

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

Middlesex, ss.

Marc Dubois,
Petitioner,

Docket No.: CR-23-0041

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Mark Dubois, pro se
For Respondent: John Durgin, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a Developmental Service Worker IV for the Department of Developmental Services. Although he provided some direct care to clients, he did so about 30% of the time. The rest of the time was spent on supervisory or administrative duties. Because he did not provide direct care for more than 50% of the time in this position, he is not entitled to Group 2 status.

INTRODUCTION

The Petitioner, Marc Dubois, timely appeals a decision by the State Board of Retirement (“Board”) denying his application for reclassification to Group 2. On February 12, 2025, I held a virtual hearing using the WebEx platform with the consent of both parties. The Petitioner was

the only witness. I admitted Exhibits R1-R7 and P1-P4 at the hearing. The parties made their closing statements at the end of the hearing at which time I closed the administrative record.¹

FINDINGS OF FACT

1. The Petitioner worked as a Developmental Service Worker (“DSW”) for the Department of Developmental Services (“DDS”) for over 40 years.² Over time, his position changed as he

¹ Mr. Dubois held several different positions over the years. There was some dispute at the hearing as to which positions were covered by Mr. Dubois’ appeal. Mr. Dubois’ application checked he was not seeking pro-rated service but then said he was applying for Group 2 status for all of his job positions throughout the years (and listed them in detail by date), which is consistent with an effort to seek pro-rated service.

This is not the first time I have seen an application filled out like this. The form appears to cause confusion, often, and the Board might consider editing it (or providing guidance about how to fill it out). Here, the Board considered only Mr. Dubois’s last position. However, after the hearing, the Board agreed to review the positions it had not originally considered for group 2 status. I stayed the matter to allow the process to play out. Ultimately, the Board agreed that those prior positions merit Group 2 status. I appreciate Board counsel’s willingness and diligence in helping Mr. Dubois have these positions evaluated by the Board. Because there is agreement as to whether Mr. Dubois’s work as a DSW I-DSW III was in Group 2, I evaluate here only his work as a DSW IV.

However, this highlights a problem with how the Board reviews these applications. Despite the availability of prorating for group 2 service, the Board typically evaluates only a member’s last year of employment, and not any time before that. That often results in excluding consideration of meritorious group 2 service which someone might then lose altogether. *See Burnes v. State Bd. of Ret.*, CR-21-0084, 2023 WL 7018527 (Div. Admin. Law App. Oct. 20, 2023), *aff’d*, 2025 WL 2902416 (Contributory Ret. App. Bd. September 10, 2025) (Petitioner worked all but her last year with a Group 2 population and the Board denied her Group 2 application in its entirety). Had Mr. Dubois not appealed, that may have happened here. Thus, I again urge the Board to reconsider its approach in these cases and, whenever a member is eligible for pro rating, review more than just the member’s last year of employment. *See Greenwood v. State Bd. of Ret.*, No. CR-22-66, 2024 WL 3326226, n.13 (Div. Admin. Law App. June 7, 2024).

² Prior to 2009, the Department of Developmental Services was known as the Department of Mental Retardation. *M.D. v. D.D.S.*, 83 Mass. App. Ct. 463, 463 n.2 (2013). The Petitioner’s

continued to be promoted; he started as a DSW I and, when he retired, he was a DSW IV. (Ex. R2; testimony.)

2. As a DSW I and DSW II, the Petitioner provided direct care almost exclusively in his job.

The Petitioner described it as direct care 100% of the time. Moreover, there was no real difference between a DSW I and a DSW II except that the DSW II was responsible for overseeing the work of a DSW I. Overseeing here meant that they worked together providing direct care, but the DSW II would be responsible for the more challenging tasks (like working 1:1 with a particularly difficult client) and making sure the DSW I was doing things correctly. (Testimony.)

3. The Petitioner was then promoted to DSW III, where he continued to provide the same direct care he provided as a DSW I and II, but with slightly more administrative responsibilities.

Still, he estimated that in this capacity he provided direct care about 95% of the time. (Testimony.)

4. In April 2017, he was promoted to DSW IV. He remained in that position until his retirement in January 2023. (Ex. R2; testimony.)

5. That position dramatically changed the amount of time he spent providing direct care to patients. His duties involved mainly supervisory and administrative functions, such as training staff, determining coverage, helping run the main office, and completing evaluations. His direct care was limited to when there were staffing shortages or other gaps in coverage. (Ex. R6; testimony.)

title was originally “Mental Retardation Worker.” Given the outdated phrasing, I refer to all of his positions as “DSW” and to the Department as “DDS” even for events pre-dating 2009.

6. Mr. Dubois estimated that in this position, he spent only about 30% of his time providing direct care to patients. (Testimony.)

DISCUSSION

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 whose "regular and major duties require them to have the care, custody, instruction or other supervision of" persons who are developmentally disabled. G.L. c. 32, § 3(2)(g); *Burke v. State Bd. of Ret.*, CR-19-0394, 2023 WL 528742 (Div. Admin. Law App. Aug. 18, 2023). "[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. State Bd. of Ret.*, CR-18-0080, *3, 2023 WL 11806157 (Contributory Ret. App. Bd. Aug. 2, 2023). That said, care "does not include administrative or technical duties." *Larose v. State Bd. of Ret.*, CR-20-357, 2023 WL 4548411, at *2 (Div. Admin. Law App. Jan. 27, 2023), *aff'd*, 2024 WL 4201310 (Contributory Ret. App. Bd. Sept. 4, 2024).

There is no dispute that "developmentally disabled patients are a population enumerated in Group 2." *Greenwood v. State Bd. of Ret.*, CR-22-0066, 2024 WL 3326226 (Div. Admin. Law App. June 7, 2024). The only question is whether, as a DSW IV, the Petitioner provided care to this population more than 50% of the time.

The Petitioner was a credible witness who explained his role with precision and detail. I credit his testimony about how much direct care he provided throughout his career. Obviously, the Board did too, because when it considered his time as a DSW I – DSW III, it determined he

was entitled to Group 2 status. The only position remaining in dispute is his position as a DSW-IV. Unfortunately for Mr. Dubois, because I credit all his testimony, that means I credit his testimony that he did not perform direct care in that position more than 50% of the time. Nor would I have expected him to, given the job description and his responsibilities as someone who was very clearly a supervisor helping manage and oversee multiple locations, numerous staff, and countless clients.

CONCLUSION AND ORDER

The Board's decision denying the Petitioner's request for reclassification of his position as a DSW IV is **affirmed**.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: December 12, 2025

Eric Tennen

Eric Tennen
Administrative Magistrate