COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Maureen England**,

Petitioner

v. Docket No. CR-17-653

**State Board of Retirement**,

Respondent

**Appearance for Petitioner**:

Maureen England

28 Newcomb Street

Norton, MA 02766

**Appearance for Respondent**:

James Salvie, Esq.

Lori Krusell, Esq.[[1]](#footnote-1)

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02108

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

The denial of the petitioner’s application for Group 2 classification is affirmed because fewer than half of the people she was in contact with were mentally ill; she was in contact with them for less than half of her working time; and she did not prove that they were in her care, custody, or supervision.

**DECISION**

 The petitioner, Maureen England, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

 I held a hearing on June 19, 2018, which I recorded digitally and which was transcribed. I cite the transcript as “Tr. \_\_.” Ms. England represented herself, testified, and called no other witness.

 I admitted seven exhibits at the hearing. (Tr. 7-8, 18.) Ms. England arrived at the hearing with a few documents that she hoped to introduce. She had not provided copies to SBR or to me, did not notify SBR or me that she planned to bring documents that she was supposed to submit by October 31, 2017 with her prehearing memorandum, and did not have copies. I allowed her to introduce one document as an exhibit if she mailed it to me after the hearing. (Tr. 16.) She did not do so. Therefore, I do not (and cannot) admit it as an exhibit. (Had I admitted it, it would have Exhibit 8, even though I referred to it as Exhibit 7. (Tr. 16.))

 SBR submitted a post-hearing brief. Instead of a brief, Ms. England chose to give an oral closing statement at the end of the hearing.

**Findings of Fact**

 1. Ms. England worked at the Department of Mental Health (DMH) from April 2014 through May 2017. (Ex. 3; Tr. 43.)

 2. Ms. England’s office was in or next to Pocasset Mental Health Day Hospital, also known as the Cape and Islands Mental Health Center, in Pocasset. (Ex. 2; Tr. 24, 73.)

 3. Ms. England was a Mental Health Coordinator I. That position, in turn, had two sub-positions; she was a Family Support Specialist. (Tr. 24.)

 4. According to the General Statement of Duties and Responsibilities on Form 30, a Mental Health Coordinator I

provide[s] families of youth in crisis[ ] outreach support, community resource information, advocacy, psycho-educational interventions and linkages to support youth and families in resolving the crisis and connect with or refer to on-going service providers.

(Ex. 3, p. 3.)

 5. The Detailed Statement of Duties and Responsibilities for a Mental Health Coordinator I has 15 items. Eight concern families, parents, guardians, and/or caretakers. One concerns “youth and family.” One item is to “[p]rovide direct care brief interventions” - presumably to youth. (Ex. 3, p. 3.). That is, most of the stated duties of a Mental Health Coordinator I did not include providing direct services to people.

6. Many of Ms. England’s duties were office-based, using the telephone to find services for clients, and communicating with parents, agencies, and insurance companies. (Tr. 29, 54.)

 7. Ms. England worked the 11:30 p.m. to 10:00 a.m. shift on a Mobile Crisis Team. (Tr. 26-27.)

 8. The other person on the team was a social worker. (Tr. 20, 21, 27.)

 9. The Mobile Crisis Team responded to children, defined as people up to 21 years old, who were having mental health crises. (Tr. 44.)

 10. The mental health crises included having outbursts over homework. (Tr. 21.)

 11. The children were in various places, such as their homes, their schools, and police stations. (Tr. 51, 57, 62 .)

 12. Children in police stations were in the custody of the police, not DMH. (Tr. 62.)

 13. Approximately 20 percent of the children she responded to were on the autism spectrum. (Tr. 47.)

 14. Approximately 25 percent of the children she responded to were having drug problems. (Tr. 47.)

 15. Approximately 30 percent of the children she responded to were having emotional problems, such as outbursts over homework. (Tr. 30.) They were probably not mentally ill. (Tr. 46-47.)

 16. Of the children on the autism spectrum and children having drug problems, approximately 10 to 15 percent were mentally ill. (Tr. 48.)[[2]](#footnote-2)

 17. Approximately 30 to 40 percent of the children she responded to were bipolar or psychotic. (Tr. 49.)[[3]](#footnote-3)

 18. Police departments on Cape Cod brought juvenile runaways to the Mobile Crisis Team, which would, in effect, babysit the juveniles until the correct agency picked them up. (Tr. 62-63.)[[4]](#footnote-4)

 19. Ms. England typically responded to one crisis per shift. In some shifts, she responded to three crises. However, every two or three weeks, a shift would pass without her needing to respond. (Tr. 50.)

 20. Driving to and from the home of a child in crisis could take three hours each way. (Tr. 50-51.)

 21. When Ms. England responded to a crisis in a child’s home, she was typically there for two hours. (Tr. 51.)

 22. Sixty percent of the children in crisis were hospitalized after the Mobile Crisis Team’s visit. (Tr. 53.)

 23. If a child was hospitalized, he or she was transported in an ambulance. Ms. England was not present in the ambulance. (Tr. 52.)

 24. At the hospital, Ms. England could help a child settle in. (Tr. 52.) The process could take an hour. (Tr. 54, 60.)[[5]](#footnote-5)

 25 At the hospital, Ms. England sometimes talked with the doctor who would be caring for the child, outside of the child’s presence. (Tr. 53.)

 26. Some children went to the hospital voluntarily. They were not in DMH’s custody (Tr. 70-71), and therefore not in Ms. England’s care, custody, or supervision.

 27. Once or twice per week, Ms. England responded to a school where, by the time she arrived, the child had already calmed down. (Tr. 57.) In such cases, the child did not enter DMH custody and therefore was not in Ms. England’s care, custody, or supervision.

 28. In a typical ten-and-a-half hour shift, Ms. England spent two to three hours with a child. During some of that time, the child was still in his or her parents’ custody. (Tr. 60-61.)

 29. Sometimes Ms. England was alone with a child, such as when a child had returned home from inpatient treatment and was not adjusting well. Her responsibility was to “see what was going on.” (Tr. 55.) The child was still in a parent’s custody.

 30. In Pocasset, Ms. England responded to what were called Code Yellows. (Tr. 24.)

 31. In a Code Yellow, every employee had to respond to help restrain a mentally ill person. Code Yellows occurred several times a week and typically lasted 10 minutes. In a Code Yellow, Ms. England responded and was present but did not always provide hands-on restraint. Code Yellows typically took a total of 30 minutes during Ms. England’s week. (Tr. 63-64.)

 32. On May 3, 2017, Ms. England applied for Group 2 classification. (Ex. 3.)

 33. On July 28, 2017, SBR wrote a letter to Ms. England notifying her that it had denied her request to be classified in Group 2. (Ex. 1.).

 34. On August 3, Ms. England timely appealed. (Ex. 2.)

**Discussion**

 For retirement purposes, Commonwealth employees fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Group 2 is the group for various employees, including those

whose regular and major duties require them to have the care, custody, instruction or other supervision of…persons who are mentally ill or mentally defective ….

Citing this provision, Ms. England seeks to reclassify her service from Group 1 to Group 2, which is more advantageous for the purpose of calculating retirement benefits.

 The “regular and major duties” requirement in G.L. c. 32, § 3(2)(g) has come to mean that an employee must spend more than half of his or her time engaged in those duties.

*Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016). If Ms. England engaged in the care, custody, or supervision of people and fewer than half of them were mentally ill, she does not prevail. If Ms. England engaged in the care, custody, or supervision of mentally ill people and did so for less than half of her working time, she does not prevail. If Ms. England was in contact with mentally ill people, but they were in someone else’s care, custody or supervision, such as a parent, the social worker on the Mobile Crisis Team, a doctor in a hospital, or the police, Ms. England does not prevail.

She does not prevail for all three reasons. Fewer than half of the children were mentally ill. I do not find that children on the autism spectrum, having drug problems, or having emotional outbursts were *per se* mentally ill. She spent less than half of her working time in contact with children, typically two to three hours in a ten-and-one-half hour shift. (Tr. 60-61.) And it is unclear whether she was responsible for the children’s care, custody, or supervision. In some cases, such as when an ambulance transported a child to the hospital – and Ms. England did not accompany the child in the ambulance – the child was not in her care, custody, or supervision.

 Ms. England has the burden of proof. *Deborah Herst Hill v. State Board of Retirement*, CR-07-605 (DALA 2009)(“The Petitioner has the burden of proof on each element necessary to establish entitlement to a benefit under Chapter 32”). *See generally* *Lisbon v. Contributory Retirement Appeal Board*, 41 Mass. App. Ct. 246, 255 (1996); *Blanchette v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct. 479, 483 (1985). However, England has not proved that she spent more than half of her time engaged in the care, custody, or supervision of mentally ill people.

 The following facts and allegations are important to Ms. England but are not important in deciding whether she is entitled to Group 2 classification: She was physically attacked on the job. (Tr. 23, 71.) She considered herself a mental health first responder. (Tr. 47, 61, 71.) She traveled long distances, sometimes in bad weather and at least once on Christmas morning. (Tr. 62, 71.) She was injured in a car accident in a snowstorm with a client in the car. (Tr. 72.) While traveling for work, she once hit a deer, “totaling” a car. (Tr. 72.) She traveled late at night (Tr. 72); of course – that was her shift. Ms. England did have an important job but that is not a criterion for Group 2 classification.

**Conclusion and Order**

 Fewer than half of the people with whom Ms. England was in contact with were mentally ill. She was not in contact with them for more than half of her working hours. And she did not prove that her contact with them constituted having them in her care, custody, or supervision. Therefore, she does not deserve Group 2 classification. Her application for such classification was properly denied.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: November 2, 2018

1. Mr. Salvie conducted the hearing. Ms. Krusell wrote the brief. [↑](#footnote-ref-1)
2. Ms. England does not contend that children on the autism spectrum are *per se* mentally ill. (Tr. 46.) [↑](#footnote-ref-2)
3. The percentage of children who were on the autism spectrum, had drug problems, had emotional problems, and were bipolar and psychotic does not total 100. It is unclear why not – due to Ms. England’s inexact estimates or because some of the children in the first three categories were also bipolar and psychotic. [↑](#footnote-ref-3)
4. There is no evidence whether these runaways were mentally ill. [↑](#footnote-ref-4)
5. It is unclear whether a child in the hospital was in her care, custody, or supervision, but Ms. England did not prove that that was the case. [↑](#footnote-ref-5)