

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Tara DeGirolamo,**  
Petitioner,

No. CR-22-0367

Dated: May 24, 2024

v.

**Massachusetts Teachers' Retirement  
System,**  
Respondent.

**Appearances:**

For Petitioner: Tara DeGirolamo (pro se)

For Respondent: James O'Leary, Esq., Lori Curtis Krusell, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner is a teacher who attempted to enroll in the benefits program known as Retirement Plus during the six-month election window afforded to her by statute in 2001. A preponderance of the evidence does not establish that the petitioner completed her enrollment attempt before the statutory deadline. There was therefore no error in the respondent board's determination that the petitioner is not entitled to be enrolled.

**DECISION**

Petitioner Tara DeGirolamo appeals from a decision of the Massachusetts Teachers' Retirement System determining that she is not entitled to be enrolled in the benefits program known as Retirement Plus. G.L. c. 32, § 5(4)(i). After various procedural turns, an evidentiary hearing took place on May 15, 2024. Ms. DeGirolamo was the only live witness. I admitted into evidence an affidavit of MTRS employee Scott Cauley and exhibits marked 1-4.

**Findings of Fact**

I find the following facts:

1. Ms. DeGirolamo is a longtime teacher. As of the 2001 school year, she was teaching in the Mansfield public schools. (Testimony.)

2. During that school year, Ms. DeGirolamo learned that the benefits program known as Retirement Plus was coming into effect. She completed and signed a preprinted enrollment form on June 29, 2001. A clerk of her payroll office also signed the form on that date. (Testimony; exhibit 1.)

3. The form completed by Ms. DeGirolamo stated that it needed to be returned to MTRS by June 30, 2001. Ms. DeGirolamo does not recall whether she believed that executing the form by that deadline would be sufficient. She does not recall whether she mailed her form herself or whether she left it with her payroll clerk. (Testimony.)

4. Ms. DeGirolamo's form arrived at MTRS's offices in a properly stamped and addressed envelope. A copy of the envelope survives in MTRS's archives. The postmark on the envelope is not clearly legible. An MTRS-applied ink stamp marks the envelope as having been received there on July 11, 2001, a Wednesday. (Testimony; exhibit 2.)

5. MTRS's mail-processing practices are regular and orderly. Designated employees check for mail each day and stamp incoming correspondence promptly upon receipt. When circumstances require such employees to process envelopes a day late, their instructions are to stamp the date of receipt, not the date of processing. A preponderance of the evidence supports the conclusion that Ms. DeGirolamo's enrollment form arrived at MTRS's offices on the July 11, 2001 date recorded by MTRS's stamp. (Cauley aff.)<sup>1</sup>

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<sup>1</sup> The affidavit supporting this paragraph's findings is less than airtight, primarily because the affiant does not describe the positions that he held at MTRS before 2016. Still, his account was not rebutted or even disputed. It is also worth noting that the result of this appeal would not change if Ms. DeGirolamo's mailing arrived at MTRS's offices several days earlier than July 11, 2001. *See infra* p. 4.

6. During 2022, Ms. DeGirolamo learned that she was not enrolled in Retirement Plus. She asked MTRS to enroll her, explaining that she always had intended to participate in the program. MTRS denied Ms. DeGirolamo's request, and she timely appealed. (Testimony; exhibits 3-4.)

### Analysis

The retirement law defines the benefit calculations and contribution amounts of Massachusetts public employees. The benefits program known as Retirement Plus reflects the Legislature's judgment that the usual arrangements may not be optimally suited to teachers. Teachers participating in Retirement Plus make enlarged contributions and enjoy advantageous calculations designed to facilitate early retirement. *See* G.L. c. 32, § 5(4)(i).

Retirement Plus took effect in mid-2001. The enacting statute prescribed the methods by which several categories of teachers could become enrolled in the program. Individuals already serving as teachers in 2001 were afforded an "election" window running from January 1 through July 1 of that year. Acts 2000, c. 114, § 2. An "election" in this context means a form or other writing delivered to MTRS. *See Fillmore v. MTRS*, No. CR-23-358, 2024 WL 277245 (DALA Jan. 5, 2024).

The governing statute does not specifically identify the effective date of a member's election. Soon after Retirement Plus's enactment, MTRS took the view that an election is effective on the date appearing in the postmark of the member's mailing. *See Arthur v. MTRS*, No. CR-01-849, at \*3 (DALA June 23, 2003, *aff'd*, CRAB Nov. 6, 2003), *rev'd on other grounds*, No. 03-5737H, 2004 WL 5641977 (Suffolk Super. Nov. 30, 2004); *Tolman v. MTRS*, No. CR-02-1305, at \*4 (DALA Dec. 12, 2003); *Ostrowski v. MTRS*, No. CR-01-1043 (DALA Aug. 29, 2002). That approach was consistent with the thrust of the case law about mailed submissions in general. In one matter, the Supreme Judicial Court remarked on the "ubiquity" of

the “postmark rule.” *Town of Falmouth v. Civ. Serv. Comm’n*, 447 Mass. 814, 819-21 (2006).

Other opinions also treat a mailing’s postmark as its presumptive effective date. *See, e.g., Pavian, Inc. v. Hickey*, 452 Mass. 490, 493, 495-96 (2008). *See also* 801 C.M.R. § 1.01(4)(a).

The postmark appearing on the surviving copy of Ms. DeGirolamo’s mailing envelope is not clearly legible. In such circumstances, the courts have endorsed the strategy of inferring that the envelope was postmarked two to five days before it was delivered. *See Falmouth*, 447 Mass. at 816 & n.3; *Town of Rockland v. Civ. Serv. Comm’n*, 99 Mass. App. Ct. 1127 (2021) (unpublished memorandum opinion). *See also Andino v. Fair Labor Div.*, No. LB-21-572, 2022 WL 9619031, at \*2 (DALA Jan. 21, 2022). Applying the version of this approach most generous to Ms. DeGirolamo, if her envelope was postmarked five days before its delivery, then the effective date of her election was July 6, 2001. *See also City of Newburyport v. Thurlow*, 324 Mass. 40, 44 (1949) (the law assumes the regularity of a public agency’s records).

The result is that Ms. DeGirolamo’s efforts to enroll in Retirement Plus before the controlling deadline were unsuccessful. Her exclusion from Retirement Plus may be harsh. But administrative tribunals lack the authority to depart from statutory rules based on considerations of this nature. *See Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006).

### **Conclusion and Order**

MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate