of the additional workload, Carvalho was promoted to Residential Supervisor C effective February 1, 2005. (Testimony. See also Exhibit 1 [start date for Carvalho's position as Residential Supervisor C].)

5. In December 2011, Carvalho was reassigned to a property in Dorchester that had two units, with four residents living in each unit. (Testimony.)

6. Carvalho's duties as Residential Supervisor C were largely the same as those he had as Residential Supervisor A/B. The main difference between the two positions was a matter of scale. As Residential Supervisor C, Carvalho became responsible for a greater number of disabled individuals and could be assigned to multiple locations. As Residential Supervisor A/B, in contrast, his responsibilities were limited to a single location and, correspondingly, to a smaller number of residents. (Testimony; Exhibit 13.)

7. In both positions, Carvalho interacted with the residents daily and was responsible for providing direct care, instruction, and supervision to them. The direct support services that Carvalho provided to residents on a regular basis included: (1) taking residents out into the community to run errands, go on shopping trips, and engage in recreational activities; (2) accompanying residents to medical appointments and advocating on their behalf; (3) helping residents with personal banking and financial management; (4) providing transportation to

residents to and from scheduled appointments, work programs, and day habilitation programs; (5) administering medication and providing medical care; and (6) assisting residents with toileting, dressing, and ambulation. (Testimony; see also Exhibit 11 [supporting letter from the Director of Metro Residential Services, Maureen A. Delaney].)

8. The “classification specification” for the residential supervisor series of positions,⁴ issued by the Commonwealth’s Human Resources Division, describes the “basic purpose” of a residential supervisor’s work as follows: “to manage, direct and supervise the clinical and administrative operations of assigned residences and provide advocacy and direct care support to the individuals served.” (Exhibit 13, at 2.)

9. The classification specification further provides that a Residential Supervisor C must “perform all the duties of a Residential Supervisor [A/B,]” and has “the same functions” and “the same decision-making authority” as a Residential Supervisor A/B but is responsible for a greater number of residents under DDS care. Residential supervisors in either position “provide direct care services to all residents assigned,” assess the residents’ individual needs, and ensure that each resident’s medical and behavioral needs are satisfied. (Exhibit 13, at 2, 5-6.)

10. As Residential Supervisor C, Carvalho was also responsible for managing the operations, staffing, and programs provided to the residents at the homes he supervised. His administrative and supervisory duties included interviewing job applicants, training and

⁴ The residential supervisor “series” includes Residential Supervisor I (A/B), Residential Supervisor II (C), and Residential Supervisor III. The classification specification document went into effect on December 4, 2020, during Carvalho’s last year of service.

supervising support staff, keeping records, writing performance evaluations, and ensuring the homes were well maintained. (Exhibits 2, 4.)

11. A “Form 30”⁵ position description for Residential Supervisor C provides the following “general statement of duties and responsibilities”:

“Oversee the operation, staffing and programmatic needs of a home or homes serving individuals with intellectual disabilities. Acts as liaison to MRS management, families, service coordinators and work and day hab sites. Insures [*sic*] home and services meet all state and federal regulations, and policies and procedures promulgated by the Department of Developmental Services and MRS.” (Exhibit 4.)

12. In addition to supervisory and administrative duties, the Form 30 states that a Residential Supervisor C “participates in the delivery of habilitative, behavioral and recreational/leisure programs.” (Exhibit 4.)

13. Each of the three homes Carvalho supervised in Belmont and Waltham was staffed by one direct support worker per shift, with three shifts per day. Each of the homes in Dorchester was staffed with either two direct support workers or one direct support worker and one licensed practical nurse. If one of those staff members was absent, Carvalho had to fill in for the absent worker in order to maintain the requisite staffing ratio (one support staff per two residents). (Testimony; Exhibit 11.)

14. Carvalho did not have an off-site office or workspace. When he was assigned to the residences in Belmont and Waltham, his desk and computer were in the corner of the recreational room at the home in Belmont. When he was reassigned to the residence in Dorchester, Carvalho had a small office space within the home for administrative tasks. One or

⁵ The Form 30 was prepared on November 18, 2002, roughly two years before Carvalho was promoted to the Residential Supervisor C position.

more of the residents would usually be with Carvalho in his office space while he was doing desk work. (Testimony.)

15. Even when he was supervising other support staff, Carvalho was often providing direct support to the residents at the same time. (Testimony.)

16. Every Sunday, Carvalho held a “Special Olympics Bowling” event, both for the residents in Belmont/Waltham and for those in Dorchester. He provided transportation for the residents to go bowling in Boston, assisted them with their personal needs such as toileting and cleansing while there, and then took them out for lunch afterward. (Testimony.)

17. On Tuesday nights, Carvalho held a self-advocacy meeting for “high functioning” residents receiving DDS services, during which they would discuss self-advocacy issues and plan events such as trips to the state house. Each meeting lasted around three hours. (Testimony.)

18. Carvalho attended weekly meetings for the residential supervisors, administrators, and clinical staff. He also conducted weekly team meetings for his support staff, at which they would discuss and plan the residents’ direct care needs and coverage for upcoming appointments. (Testimony.)

19. Carvalho spent around five hours of each eight-hour workday providing direct care and support to the residents. (Testimony.)

20. Shortly before his retirement, Carvalho applied to the Board for Group 2 classification, on a pro-rated basis, for each of the positions he held at DDS. (Exhibits 1, 7.)

