

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**RICHARD DESAUTEL,**

**Petitioner-Appellee**

**v.**

**STATE BOARD OF RETIREMENT,**

**Respondent-Appellant.**

**CR-18-0080**

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**DECISION**

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The respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing SBR's decision denying the petitioner Richard Desautel Group 2 Classification. The DALA decision is dated December 27, 2019. SBR filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1 - 19 as our own and incorporate the DALA decision by reference. We affirm the magistrate's decision that Mr. Desautel was properly classified in Group 2 for retirement purposes. We agree that despite his official position description, which reflects a largely administrative set of responsibilities, Mr. Desautel's actual duties involved providing direct "care, custody, instruction and other supervision" to mentally defective or ill patients for more than 50% of his working hours. Thus, he is correctly classified in Group 2 for retirement purposes.

***Background***

Mr. Desautel began employment with the Commonwealth of Massachusetts as a Nurse Practitioner with the Department of Developmental Services (DDS) in May of 2013. He previously held several other positions with the state including as a Registered Nurse for the

Department of Mental Health, rendering him eligible for the Massachusetts State Employees' Retirement System (MSERS). The entire patient population Mr. Desautel served was mentally ill or defective. During his time as a Nurse Practitioner, Mr. Desautel traveled to group homes, nursing homes, and hospitals to provide care to DDS clients.<sup>1</sup>

Mr. Desautel's Employee Performance Review Form (EPRS) for July 1, 2016 through June 30, 2017 indicates that his responsibilities included providing technical assistance to staff and provider agencies, serving as the Area Office healthcare expert, participating in risk reviews for individuals with complex medical needs, and facilitating and coordinating supports to provider agency nurses and medical staff through regularly scheduled meetings.<sup>2</sup> The Position Description - Form 30 for his position as Nurse Practitioner indicated that his primary job duties included providing technical assistance to staff and provider agencies, serving as the area healthcare expert, corresponding with the Area Management Team on information pertaining to medical issues and overall healthcare concerns and topics, and developing knowledge related to generic services in order to serve as a resource for other providers.<sup>3</sup>

On December 27, 2017, Mr. Desautel submitted a Group Classification Application Form requesting his position be classified as Group 2. He submitted a copy of the Position Description for his position and an EPRS form for the period from July 1, 2016-June 30, 2017, along with a narrative detailing his reasoning for the assertion that his position should fall into Group 2.<sup>4</sup> In his classification narrative, Mr. Desautel stated that he spent at least 70 percent of his time performing direct care, which included checking vital signs, reviewing and assessing symptoms, assessing body sites to evaluate healing status, reviewing medication with patients, providing counseling and education, changing dressing on wounds, providing medical and nutritional instructions, and setting up patient specific medical equipment.<sup>5</sup>

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<sup>1</sup> Findings of Fact #1-10.

<sup>2</sup> State Retirement Board Ex. 5.

<sup>3</sup> State Retirement Board Ex. 4.

<sup>4</sup> Petitioner Ex. 1-3, 5.

<sup>5</sup> Petitioner Ex. 2.

On January 25, 2018, SBR denied his request to be classified in Group 2 for retirement purposes on the basis that his position did not meet the requirements of G.L. c 32, § 3(2)(g).<sup>6</sup> Mr. Desautel appealed the decision to DALA on February 9, 2019 and retired on February 19, 2019 with 10 years and 1 month of creditable service.<sup>7</sup> On December 27, 2019, the DALA magistrate reversed SBR's decision denying Mr. Desautel's request for Group 2 classification, holding that Mr. Desautel's actual job duties made him eligible for classification as a Group 2 employee. SBR timely appealed to CRAB, requesting that we reverse the DALA decision. Specifically, SBR disputes the following: first, SBR asks us to reject Finding of Fact 11, which states, "The Form 30 and the EPRS do not reflect the Petitioner's regular and major duties as Nurse Practitioner. (Respondent Exhibits 4 and 5 and Bile Testimony)."<sup>8</sup> Second, SBR asks us to reject Finding of Fact 13, which reads:

13. The direct care duties regularly undertaken by the Petitioner included:
  - a. following up after recent medical appointments or hospitalizations which would require meeting with patients to review, discuss, demonstrate and educate them regarding follow-up care. This included checking and assessing patients physically by taking vital signs and reviewing symptoms and complaints;
  - b. sitting down with patients to review their medications which all included psychiatric medications;
  - c. sitting down with patients and family members regarding end of life choices;
  - d. changing any dressings and assessing healing and skin integrity;
  - e. medical and nutritional assessment with the patients-teaching them how to apply creams, gels and prescriptive lotions, and, education regarding diet and food and fluid consumption;
  - f. setting up medical equipment and teaching patients how to use equipment;
  - g. mental health and cognitive assessments;
  - h. nail cuttings and trimmings; and
  - i. meetings with patients to provide instruction on medical care, ADL's, self-care, risk assessment and personal decision-making.<sup>9</sup>

### *Discussion*

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<sup>6</sup> State Board of Retirement Ex. 1.

<sup>7</sup> Findings of Fact #18-19.

<sup>8</sup> Finding of Fact #11.

<sup>9</sup> Finding of Fact #13.

At issue in this case is G.L. c. 32, § 3(2)(g)'s provision that the Group 2 retirement classification includes "employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children." DALA found, and SBR does not dispute, that Mr. Desautel works with "persons who are mentally ill or mentally defective" as a Nurse Practitioner with DDS. Instead, the dispute arises over whether Mr. Desautel exercised direct care, custody, instruction, or supervision of his patients as part of his regular and major duties.

To determine an individual's regular and major job duties, we account for evidence of an individual's actual job responsibilities in addition to official job descriptions outlined in documents such as the Position Description (Form 30) and the EPRS.<sup>10</sup> The responsibilities listed in an EPRS or Position Description serve as helpful evidence of actual duties but are not dispositive factors.<sup>11</sup> We have held that 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.<sup>12</sup> However, G.L. c. 32, § 3(2)(g) requires that actual care and supervision be rendered as part of an individual's position responsibilities—mere contact with patients and the incidental provision of care as part of an administrative role is not sufficient to qualify an individual for Group 2 classification.<sup>13</sup> DALA and CRAB have long accepted that an employee who spends more than half of his or her time "engaged in care, custody, instruction, or other

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<sup>10</sup> *Maddocks v. Contributory Retirement Appeal Board*, 340 N.E.2<sup>nd</sup> 503 (1976).

<sup>11</sup> *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250 (1976).

<sup>12</sup> *See, e.g., O'Connor v. State Board of Retirement*, CR-11-698 (DALA decision March 2016, CRAB decision May 2019) (holding that the inclusion of "a number of administrative tasks" in job responsibilities did not supersede evidence that over half of petitioner's time was spent providing direct care); *Dunford v. State Retirement Board*, CR-12-96 (DALA decision March 2017, CRAB decision December 2020) (holding that overall supervision of inmate behavior and providing discipline constitutes direct supervision).

<sup>13</sup> *Hunter v. Contributory Retirement Appeal Bd.*, 80 Mass. App. Ct. 257, 262 (2010).

supervision” of a population included in Group 2 engages in these responsibilities as part of his or her “regular and major duties.”<sup>14</sup>

At the hearing on May 20, 2019, Mr. Desautel testified that his day-to-day activities included direct patient care, roughly 70% of the time. He would often physically touch patients to listen to their heart or lungs, assess wounds and change dressing to wounds, to apply ointments and creams, give injections, and check catheters or ostomy bags.<sup>15</sup> He also counseled and interviewed patients to assess their capacity to give informed consent, reviewed and gave medications and counseled patients on how to take medications, evaluated patients for dysphagia, gave instructions on use of CPAP machines, trained patients on use of canes and walkers, assisted with physical therapy, and attended doctor appointments. He also indicated to having had strength and seclusion training to mitigate the risk of close contact with patients with the potential to lash out in a psychotic or delusional episode.<sup>16</sup>

