

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**In the Matter of
Enrollment in Retirement Plus**

No. CR-21-369

Concerning: various 2001 appeals¹

Dated: August 30, 2023

**PROCEDURAL ORDER ON APPEALS
CLAIMING TIMELY ELECTIONS**

This docket has formally and informally consolidated appeals and issues relating to teachers excluded from the benefits program established by G.L. c. 32, § 5(4). The governing statute required individuals who were teachers as of 2001 to elect to participate in the § 5(4) benefits program during the first half of that year. The great majority of the appeals concerning the § 5(4) benefits program assert that, although the petitioners missed the original deadline, they should be permitted (for various reasons) to join the program at a later date.

The current order concerns teachers whose submissions—liberally construed—present different claims altogether: that these teachers *did* file elections to participate in Retirement Plus before the original deadline.² In broad strokes, the archetype of these petitioners' claims is that they executed valid election forms; placed those forms in correctly addressed, prepaid envelopes; and deposited those envelopes in the mail. *If* the petitioners are able to establish these factual

¹ Listed in Appendix A.

² Some of these petitioners also assert that either the percentages of their retirement contributions or communications from their boards led them to believe that they were successfully enrolled in the § 5(4) benefits program. Such arguments may carry intuitive force. But under Massachusetts law, a government agency that makes an error in a person's favor must correct that error, even if the person has relied on the mistake in the meantime. *See* G.L. c. 32, § 20(5)(c)(2); *Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Hunter v. Contributory Ret. Appeal Bd.*, 80 Mass. App. Ct. 257, 263 (2011); *Watson v. State Bd. of Ret.*, No. CR-21-0105, 2023 WL 4846319, at *3 (DALA July 21, 2023).

predicates, then a rebuttable presumption may arise to the effect that their election forms were duly delivered to the addressee retirement boards. *See Commonwealth v. Barboza*, 68 Mass. App. Ct. 180, 185 (2007); *Commonwealth v. Orlor*, 252 Mass. 55, 63 (1924); *Prudential Tr. Co. v. Hayes*, 247 Mass. 311, 314-15 (1924). On the other hand, the law also rebuttably presumes that the records of a public agency are “regular,” i.e., sound. *See City of Newburyport v. Thurlow*, 324 Mass. 40, 44 (1949); *Whelan v. Division of Med. Assistance*, 44 Mass. App. Ct. 663, 668 (1998); Gerald A. McDonough, *Administrative Law and Practice* § 7:15 (2d ed. 2016).

At this juncture, consolidated proceedings relating to this group of appeals may conserve resources, promote uniformity, and otherwise serve fairness and speediness. It is therefore ORDERED as follows:

1. The appeals listed in Appendix A (consolidated appeals) shall be, or shall continue to be, consolidated and governed by the orders and submissions filed in this consolidated docket. Appendix B collects copies of the notices of appeal and certain other submissions in the consolidated appeals.
2. Both MTRS and the Boston Retirement System will be treated as respondents in these proceedings.
3. The Massachusetts Teachers Association represents at least one petitioner in the consolidated appeals. In recent consolidated proceedings, MTA has provided skillful and zealous advocacy on behalf of a large universe of teachers. MTA is asked to consider—in its discretion—whether it is able and willing to appear on behalf of any additional petitioners in the appeals consolidated here.
4. Within 30 days, each petitioner shall file one or more affidavits that describe:
(a) the affiant’s best recollection, with the greatest possible specificity, of the details surrounding

the petitioner's efforts to file a Retirement Plus or TARP enrollment form before the original deadline; and (b) any additional facts or evidence tending to confirm that the affiant's recollection is accurate. Each affidavit shall be organized in numbered paragraphs, shall be signed by hand, and shall state the affiant's acknowledgement that he or she is executing the affidavit under the penalties of perjury.

5. Within 60 days, each respondent shall file a memorandum that: (a) states the respondent's position as to whether, in principle, a member should be enrolled in the § 5(4) benefits program if the member is able to establish that he or she properly mailed an executed election form to the respondent before the applicable deadline; (b) states, as to each appeal relating to the respondent, whether the appeal is meritorious, whether it must be tried at an evidentiary hearing, or whether it may be decided on summary decision; and (c) describes in broad strokes—if any cases must be tried—the nature of the evidence that the respondent would present at any evidentiary hearing(s), explaining (in MTRS's case) whether such evidence would be primarily case-specific or generally identical as to each of the appeals.

6. This order will be served on MTRS, BRS, and MTA by email, and on each unrepresented petitioner by U.S. Mail.³ All future submissions relating to these appeals shall be made by email to dalapleadings@mass.gov. Upon receipt of this order, each unrepresented petitioner shall provide DALA with his or her email address forthwith, by submitting an email that names the petitioner, identifies the docket number of his or her appeal, and states that the petitioner's email is being submitted in accordance with a consolidated order in *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369.

³ For purposes of economy, Appendix B will be omitted from the copies of the order transmitted by paper mail. It will be available electronically upon request.

7. Any petitioner's failure to comply with paragraphs 4 or 6 may result in dismissal of that petitioner's appeal based on failure to prosecute. Any respondent's failure to comply with paragraph 5 may result in decisions by default. See G.L. c. 30A, § 10; 801 C.M.R. § 1.01(7)(g)(2).

8. The parties are invited to propose any additional or alternative procedures designed to facilitate the fair and efficient adjudication of these appeals. They also are invited to propose any modifications to the universe of cases consolidated pursuant to this order. Any such proposals shall be made without delay and shall follow conferral with the other parties to the extent practicable.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Appendix A
(Consolidated Appeals)

Gina Flanagan v. MTRS, 20-0397

Tracey Hartman v. MTRS, 21-0146

Roger Tait v. MTRS, 22-0029

Colleen Whitman v. MTRS, 22-0118

Leela Bakshi v. MTRS, 22-0135

Timothy Sigda v. MTRS, 22-0173

Linda Leger v. MTRS, 22-0289

Tara Degirolamo v. MTRS, 22-0367

Maureen Lavin v. MTRS, 22-0418

Bonnie Antkowiak v. MTRS, 22-0629

Colleen Murray v. MTRS, 23-0036

Karen Hurley Cudmore v. MTRS, 23-0065

Carlene Hackett v. MTRS, 23-0192

Chris Baratta v. Boston Retirement System, 23-0216

Roberta Fillmore v. MTRS, 23-0358

Appendix B
(Copies of Submissions)

20-0397

September 29, 2020

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer Street
4th Floor
Malden, MA. 02048

Dear Mr. McGrath,

I received a response to my inquiry of why my MA Retirement Plus was never recognized by MTRS. I submitted evidence of my election completed and processed form that included all the necessary signatures and paperwork from 2001. It was stated in the letter from MTRS that I never returned the form to effect the change. I am disputing this claim for a few reasons.

As you can see from the completed form, it was signed and processed by multiple central office individuals prior to the deadline.

Around this time, I had just lost my husband to cancer. He too was a MA teacher. Given the dire financial situation I was in (being a single mother with two children ages two years and 8 months), I know that I was careful to get the signatures, fill out the paperwork and return it to the MTRS. I'm not sure how the MTRS can conclude that the form was never mailed back versus the form was lost or not processed on their end.

This matter is of great concern to me and I ask for more assistance to provide me the benefit that I carefully processed.

Thank you for your time and understanding.

Sincerely,



Gina Flanagan



Main Office
500 Rutherford Avenue, Suite 210
Charlestown, MA 02129-1628
Phone 617-679-MTRS (6877)
Fax 617-679-1661

Western Regional Office
One Monarch Place, Suite 510
Springfield, MA 01144-4028
Phone 413-784-1711
Fax 413-784-1707

Online mass.gov/mtrs**Members of the Board**

Dr. Ventura Rodriguez
*Chair, Designee of the
Commissioner of
Elementary and
Secondary Education*

Deborah B. Goldberg
State Treasurer

Suzanne M. Bump
State Auditor

Dennis J. Naughton

Jacqueline A. Gorrie

Richard L. Liston

Anne Wass

Executive Director
Erika M. Glaster

August 27, 2020

Ms. Gina Flanagan
1605 North Stone Street
West Suffield, CT 06093

RE: Your application for RetirementPlus election status change

Dear Ms. Flanagan:

The Massachusetts Teachers' Retirement System has evaluated your petition to change your RetirementPlus eligibility status pursuant to the provisions of MGL Chapter 32 section 5(4). Our analysis has determined that your circumstances do not meet the conditions required to effect a change in your RetirementPlus status because you did not return the RetirementPlus form that was mailed to your home in 2001 to the MTRS. As much as we would like to offer you another opportunity to elect, please be advised that the Board has neither the discretion nor the statutory authority to grant your request.

If you are aggrieved by this decision, you may appeal it pursuant to M.G.L. c. 32 §16(4). To appeal this decision, you must file a claim with the Contributory Retirement Appeal Board, by mail or by fax, but not both, within **fifteen days** of receipt of this letter. Your appeal should include a copy of this letter and be directed to:

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St, 4th Floor
Malden, MA 02148
Fax 781-397-4720

If you have any questions or concerns, please feel free to contact me directly.

Sincerely,

Caroline Tierney

Assistant Director of Transfers, Refunds, and Enrollments
617-679-6893

caroline.tierney@trb.state.ma.us

cc: File No. 301152



CHAPTER 114 OF THE ACTS OF 2000

RETIREMENTPLUS ELECTION FORM

Massachusetts Teachers' Retirement Board
69 Canal Street ■ Boston, MA 02114-2001
Phone (617) 727-3861 ■ Fax (617) 727-6781
Online www.state.ma.us/mtrb

ELECTION FORM

589201079
Springfield 1825
Gina O'Reilly
24 Forest Hills Rd
E Longmeadow, MA 01028

Date _____
Status ☐ Current member of MTRS (before 7/1/2001)
☐ New employee or transfer from another MA contributory retirement system before 7/1/2001
☐ Transfer from another MA contributory retirement system on or after 7/1/2001

1 Review the information on RetirementPlus enclosed with this form, and on the back, as well as on our web site (<http://www.state.ma.us/mtrb>) so that you may make an informed decision.

2 Read this Member Statement I, the undersigned member of the Massachusetts Teachers' Retirement System ("MTRS"), hereby certify that:

- I have read and I understand the information enclosed with this form, as well as on the back of this form, regarding the enhanced benefit provided under Chapter 114 of the Acts of 2000 ("RetirementPlus").
- My election to participate in RetirementPlus—or not—is voluntary and irrevocable. I understand that I cannot change my election once this form is submitted.
- If I do not return my completed Election Form to the MTRB by _____ June 30, 2001
I will be treated as having elected not to participate in RetirementPlus.
I understand that it is my responsibility to return my completed Election Form.
- If I elect to participate in RetirementPlus, I understand and agree to pay the required retirement contributions as described in Paragraph (d) on the back of this form.

3 Mark your choice and sign: I, the undersigned member, hereby elect as follows (check one box only):

☒ YES ☐ NO

Gina O'Reilly
51171 01 (413) 526-0886

When do you anticipate retiring? (Your answer to this question is not binding. See shaded area on back and check one box only.)

☐ 2001 ☐ 2002 ☐ 2003 ☐ 2004 ☐ 2005 ☐ 2006 ☒ 2007 or after

4 ACTIVE MEMBERS: Submit this entire form to your PAYROLL OFFICIAL for his or her acknowledgment and signature. I, the undersigned school district Payroll Official, hereby acknowledge that I have received this member's completed Notice to Employer indicating his or her above RetirementPlus election.

Claretha B. Coleman
Claretha B. Coleman
Director of Personnel
5 / 17 / 01
(413) 787-7185

INACTIVE MEMBERS: If you are NOT currently employed by a Massachusetts public school, charter school or collaborative or on an authorized leave of absence, please check this box. You may disregard the Payroll Official's acknowledgment, above, as well as the Notice to Employer (bottom left). Be sure to read the Special Notice to Inactive Members on the back of this form.

5 Return your completed Election Form in the official RetirementPlus reply envelope by the date indicated above.

21-0146

Law Office of Gregory W. Wheeler

15 Monument Square, Suite 225
Leominster, Massachusetts 01453
gregorywheelerlaw.com

Phone: (978) 534-0404
Facsimile: (978) 840-0010
greg@gregorywheelerlaw.com

March 29, 2021

By Facsimile (781) 397-4720

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148

Re: Tracey Hartman, 18 Drummer Lane, Leominster, MA – Notice of Appeal

Dear Attorney McGrath:

I represent Tracey Hartman, 18 Drummer Lane, Leominster, MA 01453. Pursuant to M.G.L. c. 32, § 16(4), please accept this letter as Ms. Hartman's *Notice of Appeal* of the enclosed decision by the Massachusetts Teachers' Retirement System denying Ms. Hartman's application to change her Retirement*Plus* eligibility status.

Thank you for your attention to this matter and please do not hesitate to contact me with any questions or concerns.

Very truly yours,



Gregory W. Wheeler

Enclosure

Cc: Client

Division of Administrative Law Appeals
14 Summer St. 4th FL
Malden, MA 02148

Division of Administrative

MAY 4 2022

Law Appeals

RE: Tracey Hartman- Docket No. CR-21-0139

- Docket
21-0146

To the Attention of the Administrators:

This letter is in response to the "Order to Show Cause" document dated January 11, 2022; from the Division of Administrative Law Appeals.

It has always been my understanding that I signed and provided the Mass. Teacher Retirement System the Retirement Plus Election forms. There was no copy to held on file as proof, the full from was submitted complete within the requested dates. I had requested all signed documents from their office; however they weren't able to provide me with an internal decision form that would indicate my refusal or opt out of the program in 2001. Furthermore I was never notified that I was not enrolled into the program post June 30, 2001.

Throughout my career I had been under the assumption I was paying into the program as standard. Attached are copies of my paycheck dated "April 14, 2005 & June 11, 2015". The itemization of the payroll check leads me to believe I was contributing additional into the retirement plus deduction. Also attached are my 2005, 2007, 2014, 2019- "Statement of Annuity Savings" there is no location which indicates enrollment status.

The enrollment was only brought to my attention last year when I was first provided a login for my account through the MTRS website. Located in the account it states my lack of enrollment, however my attached "MTRS Membership and Account Summary" show I'm paying the 11% contribution with no indication of enrollment plan. At this time I filed the initial inquiry.

Please take my perspective and lack of evidence provided to indicate either enrollment into account. If I am under a misunderstanding I should at minimum be provided the benefit to "buy" into the retirement plus program for a lump sum.

Thank you for your time,

Tracey Hartman

(Copies have been provided to MTRS)

22-0029

Dear Mr. McGrath,

I am appealing the decision referred to in the attached January 11th, 2022 letter from David Percoco. In support of my appeal, I have included all email correspondence that has occurred to date. If there are any additional requirements needed of me in this appeal process, please advise. Looking forward to hearing from you on this matter.

Regards,
Roger Tait.

----- Forwarded message -----

From: **Galluzzo, Lynne** <galluzzol@carver.org>

Date: Tue, Jan 25, 2022 at 9:55 AM

Subject: Your scan (Scan to My Email)

To: <galluzzol@carver.org>

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Lynne Galluzzo
Administrative Assistant to the Principal
Carver Middle High School
60 S. Meadow Rd, Carver, MA 02330
508-866-6111

Division of Administrative

FEB 23 2023

Law Appeals

February 21, 2023

Division of Administrative

FEB 23 2023

Law Appeals

To:

James P. Rooney
First Administrative Magistrate
Docket No. CR-22-0029

Please note this is my written response to your June 10, 2022 Order to Show Cause.

I believe there is an issue of fact in dispute and my claim is not precluded as a matter of law due to the fact that the circumstances of my appeal fall outside of the provisions of M.G.L. c. 32, 5(4)(i) governing membership in Retirement Plus referred to in the Order. I have included a hard copy of my election form on file with the Massachusetts Teachers' Retirement System (MTRS) that was emailed to me by Caroline Tierney, Assistant Director of Transfers, Refunds and Enrollments at MTRS in Charlestown.

I am included with 5 other petitioners in the June 10th Order to Show Cause. The Order seems to address and provide information to all of us as having a claim similar in nature or covered by the same provision of the law. The Order appears to be a response to petitioners who are making an appeal to the similar circumstance that they did not file an election by the statutory deadline. The Order includes a portion of the law that would support the notion that the law precludes an exception to a statutorily mandated time limit. However, this does not fully and accurately describe the nature of the basis for my appeal as my claim has nothing to do with missing a deadline for ballot submission. I do not dispute that MTRS has an election ballot for me that was filed before the deadline.

I believe my appeal should not be dismissed, due to circumstances with my case that warrant an exception to the provisions of the law governing membership in Retirement Plus as stated in the June 10th Order. The circumstances I'm referring to have to do with the fact that the Retirement Plus election ballot that is on file for me has an alteration that was not made by me. It is clear by viewing the ballot that "Yes" was selected and a subsequent alteration occurred that changed the response to "No".

I assert that I selected "Yes" and it was not me that made the alteration. I can offer no provable explanation for how this alteration occurred after the ballot left my custody, nor do I make any accusations or look to hold any party accountable for this alteration. However, I do seek a remedy that would correct the unauthorized change that occurred to my ballot and that would change my current enrollment status.

My claim that the change was not made or authorized by me is supported by the fact that the change on the ballot was not initialed by me. I believe there are grounds to challenge the legitimacy of this ballot based in part on the fact that this document has substantial financial implications and there are standard legal practices of requiring a sign-off (e.g. initialing) or

some other authorizing process for any changes made to such a document. I believe the narrow circumstances of my appeal present a valid and substantial concern that takes precedence over statutory limitations regarding deadlines as this ballot alteration was only discovered by me in January 2022 as the result of an earlier request I made to MTRS to determine my years of credible service. Prior to that discovery, I had always believed I was enrolled in Retirement Plus.

My appeal is not based on the fact that I'm giving you 'my word' that the ballot alteration was not made by me. The basis for my appeal is whether or not greater duty of care standards exist for MTRS or any party that would accept this altered ballot document as presented without further inquiry. In this situation, I believe the burden does not rest with me, the petitioner, to prove that an unauthorized ballot change occurred...rather I maintain that a greater burden existed for MTRS to have made an effort to seek clarification regarding a ballot that clearly contained an alteration that was not initialed. MTRS made no such effort.

I believe that with regard to my specific circumstances, there has been a demonstration of the lack of a process that meets reasonable due diligence expectations. I believe my circumstances establish a legitimate basis for granting an appeal, not just as a matter of fairness and good faith but from a perspective rooted in legal practices regarding alterations to documents that have financial implications.

I would request that a review be conducted of all my MTRS records available as well as previous correspondence regarding this matter that I have forwarded beginning on January 2, 2022 along with a hard copy of my election ballot that I have attached to this letter in making further determinations regarding my appeal.

I have also mailed a copy of this letter to the MTRS Main Office at 500 Rutherford Ave, Suite 210 in Charlestown as instructed.

Regards, Roger Tait

RETIREMENTPLUS ELECTION FORM

Massachusetts Teachers' Retirement Board
69 Canal Street ■ Boston, MA 02114-2006
Phone (617) 727-3661 ■ Fax (617) 727-6797
Online www.state.ma.us/mtrb

Social Security No.

027-74-2117

MTRB Member No

308899



Current/Last School District

Cohasset Public Schools

MTRB Agency Code

0495

Member Name and Address (Please mark changes directly on this form and confirm your data with your Payroll Official.)

Tait, Alan R.
97 Wenham Rd.
Carver, MA 02330-1222

37529**OFFICIAL USE ONLY**

Date Feb 2, 2001

- Status ☒ Current member of MTRS (before 7/1/2001)
- ☐ New employee or transfer from another MA contributory retirement system before 7/1/2001
- ☐ Transfer from another MA contributory retirement system on or after 7/1/2001

1 Review the information on RetirementPlus enclosed with this form, and on the back, as well as on our web site (<http://www.state.ma.us/mtrb>) so that you may make an informed decision.

2 Read this Member Statement: I, the undersigned member of the Massachusetts Teachers' Retirement System ("MTRS"), hereby certify that:

- ☒ I have read and I understand the information enclosed with this form, as well as on the back of this form, regarding the enhanced benefit provided under Chapter 114 of the Acts of 2000 ("RetirementPlus").
- ☒ My election to participate in RetirementPlus—or not—is voluntary and irrevocable. I understand that I cannot change my election once this form is submitted.
- ☒ If I do not return my completed Election Form to the MTRB by June 30, 2001 I will be treated as having elected not to participate in RetirementPlus. I understand that it is my responsibility to return my completed Election Form.
- ☒ If I elect to participate in RetirementPlus, I understand and agree to pay the required retirement contributions as described in Paragraph (d) on the back of this form.

3 Mark your choice and sign: I, the undersigned member, hereby elect as follows (check one box only):



YES, I elect to participate in RetirementPlus.



NO, I elect not to participate in RetirementPlus.

Signature

Alan Roger Tait

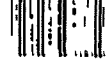
Date

5 / 17 / 01

Phone

(508) 866-5945

When do you anticipate retiring? (Your answer to this question is not binding. See shaded area on back and check one box only.)

☐ 2001☐ 2003☐ 2005☐ 2002☐ 2004☐ 2006☒ 2007 or after

4 ACTIVE MEMBERS Submit this entire form to your PAYROLL OFFICIAL for his or her acknowledgment and signature. I, the undersigned school district Payroll Official, hereby acknowledge that I have received this member's completed Notice to Employer indicating his or her above RetirementPlus election.

Signature

Janice Bierwert

Date

5 / 17 / 01

Name

Janice Bierwert

Phone

(781) 323-6108

Title

BOOKKEEPER

INACTIVE MEMBERS: If you are NOT currently employed by a Massachusetts public school, charter school or collaborative or on an authorized leave of absence, please check this box ☐

You may disregard the Payroll Official's acknowledgment, above, as well as the Notice to Employer (bottom left). Be sure to read the Special Notice to Inactive Members on the back of this form.

5 Return your completed Election Form in the official RetirementPlus reply envelope by the date indicated above.

22-0118

Contributory Retirement Appeal Board
Edward McGrath, Esp.
Chief Administrative Magistrate
Division of Administrative Law Appeals
One Congress Street
11th Floor
Boston, MA 02114

March 12, 2022

Re: Appeal of RetirementPlus Eligibility

Dear Mr. Edward McGrath,

I am in receipt of a notice that has denied my eligibility to participate in RetirementPlus, stating I did not meet the original deadline. That statement is inaccurate, and I wish to appeal this decision.

Sincerely,

Colleen Whitman

CR-22-0118

Division of Administrative
MAR 16 2022
Law Appeals

Col
Whitman

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

COLLEEN WHITMAN,
Petitioner

v.

Docket No. CR-22-0118

**TEACHERS
RETIREMENT SYSTEM,**
Respondent

SHOW CAUSE RESPONSE

Petitioner, Colleen Whitman, submits this response to DALA's August 3, 2022 Order to Show Cause in this matter. Pursuant to DALA's Order on February 23, 2023, Petitioner advances only the factual circumstances of her case and incorporates by reference the legal arguments that will be advanced pursuant to DALA's consolidated briefing schedule for 2001 petitioners.

I. PROPOSED FINDINGS OF FACT

1. Colleen Whitman (f/k/a Colleen Maunsell) started teaching in the Springfield Public Schools in 1988. She was enrolled in MTRS at that time. **Exhibit 1.**
2. Beginning in January 2001, Ms. Whitman was forced to take medical leave for cancer treatment.
3. During the period of her leave, an opportunity to enroll in the alternative superannuation retirement benefit program, known as "Retirement Plus," (R+) was made available to members of the MTRS.
4. MTRS created an administrative process whereby MTRS sent R+ election packets to its members and requested they complete an R+ election form, have it signed by their school's payroll official, and return it to the MTRS.
5. Ms. Whitman specifically recalls signing the election form, indicating she was electing to participate in R+; securing the signature of her payroll official, Ms.

Claretha Coleman; making a copy of the fully executed election form for her own records; and then depositing the form in the mail to the MTRS. **Exhibit 2.**

6. Because Ms. Whitman was on leave, she specifically recalls that it was one of the only work-related tasks she knew she needed to— and did in fact— complete at that time.
7. Thereafter, Ms. Whitman made contributions to the MTRS at the flat, 11% R+ rate.
8. At some point her contribution rate was changed and she was returned to her original, 8+2% rate.
9. Based on documents in Ms. Whitman's retirement file, it does not appear a refund of the excess, R+ contributions was provided to her until 2009. No explanation was provided as to the source of the excess funds. **Exhibit 3.**
10. In implementing the provisions of the R+ statute (M.G.L c. 32, § 5(4)) MTRS devised a "Late Retirement Plus Election Exceptions" Policy that provided, *inter alia*:

...
2) If we never received the election form, we will accept the member's written statement that they mailed the form within the deadline.

...
Exhibit 4

11. Ms. Whitman mailed the form. She is willing to provide a written statement that she mailed the form within the deadline.
12. Ms. Whitman believed she had taken all necessary steps to comply with the R+ election requirements.
13. Some time later, a colleague alerted Ms. Whitman to the possibility she may not be in R+. Based on a review of her paystubs, Ms. Whitman contacted MTRS.
14. After supplying copies of the R+ election forms to MTRS (Exhibit 2) and attempting to resolve the matter with MTRS directly, MTRS sent Ms. Whitman its determination that she could not participate in R+. **Exhibit 5.**
15. Ms. Whitman timely appealed. **Exhibit 6.**

II. EXHIBITS

- Exhibit 1: Member Enrollment Form
- Exhibit 2: Election Form
- Exhibit 3: MTRS Notification of Refund for Excess Contributions to Member and Springfield Public Schools
- Exhibit 4: MTRS "Late Retirement Plus Election Exceptions" Policy
- Exhibit 5: MTRS Determination
- Exhibit 6: Member Appeal

Petitioner reserves the right to supplement this list.

Respectfully submitted,

COLLEEN WHITMAN

By her Attorney,

Ashley Walter

Ashley F. Walter, Esq.
Massachusetts Teachers
Association

2 Heritage Drive, 8th Floor
Quincy, MA 02171

awalter@massteacher.org

617-878-8286

CERTIFICATE OF SERVICE

I, Ashley Walter, do hereby certify that on this 21st day of April 2023, I have caused a copy of the enclosed document to be served upon the following person(s) at the address below indicated, by email.

James O'Leary, Esq.

MTRS General Counsel

James.O'Leary@trb.state.ma.us

Ashley Walter

Ashley F. Walter

22-0135

Leela Bakshi

22 Overlook Circle
Bradford MA 01835

978-809-2685

leelabakshi@me.com

Member number 253465

30th March 2022

Edward McGrath, Esq

Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer Street 4th Floor
Malden, MA 02148

Dear Attorney McGrath,

I am writing to file a claim in regards to my Retirement Plus status with the Massachusetts Teachers' Retirement System.

Over the course of my career, having spent time home after the birth of my children, I wrongly believed that I was enrolled in Retirement Plus. I wish to have the opportunity to contribute to Retirement Plus for the amount that I would have contributed from September 2004 until present.

I had recalled enrolling, however, MTRS lists my paperwork as never received upon my rehire post maternity leave. I applied with MTRS this month feeling that I had been denied the opportunity to enroll in 2004. This application was denied. After more thorough research into my return to work at Andover Public Schools, I found a partial receipt of enrollment in my possession. (Please note that all my personal contact information on the email form has since changed).

I would like to have MTRS research receipt of my election form, perhaps now easier that we have the date of the transmission being July 13th, 2004. I am appreciative of the due diligence in further evaluating my eligibility.

Many thanks for any assistance with this claim,

Leela M. Bakshi



Enclosures:

- 1) online election form dated 7/13/2004
- 2) Correspondence from Kathleen Kreatz regarding my application for Retirement Plus election status change

CR 22 0135

Division of Administrative

MAR 31 2022

Law Appeals

104
NTRW

Timothy J. Sigda

255 Batchelor St.
Granby MA, 01033
(413) 237-7655
tsigda@belchertownps.org

Division of Administrative

MAY 4 2022

Law Appeals

28th April 2022

Edward McGrath, Esq.

Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St. 4th Floor
Malden, MA 02148
Fax 781 - 397-4720

Dear Edward McGrath Esq.,

I am writing to you today to appeal the decision made by Kathleen Kreatez for acceptance into the Retirement Plus program. I have been an educator since 8/28/1997, and am in my 25th year of teaching. I selected this option in 2001 and believed I had been enrolled since the beginning of this program. When I logged into the MTRS website recently, it was to my surprise that I was not enrolled. I review my pay statements every two weeks and was given no indication that I was not enrolled. In fact, there are deductions on my pay stubs delineated as "RETIREMENT" and "RETIREMENT +", which led me to believe I had been enrolled all this time.

I know that I returned this information in a timely fashion and selected to be opted into the Retirement Plus Program. I had no reason to believe that this information did not reach MTRS. I have enclosed a copy of my most recent pay stub so you can see the reason for possible confusion on my part. Please allow me to enter the program as all this seems to be a clerical error in our town offices. The implications of your decision will greatly affect the conditions of my retirement in the future.

When I called our town payroll office they also looked at my pay deductions, and told me that I had been paying into it as well. They had to make an additional call to your office to get the proper information. After all the confusion, I understand that I need to pay additional money to get into Retirement Plus and I am prepared to do so. Thank you for your time and consideration in this matter. I look forward to hearing from you.

Sincerely,

cc'd
mtrs**Timothy J. Sigda**

Linda A. Leger

36 Lane Drive
Norwood, MA 02062
617-365-3171
lindaleger@verizon.net

July 13, 2022

Edward McGrath, Esq.

Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St, 4th Floor
Malden, MA 02148

Dear Esq. McGrath,

I am writing to request an appeal to the decision made of my request to change the contribution rate for Retirement Plus to my current employment status, please see the enclosed letter dated July 7, 2022. I signed up for Retirement Plus when I was employed at Somerville Charter School. My dates of employment are from Aug 1999 - August 2001. I also had applied for a transfer to Foxboro Charter School in January of 2001 for the 2001-2002 school year. I did not accept the offered position from that transfer and ended my employment with the Charter School in August 2001.

Through this appeals process, I learned that there were mailings that were sent to residences for election into the Retirement Plus program. I remember completing paperwork to enroll in the Retirement Plus contribution plan while being employed at the Somerville Charter School. I am in the process of trying to get my personnel file reviewed from that employment. I also had an extenuating circumstance during the 2000-2001 school year. I became pregnant with my first child in October 2000. In February 2001, I was informed that I was having symptoms of preeclampsia and also that my unborn child was diagnosed with a birth defect within the brain. I was placed on a remote work leave from March 2001 until the birth of my child on June 26, 2001. The weeks within those months were filled with numerous medical appointments and much personal anguish. I do not remember a mailing that was sent out during this time, but I recall filling out paperwork at the school after a representative came to speak with our staff. As stated, I ended my employment with the Somerville Charter School in August 2001 and accepted a position in the private sector until 2005 when I was hired at Plainville Public Schools.

Division of Administrative

JUL 18 2022

Law Appeals

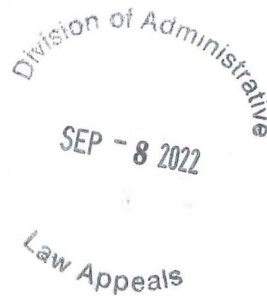
lcl
mtr

22-0367

CR-22-0367

September 1, 2022

Edward McGrath, Esq
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St, 4th Floor
Malden, MA 02148



Dear Mr. McGrath,
I would like to file an appeal in regards to my Retirement Plus eligibility.
Thank you for looking into this matter.
Sincerely,


Tara DeGirolamo
508-243-4286

LCd
morton

CR 22-0367

Tara DeGirolamo
Teacher
880 East St
Mansfield, MA 02048
508-243-4286
tara.degirolamo@mansfieldschools.com

Division of Administrative

AUG 28 2023

Law Appeals

August 25, 2023

Uyen M. Tran
Assistant Attorney General
Chair, Contributory Retirement Appeal Board

Dear Mr. Tran,

I am writing to appeal the decision to exclude me from the benefits program known as Retirement Plus dated August 11, 2023 and received on August 15, 2023.

I'm appealing this decision because I feel that in 2001 I was interested in signing up for Retirement Plus. Twenty-two years ago I received information about joining Retirement Plus although I cannot exactly remember how or what was presented. However, I can tell you that I intended to join Retirement Plus. I sent my paperwork to the business office in my district and they signed it prior to June 30, 2001. The state received my paperwork on July 11, 2001.

I am asking that you reconsider your decision and allow me to buy into Retirement Plus. Thank you for reviewing my appeal.

Sincerely,



Tara DeGirolamo

Enclosed is a copy of the paperwork dated prior to June 30, 2001.



ELECTION FORM

CHAPTER 114 OF THE ACTS OF 2000

RETIREMENTPLUS ELECTION FORM

Massachusetts Teachers' Retirement Board
69 Canal Street ■ Boston, MA 02114-2006
Phone (617) 727-3661 ■ Fax (617) 727-6797
Online www.state.ma.us/mtrb

RPNR

Social Security No.	MTRB Member No.
	316227
Current/Last School District	MTRB Agency Code
Mansfield	1085
Member Name and Address (Please print or type clearly, and be sure to include your date with your Payroll Office)	
Tara Regan 43 Darby Dr Mansfield, MA 02048	

OFFICIAL USE ONLY	
Date	
Status	<input checked="" type="checkbox"/> Current member of MTRS (before 7/1/2001) <input type="checkbox"/> New employee or transfer from another MA contributory retirement system before 7/1/2001 <input type="checkbox"/> Transfer from another MA contributory retirement system on or after 7/1/2001

1 Review the information on RetirementPlus enclosed with this form, and on the back, as well as on our web site (<http://www.state.ma.us/mtrb>) so that you may make an informed decision.

2 Read this Member Statement: I, the undersigned member of the Massachusetts Teachers' Retirement System ("MTRS"), hereby certify that

- I have read and I understand the information enclosed with this form, as well as on the back of this form, regarding the enhanced benefit provided under Chapter 114 of the Acts of 2000 ("RetirementPlus").
- My election to participate in RetirementPlus—or not—is voluntary and irrevocable. I understand that I cannot change my election once this form is submitted.
- If I do not return my completed Election Form to the MTRB by **June 30, 2001** I will be treated as having elected not to participate in RetirementPlus. I understand that it is my responsibility to return my completed Election Form.
- If I elect to participate in RetirementPlus, I understand and agree to pay the required retirement contributions as described in Paragraph (d) on the back of this form.

3 Mark your choice and sign: I, the undersigned member, hereby elect as follows (check one box only) :



YES, I elect to participate in RetirementPlus.



NO, I elect not to participate in RetirementPlus.

Signature	Tara Regan	
Date	6/29/01	Phone 1508 1339 3286

When do you anticipate retiring? (Your answer to this question is not binding. See shaded area on back and check one box only.)

- | | | | |
|-------------------------------|-------------------------------|-------------------------------|---|
| <input type="checkbox"/> 2001 | <input type="checkbox"/> 2003 | <input type="checkbox"/> 2005 | <input checked="" type="checkbox"/> 2007 or after |
| <input type="checkbox"/> 2002 | <input type="checkbox"/> 2004 | <input type="checkbox"/> 2006 | |

4 ACTIVE MEMBERS: Submit this entire form to your PAYROLL OFFICIAL for his or her acknowledgment and signature. I, the undersigned school district Payroll Official, hereby acknowledge that I have received this member's completed Notice to Employer indicating his or her above RetirementPlus election.

Signature	Ginger Boisvert	
Name	Ginger Boisvert	Phone 1508 261 7574
Title	Payroll Clerk	

INACTIVE MEMBERS: If you are NOT currently employed by a Massachusetts public school, charter school or collaborative or on an authorized leave of absence, please check this box
You may disregard the Payroll Official's acknowledgment, above, as well as the Notice to Employer (bottom left). Be sure to read the Special Notice to Inactive Members on the back of this form.

5 Return your completed Election Form in the official RetirementPlus reply envelope by the date indicated above.

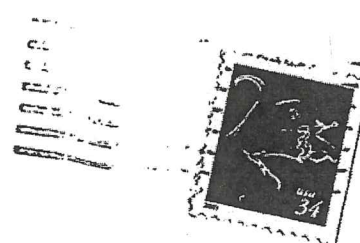
43 Darby Dr
Mansfield, MA
02048



JUL 11 2001

A. Wiley

Retirement Plus
Election Form Enclosed
MTRB
c/o LHS Associates, Inc.
13 Branch Street
Methuen, MA 01844



22-0418

September 27, 2022

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden MA 02148

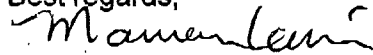
Re: File # 262210 Appeal of Retirement Plus Status

Dear Mr. McGrath,

Please consider this as my formal request to appeal the decision of not allowing me to be eligible for Retirement Plus. I chose to elect into Retirement Plus in the Spring of 2001 while teaching for Waltham Public Schools. However, I did not return to teach in the Fall of 2001. I returned to teach in January of 2010 for Medford Public School (and presently teaching) where I have been in Retirement Plus. I received my calculated years of service from the MTRS that stated I was in Retirement Plus, then I received an email about a week later stating that there was a discrepancy and I was not in Retirement Plus. I have attached a copy of the letter from David Percoco of the MTRS, stating that my circumstances do not meet the conditions required to be in Retirement Plus.

I look forward to hearing from you to either reverse this decision or hold a hearing.

Best regards,



Maureen Lavin
10 Hersam Street, Unit A
Stoneham MA 02180
781-953-1203
maureen.lavin@yahoo.com

22-0629

December 13, 2022

CK22-0629

Division of Administrative
DEC 13 2022
Law Appeals

To Edward McGrath, Esq

I hereby appeal the December 1st, 2022 decision of MTRS on my Retirement Plus Inquiry. The inquiry is below. As stated below " *When the first tier of Retirement Plus was offered I was hospitalized and then at home with a premature baby from 4/4/2000 to October 31st, 2000. During this time, I remember filling out the paperwork I received, in the mail and sending them back to the Business Manager who at that time was Kara Kosmes. I have reached out to Kara Kosmes, who remembers discussing this with me at the time and receiving the completed document. It is unclear as to why MTRS has no record of the receiving the election form, however there was no question as to my intent to enroll in Retirement Plus.*" I do not know why MTRS did not process the paperwork.

Sincerely,
Bonnie Antkowiak

November 15, 2022

To Whom It May Concern:

I am writing in reference to the reply below on my inquiry to the DESE on Retirement dates and Retirement Plus that was sent out on July 21st this year. I have been working in the Haverhill Public Schools since 1995. (In 1994 worked as a long-term sub for the year) I have been a Teacher,

CC
mthw

Colleen Burke Murray
26 Old Point Rd.
Newbury, MA 01951
colbmurray@gmail.com
617 930-3488

23-0036

CR23-0036

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St. 4th Floor
Malden, MA 02148

Division of Administrative

JAN 17 2023

Law Appeals

December 10, 2022

Mr. McGrath,

My name is Colleen Burke Murray, and I am providing you with a written appeal of the Massachusetts Teachers Retirement System decision not to change my Retirement Plus Eligibility. I am an active teacher who was a member of the Massachusetts Teachers Retirement System (MTRS) between September 1, 1997, and June 30, 2001. I submitted a Retirement Plus election form before June 30, 2001, when I was working for the Pentucket Regional School System. However, when that school year ended, I decided to stay home for the following 5 years to raise my children. When I returned to teaching in a new district, (Triton Regional District) in 2007, I assumed my previous retirement plus paperwork would be carried over. When I saw the 9+2 contributions on my paycheck, I thought it signified retirement plus. It was only recently that I learned that my original retirement plus election paperwork had not followed me to this new district. Therefore, I was never given any reasonable or apparent notice of the mistake made by MTRS.

As my inability to submit the Retirement Plus election form was not the result of my mistake, but that of the administration in charge, I hereby request that you immediately enroll me in Retirement Plus effective July 1, 2001, and bill me for the difference in contributions that I would have paid had I been given the proper opportunity to enroll.

Thank you for your consideration of this matter.

Sincerely,


Colleen Burke Murray

ltd
mtr

23-0065

Karen Hurley Cudmore
396 Old Homestead Hwy
Richmond, NH 03470

CR 23-0065

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St. 4th Floor
Malden, MA 02148

Division of Administrative

JAN 23 2023

Law Appeals

January 16, 2023

Dear Mr. McGrath,

My name is Karen Hurley Cudmore, and I am providing you with a written appeal of the Massachusetts Retirement System decision not to change my Retirement Plus eligibility. I am an active teacher who has been a member of the Massachusetts Teachers Retirement System (MTRS) since September of 1995. I submitted a Retirement Plus election form before June 30, 2001. In November of 2001, I took maternity leave until the end of the 2002 school year. When I returned in September of 2002, I assumed that my previous paperwork was active as I saw the 9+2 percent contributions taken out of my paycheck. It was only recently, when I went to a retirement workshop for those who might be ready to retire in 5-10 years, that I found out that I was not part of the Retirement Plus system.

As the Retirement Plus election form was turned in by the necessary date, and I was given no notification that I needed to do anything further on my return to my teaching position with the Harvard Public Schools, I hereby request that you immediately enroll me in Retirement Plus effective July 1, 2001, and bill me for the difference in contributions that I would have paid.

Thank you for your consideration of this matter.

Sincerely,

Karen Hurley Cudmore

Karen Hurley Cudmore

Ed McGrath

23-0156

CR 23 0156

Edward McGrath, Esq
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St 4th fl
Malden MA 02148

Division of Administrative

MAR - 8 2023

Law Appeals

To the Contributory Retirement Appeal Board:

I hereby appeal the 3/2/2023 decision of the Massachusetts Teachers' Retirement System in denying my request to opt in RetirementPlus. Thank you.

Thank you for your consideration.



Holly Breen

30 Union Street

North Andover, MA 01845

Cl & MTKV
~~Director~~

Uyen M Tran
Assistant Attorney General
Chair
Contributory Retirement Appeal Board
Office of Attorney General
One Ashburton Place
18th Floor
Boston, Mass

Division of Administrative

AUG 23 2023

Law Appeals

CC: Division of Administrative Law Appeals
14 Summer Street
Malden, Ma 02148

August, 15, 2023

Dear Contributory Retirement Appeal Board:

I am asking you to reconsider the Order of Conditional Dismissal related to No. CR-23-0156.
DALA decision made on August 7, 2023.

I was not aware of the requirement to enroll in the 5(4) benefits program because I was not actively teaching at the time during the first half of 2001. Notably, I was on a leave of absence from the Andover Public School system for child rearing. During this leave of absence I never received any notice by mail, email or during a meeting of the one time opt in. It is incredulous to me that I would be penalized from opting into this benefit because of a lack of communication during my school approved leave of absence.

Please reconsider my appeal: The DALA states: the only apparent exception to this rule relates to individuals who were not employed as teachers during the first half of 2001.

Please see attached: a copy of the DALA decision.

Thank you for your consideration.

Best,



Holly Breen
30 Union Street
North Andover, MA 01845

No. CR-23-0156

23-0192

Division of Administrative

Dear Mr. McGrath,

MAR 20 23

March 16, 2023

Law Appeals

I am writing about my status of Retirement Plus. In the year 2001 I was working in the city of Lawrence and remember being a fairly new teacher. Many of the veteran teachers were telling the new teachers to change our status since it would be a benefit to us. I remember talking to my husband about this also and we both thought it would be advantageous to go through this. There was a lot of talk about this in school and I remember filling out the form. Some time later my paycheck had a deduction of 9% and 2%, we were told that this was for Retirement Plus. Years later when I transferred to Lowell Public Schools my deduction was now 11% for Retirement, once again I was told it was for Retirement Plus. Many teachers last year were concerned about their paycheck not having the 11% taken out. At this time I was not ever concerned about this since I had the 11%. About a few weeks ago I got a statement about my retirement and the years accumulated. On the top of this page I saw that it stated not participating in Retirement Plus. At this time I reached out to have my account looked into.

This not only concerns me about my retirement, but that of others who may have gone through the same problem and might not even know about it. I please ask you to reconsider this decision since I did what I thought was right by filling out the paperwork and returning it, but for some reason was not in Retirement plus. What concerns me is the lack of knowledge about this until now, how are teachers supposed to know if they are in this or not? I had no reason to question this until this year with the statement.

I appreciate your time,

Sincerely,

Carlene D. Hackett

3/16/23

Division of Administrative

MAR 20 2023

Law Appeals

Carlene Hackett

cc: TRS

23-0216



Christopher Baratta
Assistant Superintendent for
Curriculum and Instruction

TAUNTON PUBLIC SCHOOLS

215 Harris Street Taunton, Massachusetts 02780 Tel. (508) 821-1100 Fax (508) 821-1177

Academic excellence for every student, in every classroom, in every school

March 27, 2023

Division of Administrative

MAR 30 2023

Law Appeals

Contributory Retirement Appeals Board (CRAB)
c/o DALA
14 Summer Street, 4th Floor
Malden, MA 02148

To Whom it May Concern:

I am in receipt of the Boston Retirement System communication which was dated March 17, 2023. Within that letter, it stated that as a member of the Boston Retirement System during the TARP election period, I failed to elect/enroll into the Retirement Plus program and thus, unable to opt into this program per *Simonet v. Mass. Teachers' Ret. System*, CR-18-0164 (DALA 05/17/2019).

As stipulated within the communication, *I am exercising my right* pursuant MGL ch.32, 16(4) to "appeal to the contributory retirement appeal board by filing therewith a claim in writing within fifteen days of notification of such action or decision of the retirement board".

It is my position that I did in fact opt into "TARP" during my employment period with the Boston Public Schools and as such, should have been enrolled in the Retirement Plus program from that date forward. I understand that the filing of this appeal is the first step of many within this process. As a result, I remain ready and willing to provide any additional information that the Board may request.

Thank you for your time and consideration.

Sincerely,

Chris Baratta

July 1, 2023

23-0358

Edward McGrath, Esq.
Chief Administrative Magistrate
Division of Administrative Law Appeals
14 Summer St, 4th Floor
Malden, MA 02148
Fax 781-397-4720

Division of Administrative

JUL 07 2023

Law Appeals

Dear Mr. McGrath,

My name is Roberta Fillmore and I have been a teacher at Lowell High School and have been teaching for the Lowell Public School system since 1998. I am appealing a decision made by the Massachusetts Retirement System. I originally signed up for retirement plus and had it taken out of my check from 9/1/2001-3/29/2007. In 2007, I went off the payroll for approximately two months when my second child, William Fillmore, was born on February 25, 2007. This is when my problems with being told I did not sign up for retirement plus began.

The personnel department in Lowell called me out of the blue one day and claimed they didn't have a record of me signing up for retirement plus, even though it was already being taken out of my check for several years and I clearly told them that I absolutely did and recalled signing up for it and have the pay stub to prove it (see attached). I was told that they mailed me an election form to my mother's address, which was 247 Plain Street, Lowell, MA 01852. I never received any such form, since I was living in an apartment, 349 Hildreth Street, Lowell, MA from 2001-2002 and then 352 Hildreth Street, Apt. 22 until 2004. After many times of explaining to multiple people that I believed that my going off the payroll and going back on after I had a baby was probably the mixup. Everyone I spoke to just kept incorrectly telling me I never elected to join Retirement Plus and they forced me to take a refund after 6 years of being a part of it. I distinctly remember signing up with the four teachers in my cluster at the time and all 3 of them are still on retirement plus, but I'm not. My union rep at the time, Bill Donahue, looked into it for me and he was the one who discovered that when I went off the payroll for that very short time when my son was born and that's when the retirement plus problem started.

I know the new law states that retirement plus could now cover people who transferred into the system by a certain date, etc. and that's great. However, since I was already on it and then told I can no longer be a part of it, I believe due to some clerical error, is it possible that I can be reinstated and pay back whatever I owe so I don't have to work more years on the end unfairly? I really did sign up for this and did fill out the form at the time and never received whatever new form they are claiming to have sent me to at my mother's address, as I was not living there at the time. Below is a copy of the rejection letter I received from the Massachusetts Retirement System and a copy of one of my paystubs that shows I was on retirement plus in 2004. Also, I include the letter they sent me and a copy of the refund check that I told them I did NOT want, but was forced to take since they said I couldn't give it back. If you could please try and rectify this for me, I would be more than grateful, thank you in advance.

Sincerely,

Roberta Fillmore

Roberta Fillmore

(508) 423-0396

fillmore.roberta@gmail.com

cc: MTRS