21. By letter dated January 29, 2021, the Board notified Carvalho that it had denied his “request for reconsideration of the prior denial of [his] request for Group 2 classification for [his] position of Residential Supervisor C.” This letter was in error, however, because there had

been no prior denial or request for reconsideration. The Board acknowledged this error in a letter to Carvalho, dated February 4, 2021, which clarified that the Board had denied Carvalho's initial request to classify his position as Residential Supervisor C in Group 2. (Exhibits 5, 6.)

22. On February 8, 2021, Carvalho timely appealed the Board's decision.⁶ (Exhibit 9.)

23. On July 29, 2021, the Board approved Carvalho's request for Group 2 classification for his prior positions at DDS—i.e., Mental Retardation Worker I, Mental Retardation Worker II,⁷ and Residential Supervisor A/B. (Exhibit 8.)

24. Carvalho retired on July 31, 2021. (Testimony; Exhibit 10.)

ANALYSIS

The retirement allowance afforded to members of the state employees' retirement system is determined, in part, by the classification of the employees' service into one of four groups. See G. L. c. 32, § 3(2)(g). By default, members whose positions do not meet the criteria for Groups 2, 3, or 4 fall within Group 1, which includes "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." *Id.* In addition, "[a]ny active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group[.]" G. L. c. 32, § 5(2)(a).

⁶ I note that Carvalho's appeal was timely regardless of whether the appeal deadline is triggered by the Board's first letter or its second letter.

⁷ The Mental Retardation II position was later renamed Habitation Coordinator I. (Exhibit 7.)

Carvalho has elected to receive pro-rated benefits based on his years of service in each retirement group, pursuant to G. L. c. 32, § 5(2)(a). At issue is whether his service as a Residential Supervisor C meets the requirements for Group 2 classification, as he requested, or instead falls under Group 1.

Residential Supervisor is not among the specific job titles included in Group 2 under G. L. c. 32, § 3(2)(g). To prevail, therefore, Carvalho must prove by a preponderance of the evidence that his “regular and major duties” involved the “care, custody, instruction or other supervision” of “persons who are mentally ill or mentally defective.” G. L. c. 32, § 3(2)(g); *Peck v. State Bd. of Retirement*, No. CR-15-282, 2021 WL 12298080, at *2-3 (Contrib. Ret. App. Bd. Feb. 8, 2021) (petitioner’s burden of proof). Carvalho may satisfy this burden by showing that he spent more than half of his time engaged in providing such services. *Forbes v. State Bd. of Retirement*, No. CR-13-146, 2020 WL 14009545, at *7 (Contrib. Ret. App. Bd. Jan. 8, 2020).

There is no dispute that the residents Carvalho served qualify as “mentally ill” for purposes of § 3(2)(g). The issue, therefore, is whether Carvalho’s regular and major duties required the care, custody, instruction, or supervision of those residents.

To determine an employee’s duties, the responsibilities listed in the written job description for the employee’s position are considered but are not dispositive. *Desautel v. State Bd. of Retirement*, No. CR-18-0080, 2023 WL 11806157, at *2 (Contrib. Ret. App. Bd. Aug. 2, 2023); *Forbes, supra*, at *5. Testimony or other evidence of the actual job duties performed by the employee may also be taken into account. *Desautel, supra*, at *2. Employees “who serve in a supervisory capacity but are required to provide direct care on a regular basis for more than half of their working hours are eligible for Group 2 classification even though their job also

involved supervision and administration.” *Id.* However, a member must render “actual care and supervision” to qualify for Group 2 classification; “mere contact with patients and the incidental provision of care as part of an administrative role is not sufficient.” *Id.*

The written job descriptions in both the Form 30 and the classification specification reflect many administrative and supervisory responsibilities for Carvalho’s position, but they also include “direct care services” to the residents, such as active participation in habilitative and behavioral programs for the residents, assessing the residents’ medical and behavioral needs, and making sure their needs are met. Carvalho elaborated on his direct care responsibilities during his testimony, which included providing transportation, taking residents on bowling outings and other excursions, and assisting them with personal care needs (see pages 3-4, *supra*). Carvalho’s description of his work is further supported by a letter from the Director of Metro Residential Services, Maureen A. Delaney, which offers a similar summation of his job duties. He often provided direct care to the residents at the same time that he completed office work or was supervising staff.

Based on Carvalho’s testimony, which I found to be credible, he has met his burden of proving that his regular and major duties required him to provide direct care and supervision to “mentally ill” residents in DDS care for the majority of his time. He provided direct care to the residents daily, which consumed about 63% of his total work time. Carvalho is therefore entitled to Group 2 classification for his service as a Residential Supervisor C.⁸

⁸ Whether an employee in Carvalho’s position (or similar) meets the criteria for Group 2 classification is a fact-intensive inquiry that must be done on a case-by-case basis. Compare, for example, *Cassidy v. State Bd. of Retirement*, No. CR-21-0400, 2024 WL 1739372 (Div. Admin. Law App. Apr. 12, 2024) (Residential Supervisor II entitled to Group 2 classification) and *Manganiello*

CONCLUSION

For the foregoing reasons, the State Board of Retirement's decision denying Michael Carvalho's application for Group 2 classification is *reversed*.

Dated: April 10, 2026

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate
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v. State Bd. of Retirement, No. CR-03-937 (Div. Admin. Law App. Jan. 24, 2005) (Residential Supervisor C entitled to Group 2) with *Divers v. State Bd. of Retirement*, No. CR-06-461, 2006 WL 4211485 (Div. Admin. Law App. Oct. 30, 2006) (affirming Group 1 classification for Residential Supervisor C).