

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

---

|                           |   |                       |
|---------------------------|---|-----------------------|
| MARIA CASSIDY             | : | Docket No. CR-21-0400 |
| <i>Petitioner</i>         | : |                       |
|                           | : |                       |
| v.                        | : | Date: April 12, 2024  |
|                           | : |                       |
| STATE BOARD OF RETIREMENT | : |                       |
| <i>Respondent</i>         | : |                       |

---

**Appearances:**

For Petitioner: Maria Cassidy, *pro se*  
For Respondent: Yande Lombe, *Esq.*

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

Petitioner, Maria Cassidy, worked at the Department of Developmental Services as a Residential Supervisor II. She was responsible for running a large residential home that housed nine residents. Even though she had some administrative and supervisory duties, she provided direct care to these residents over 50% of the time. She is thus entitled to Group 2 status.

**DECISION**

The Petitioner, Maria Cassidy, timely appeals a decision by the State Board of Retirement (“Board”), denying her application for reclassification to Group 2. On March 4, 2024, I conducted a virtual hearing using the WebEx platform with the consent of both parties. The Petitioner testified on her own behalf; the Board did not present any witnesses. I admitted Respondent’s Exhibits 1-8 and Petitioner’s Exhibits 1-3 into evidence. The Petitioner presented a closing argument at the hearing and the Board submitted a closing memorandum on April 5, 2024 at which point I closed the administrative record.

**FINDINGS OF FACT**

1. The Petitioner began working for the Department of Developmental Services (DDS) in 1993. She held various positions over the years. (Res. Ex. 1; Testimony.)
2. For some time, she was a direct care worker for clients under the Department’s care. She then served as a Residential Supervisor I (“RS I”) and Residential Supervisor II (“RS II”). (Res. Exs. 1 & 6.).
3. While this appeal only covers her time as an RS II, some general background provides helpful context.
4. When the Petitioner began her career, most, if not all, clients receiving services from DDS were institutionalized. At some point that focus shifted and the Department began moving residents out of institutions or regional centers and into residential group homes. The homes varied in size but were all generally staffed by direct care workers and their supervisors. The Department’s focus also shifted to providing more community involvement for the residents. (Testimony.)
5. As a direct care worker, the Petitioner’s responsibility involved only directly caring for the residents. When she became an RS, she took on more administrative responsibilities. She still mostly worked directly with residents. (Testimony.)
6. She was an RS I for about 20 years primarily at one residence. After that, she was an RS II from May 2006 through September 2007 for two homes (housed together in one duplex)[“the duplex”]. (Testimony.)
7. Her duties of an RS I and RS II were the same. She had the same responsibilities and performed the same tasks. The difference between the two jobs was simply scale. As an RS I, she

oversaw one home with three to four residents. As an RS II, she oversaw the duplex with two functioning homes—one had four residents and the other had five. (Testimony.)

8. When she testified, the Petitioner explained her duties as an RS generally, i.e. whether as an RS I or RS II. However, she was also able to recall specific examples of her time as an RS II at the duplex. (Testimony.)

9. The job duties of an RS II list a combination of administrative and direct care tasks, but do not specify how much time is dedicated to each. (Pet. Exs. 1 & 2.)

10. The Petitioner’s testimony filled in the remaining details.

11. At the duplex, while she oversaw the everyday functioning of the home, she reported to a residential director. That director had a purely administrative job that dealt with many of the house’s administrative needs, such as budgeting or hiring and firing employees. (Testimony.)

12. To be sure, as an RS II, the Petitioner was tasked with several administrative duties such as interviewing job candidates, scheduling worker shifts, writing performance reviews, delegating tasks, and entering documents into their system. But those tasks paled in comparison to the amount of time she spent directly caring for residents. Every day involved countless, substantive interactions with residents. (Testimony.)

13. At the duplex, she interacted with residents the same way a direct care worker did. She taught them life skills, supervised their tasks around the home, oversaw their medication and more. (Testimony.)

14. For example, she constantly took residents out into the community by herself for a variety of reasons, such as going to the bank, visiting family, or to a doctor’s appointment. It was common for her to take a resident to a psychiatric appointment to make sure she could accurately

report to the doctor the effects the medications were having or just know if there was a medication change. (Testimony.)

15. In fact, community trips were some of the most common tasks because of the shift in the Department's goals for the residents. She recalled several residents who she regularly took into the community. Every Wednesday, she would take one resident to shop, run errands, and eat. This would take up hours of her day. There was another resident who she would regularly take to church on Sundays. She helped one resident create a relationship with an elderly woman at a neighboring complex by escorting her and being there for the visit. (Testimony.)

16. At the duplex she was also responsible for training the new staff. New staff had their primary training off site and by someone else. When they were ready to begin work, the Petitioner provided hands-on training for their specific jobs. As she explained, there was no better way of teaching than by example. Thus, she did not train them by telling them what to do but by showing them how to directly care for the residents. (Testimony.)

17. One of the biggest problems at the duplex was maintaining minimum staffing. If a direct care worker were absent, the Petitioner would have to substitute in. Even though she was technically scheduled to work one shift, Tuesday through Saturday, she constantly worked more. She would come in at night, on the weekends, or any other time she was needed to fill in for absent workers. (Testimony.)

18. For example, one resident was visually impaired and required 24-hour, one-on-one, supervision. This resident's floor was often short-staffed, which meant the Petitioner had to be there providing the one-to-one supervision (whether it was during her shift or not). (Testimony.)

19. When she substituted in, it was only ever for direct care workers. Thus, this was additional time she spent providing direct care to residents. (Testimony.)

20. The current director overseeing her position wrote a letter on her behalf. Although he was not her direct supervisor at the time, he is very familiar with the roles she performed. He acknowledged that an RS I and II were house manager positions, which involved a fair amount of administrative work and staff supervision. Nevertheless, the Petitioner was based in the home and had daily direct contact with residents. According to the director,

It has been my understanding that the threshold for Group 2 consideration is that you must work directly with the residents at least 50% of the work day. When Maria Cassidy served in these positions she absolutely worked directly with residents in a hands on way at least 50% of the time. At the time the house manager role was relatively new as were the homes [.] That combined with the high intensity behavioral needs of the residents that Maria worked with demanded that she serve in a hands on direct care way well above 50% of her work day. She worked alongside and in place of direct care staff providing hands on care for all activities of daily living, to assist with community integration and did daily crisis and behavioral management. It was the direct result of Maria's excellent work and hands on dedication that made those individual homes successful.

(Res. Ex. 2.)<sup>1</sup>

21. The Petitioner did not explain her time spent providing direct care in terms of hours or days of the week but by a percentage. She estimated that she provided direct care, supervision and instruction to the residents way more than 50% of the time. (Testimony.)

22. The Board granted the Petitioner Group 2 status for every position except RS II. It denied her request for the RS II without explanation. (Res. Exs.1 & 7; Pet. Ex. 3.)

### **CONCLUSION AND ORDER**

A member's retirement compensation is based, in part, on their group classification.

Members are classified into four groups. G.L. c. 32, § 3(2)(g). Group 2 includes employees

---

<sup>1</sup> This letter was admitted, without objection. The author is familiar with the Petitioner's position and its responsibilities. I credit its description of the Petitioner's duties, but not as to the percentage of time she performed those duties. I rely on the Petitioner's testimony for that evidence.

“whose regular and major duties require them to have the care, custody, instruction or other supervision of . . . persons who are . . . [developmentally disabled.]”<sup>2</sup> *Burke v. State Bd. of Ret.*, CR-19-0394, 2023 WL 5528742 (DALA Aug. 18, 2023), quoting G.L. c. 32, § 3(2)(g). “[A]n employee who spends more than half of his or her time ‘engaged in care, custody, instruction, or other supervision’ of a population included in Group 2 engages in these responsibilities as part of his or her ‘regular and major duties.’” *Desautel v. SBR*, CR-18-0080, \*3 (CRAB Aug. 2, 2023). “Individuals 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.* at \*3-4.

There are several cases in which DALA has held an RS II<sup>3</sup> working for DDS qualified for Group 2 status. *Manganiello v. SBR*, CR-03-0937 (DALA Jan. 24, 2005); *Barnes v. SBR*, CR-02-739 (DALA May 14, 2004); *Chigas v. SBR*, CR-03-012 (DALA Feb. 13, 2004); *Landry v. SBR*, CR-00-1094 (DALA Jul. 20, 2001). The Petitioners in those cases, all of whom supervised DDS group homes, described their duties almost identically to the Petitioner in this case. There was no dispute in those cases that the interactions with the residents constituted “care, custody, instruction or other supervision.” The only disputed issue in those cases was whether those interactions occurred more than 50% of the time. The Petitioner’s duties in this case mostly mirror the duties of the Petitioners in these prior cases involving the same position in the same agency. The findings from these prior cases corroborate the Petitioner’s testimony here, showing

---

<sup>2</sup> The statute uses the term “mentally defective.” However, “[t]he term ‘mentally defective’ is obviously and badly archaic . . . Over the years, administrative case law has come to interpret the ‘mentally defective’ category as covering individuals with developmental disabilities.” *Burke*.

<sup>3</sup> An RS II is also sometimes referred to as an RS C.

that RS IIs, at least in the mid-2000's, were responsible for significant direct care on a daily basis. In essence, the Petitioner was not the only supervisor whose administrative tasks were dwarfed by her obligation to care for the residents. Like these other Petitioners, “[a]lthough the official job description suggests that this function is not a regular and major duty of the job of Residential Supervisor C, the reality of staffing shortages has required the Petitioner to spend more time in direct care of residents than had perhaps been intended.” *Manganiello* at \*4.<sup>4</sup>

I credit the Petitioner's testimony that she provided direct care<sup>5</sup> well over 50% of her time working as an RS II. Though she had administrative duties, the short staffing and her responsibility to the residents resulted in her duties overwhelmingly requiring her to provide direct care instead.

### CONCLUSION AND ORDER

The Board's decision denying the Petitioner's request for reclassification is **reversed**.  
SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

---

Eric Tennen  
Administrative Magistrate

---

<sup>4</sup> The Board argues this case is more like *Divers v. SBR*, CR06-0461 (DALA Oct. 30, 2006), in which DALA held an RS C was not entitled to Group 2 status. However, *Divers* appears to be an outlier; among other things, the findings of fact were sparse as to the Petitioner's day-to-day tasks. The petitioner in *Divers*, and the other cases cited, had the burden of proof. Evidently, *Divers* failed to present sufficient proof, but in the other four case I cited, the petitioners each presented proof that demonstrated that their work as RS IIs or RS Cs required them to spend the majority of their time providing direct care to the developmentally disabled.

<sup>5</sup> Some of what the Petitioner did could also be considered instruction, supervision and/or custody. See e.g. *Pina v. SBR*, CR-21-0387, 2024 WL 1048144 (Mar. 1, 2024). It is not necessary to parse how much of each she provided since she clearly provided all of it in combination over half the time.