Mr. Desautel’s statements pertaining to the actual care that he was providing clients of DDS are supported by the additional testimony of Mr. Bilé, an individual who worked with Mr. Desautel as a service coordinator for DDS. Mr. Bilé indicated that he observed Mr. Desautel providing direct care and supervision on occasions when they had gone to visit patients together. For instance, he testified to Mr. Desautel directly overseeing a patient being transported from UMass Memorial Hospital to a psychiatric unit in Boston, examining a patient for bedsores, changing wound dressings, assessing g-tubes, and assessing patients on a regular basis.<sup>17</sup> Mr. Desautel also submitted a travel log noting his visits to provide care to patients in different parts of the state and an affidavit to support the contention that he was frequently away from his office seeing and providing care to patients.<sup>18</sup>

SBR contends that Mr. Desautel primarily supervised care provided by others and cites several cases indicating that such supervision does not render an individual eligible for Group 2

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<sup>14</sup> See generally *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 490 n. 3, 491 (1976) (proof presented that nurse spent “more than fifty percent of her time” in direct care in prior position; Group 2 denied where position in year prior to retirement was supervisory).

<sup>15</sup> Petitioner testimony, hearing dated May 20, 2019.

<sup>16</sup> *Id.* See also Petitioner Memorandum at 5-6; Finding of Fact 13.

<sup>17</sup> Testimony of Mr. Bilé; Petitioner Memorandum at 6.

<sup>18</sup> Exhibits 6-7.

classification.<sup>19</sup> Unlike in each of these cases, which concern individuals providing incidental care while primarily coordinating care being delivered by others, Mr. Desautel in this case introduced substantial evidence that his responsibilities involved frequent, hands-on care. In his visits, Mr. Desautel was accompanied by other care providers, and patients had other staff providing care on a day-to-day basis. The fact that he was not a primary caregiver for any one individual does not render the provision of care any less a part of his regular duties. The activities listed in Finding of Fact 13 all constitute direct care, and the SBR provides no evidence that these activities took up less than half of his time or were merely incidental. There is no evidence that he was merely supervising while these services were being provided by other staff, and the magistrate's determination that more than half of his job responsibilities included direct care, custody, instruction, or supervision is a justifiable conclusion. In this instance, SBR failed to meet its burden of proof.

Furthermore, CRAB affords deference to DALA in subsidiary findings of fact and substantial deference to the magistrate's determinations of credibility.<sup>20</sup> Based on the evidence presented in Mr. Desautel's testimony, Mr. Bilé's testimony, Mr. Desautel's affidavit, and the evidence in the record, the magistrate's determination that Mr. Desautel's actual and major job duties constituted the "care, custody, instruction, or other supervision" of a population included in Group 2 is reasonable. As such, Mr. Desautel is properly classified in Group 2 for retirement purposes.

### ***Conclusion***

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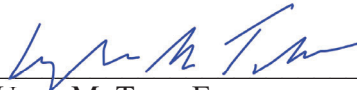
<sup>19</sup> Appellant's Supplemental Memorandum of Objection dated 6/15/2020 (citing *Wark v. State Board of Retirement*, CR-12-108 (DALA decision November 19, 2012; CRAB decision October 11, 2013); *Herst-Hill v. State Board of Retirement*, CR-07-605 (DALA decision June 12, 2009; no CRAB decision) *Olukokun v. State Board of Retirement*, CR-10-729 (DALA decision February 7, 2014; appeal dismissed by CRAB as untimely June 26, 2014); *Rood v. State Board of Retirement* CR-09-685 (DALA decision February 1, 2013; no CRAB decision); *Gasser v. State Board of Retirement*, CR-15- 254 (DALA decision March 3, 2017, no CRAB decision); *Morreale v. State Board of Retirement*, CR-15- 332 (DALA decision March 10, 2017; no CRAB decision)).

<sup>20</sup> *Vinal v. CRAB*, 13 Mass. App. Ct. 85,101 (1982); *Morris v. Bd. of Reg. of Medicine*. 405 Mass. 103, 109 (1989).

Mr. Desautel's major and regular job duties involved the care, custody, instruction, or other supervision of mentally ill or defective individuals. Accordingly, he is entitled to Group 2 classification for his service with the Department of Developmental Services. The DALA decision is affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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