

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

Middlesex, ss.

Marisa Fleming,
Petitioner,

Docket No.: CR-25-0720

v.

Fitchburg Retirement System,
Respondent.

ORDER OF DISMISSAL

Petitioner, Marisa Fleming, appeals the denial by Respondent, Fitchburg Retirement System (FRS), of her application to purchase creditable service for work as a City Councilor from 2018 to 2025. Based upon a memorandum dated October 19, 2021 of Public Employee Retirement Administration Commission (PERAC), FRS declined Petitioner's purchase application as she had not filed an application for membership within ninety days of assuming office.

To become a member of the state retirement system, a person elected by popular vote to a state, county or municipal office or position must file a written application for membership within ninety days after the date of assuming the duties of his or her office. G.L. c. 32 §3 (2)(a)(vi). If an elected official has not chosen to join the retirement system within ninety days of the start of a term, she may not thereafter purchase that service. *Goode v. Weymouth Ret. Bd. & Norfolk Cty. Ret. Bd.*, CR-99-701, at *2-3 (Contrib. Ret. App. May 1, 2001).

Section 3(2)(a)(vi) does not "merely include elected officials as persons generally eligible for membership . . . it conditions their membership upon application within a specific time limit." *Awad v. Hampshire Cty. Ret. Bd.*, CR-08-621, at *5 (Contrib. Ret. App. Bd. Dec. 19, 2014.)

Further, the late-entry provision under § 3(3) does not apply and cannot override the more specific provisions of §3(2)(a)(vi). *Id.* at *2.

No authority exists for the Division of Administrative Law Appeals (DALA) to deviate from clear, statutory time requirements. Arguments based upon equitable considerations are unavailing, as DALA lacks equitable authority. *See Milne v. Barnstable Cty. Ret. Ass'n.*, CR-12-8 (Div. Admin. Law App. July 24, 2015).

On December 30, 2025 I issued an Order to Show Cause for Petitioner to provide sufficient evidence in writing of her eligibility to purchase creditable service, and a copy of her service purchase application. Petitioner's response consisted of an email stating the following:

Upon my election and subsequent service as a City Councilor, I was advised by [a] former HR representative . . . that I should opt for the VOYA plan instead of the city retirement plan. Unfortunately, I have recently discovered that this guidance was inaccurate. Given this new information, I believe it is both fair and necessary to request a buyback of my service time from January 2018 to December 2025.

Petitioner's email makes clear she did not apply for membership within ninety days of assuming office. DALA lacks the authority to deviate from this requirement and may not consider equitable arguments. Therefore, Petitioner is ineligible to purchase her service time.

In view of the foregoing, Petitioner has failed to state a claim upon which relief can be granted. Pursuant to 801 CMR 1.01(7)(g)(3), this appeal is DISMISSED.

Dated: February 13, 2026

/s/ Karen T. Guthrie
Karen T. Guthrie
Administrative Magistrate
DIVISION OF ADMINISTRATIVE LAW APPEALS
14 Summer St., 4th Floor
Malden, MA 02148
Tel: (781) 397-4700
www.mass.gov/dala