

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kelly Harris,
Petitioner,

No. CR-24-0712

Dated: February 21, 2025

v.

Massachusetts Teachers' Retirement System,
Respondent.

ORDER GRANTING SUMMARY DECISION

This is an appeal from a decision of the Massachusetts Teachers' Retirement System (MTRS) to exclude petitioner Kelly Harris from the benefits program known as Retirement Plus. *See* G.L. c. 32, § 5(4). Earlier this month, MTRS filed a motion to dismiss the appeal. Because the motion cited an affidavit and exhibits from MTRS's archives, I advised the parties that I would treat it as a motion for summary decision. *Cf.* Mass. R. Civ. P. 12(b), last paragraph. *See generally* standard rules 7(g)(3), (h).¹ The deadline for any response to the motion from Ms. Harris has expired.

Retirement Plus came into effect on July 1, 2001. There is no dispute that Ms. Harris was then already a teacher and an MTRS member. In order to participate in Retirement Plus, she was required to file an enrollment document during the first half of 2001. *See* Acts 2000, c. 114, § 2. Subject to a narrow exception inapplicable here, teachers who missed the mid-2001 deadline cannot join Retirement Plus at a later date. *See Roussin v. Boston Ret. Syst.*, No. CR-23-28, 2024 WL 2956657, at *2 (Contributory Ret. App. Bd. June 3, 2024).

¹ In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

For a number of years, Ms. Harris’s current employer withheld retirement contributions from her pay at the enlarged Retirement Plus rate of 11%. The question presented is whether those withholdings were an error that MTRS is required to correct. *See* G.L. c. 32, § 20(5)(c)(2); *Hunter v. Contributory Ret. Appeal Bd.*, 80 Mass. App. Ct. 257, 263 (2011). MTRS argues that the answer is yes, because Ms. Harris never successfully joined Retirement Plus. In support of its argument, MTRS relies on: (a) an entry in its databases stating that Ms. Harris provided “[n]o [r]esponse” to correspondence about Retirement Plus in 2001; (b) a 2013 letter from MTRS to Ms. Harris making a similar statement; and (c) an affidavit reporting that Ms. Harris’s employers did not begin to collect the 11% rate from her until ten years after Retirement Plus took effect. (Exhibits 3-5.).

Summary decision is warranted where no “genuine” issue of fact stands between the moving party and an entitlement to prevail as a matter of law. *See* standard rule 7(h). To establish a “genuine” issue of fact, Ms. Harris would need to show a “reasonable expectation” of prevailing at an evidentiary hearing. *See Goudreau v. Nikas*, 98 Mass. App. Ct. 266, 269-70 (2020). Ms. Harris supports her appeal with the statement: “I do believe I signed up for [Retirement Plus]” But this reported belief is too “vague, non-specific and general” to avert summary decision. *See Benson v. Massachusetts Gen. Hosp.*, 49 Mass. App. Ct. 530, 533 n.3 (2000). Ms. Harris does not identify details of the sort that could allow a fact finder to conclude that she correctly recounts the events of twenty-three years ago. At an evidentiary hearing, if Ms. Harris were to reiterate her claim credibly, her testimony would remain incapable of surmounting the presumption that a public agency’s records 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).

In view of the foregoing, MTRS's motion for summary decision is ALLOWED.

Summary decision is hereby entered to the effect that MTRS's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate