

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kim Derry,
Petitioner,

No. CR-25-0038

Dated: April 4, 2025

v.

Massachusetts Teachers' Retirement System,
Respondent.

ORDER OF DISMISSAL

Petitioner Kim Derry appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) excluding her from the benefits program known as Retirement Plus. *See* G.L. c. 32, § 5(4). Ms. Derry has asked for her case to be decided based on the written submissions. *See* 801 C.M.R. § 1.01(10)(c). Her submissions include a memorandum, a supporting letter from her physician, and other correspondence.

Ms. Derry was a teacher and an MTRS member in 2001, when Retirement Plus came into effect. Her statutory window to enroll in the program ran from January to June of that year. *See* Acts 2000, c. 114, § 2. Ms. Derry acknowledges that she did not enroll at that time. A member who missed the 2001 enrollment window may join Retirement Plus belatedly only in very narrow circumstances inapplicable here. *See Dwyer v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-0459, 2024 WL 4345195, at *3 (Div. Admin. Law App. Sept. 13, 2024); *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723 (DALA Aug. 7, 2023).

Ms. Derry describes and documents highly sympathetic and personal medical issues that she confronted around 2001. Her physician explains that those issues impaired Ms. Derry's ability to manage her affairs and respond to correspondence. These circumstances make Ms. Derry's case a painful one. The problem is that the Retirement Plus statute prescribes an

inflexible rule that makes no allowances for unusual cases. This administrative tribunal has no authority to overrule the Legislature by amending the applicable statute or crafting new exceptions to it. *See Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 446, 450-51 (2006). *See generally Commissioner of Revenue v. Marr Scaffolding Co.*, 414 Mass. 489, 493 (1993). “[W]e must apply the law as written, even where the result may appear harsh.” *Roussin v. Boston Ret. Syst.*, No. CR-23-28, 2024 WL 2956657, at *2 (Contributory Ret. App. Bd. June 3, 2024).

In view of the foregoing, Ms. Derry’s pleadings, taken as true, do not state a claim upon which relief can be granted. It is therefore ORDERED that this appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate