

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Sherrill Hayter,

Petitioner,

v.

Docket No. CR-21-0052

State Board of Retirement,

Date: June 14, 2024

Respondent.

Appearance for Petitioner:

Sherrill Hayter, pro se

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner proved that the majority of her time as an on-site nursing supervisor for the Department of Mental Retardation was spent providing direct care to individuals with mental illness or developmental disabilities, and she is therefore entitled to Group 2 classification for her service from November 23, 1986, through January 31, 1997. Her subsequent service as an area office nurse primarily involved the oversight of medical care provided by other medical professionals and as an advocate for high quality patient care, and any direct care she provided was ancillary to her supervisory functions. Accordingly, the petitioner's service as an area office nurse was properly classified in Group 1.

DECISION

The petitioner, Sherrill Hayter, appeals the decision of the State Board of Retirement (“Board”) to deny her application for Group 2 classification under G. L. c. 32, § 3(2)(g). The petitioner and respondent each filed a pre-hearing memorandum, which I have marked for identification as briefs “A” and “B,” respectively.

I held an evidentiary hearing on April 6, 2023, at the Division of Administrative Law Appeals, 14 Summer Street, Malden, Massachusetts. Ms. Hayter was the only testifying witness. I have admitted sixteen exhibits into evidence (i.e., Exhibits 2 and 4-17).¹ The petitioner filed a post-hearing brief on June 5, and the respondent filed a brief on June 6, 2023 (marked for identification as briefs “C” and “D”), whereupon the hearing record closed.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. Sherrill Hayter was employed as a registered nurse by the Department of Developmental Services (DDS) (formerly the Department of Mental Retardation) for approximately 35 years.² (Testimony.)

¹ The petitioner’s application for group classification relative to her service from February 1, 1997, to February 1, 2019, was marked as Exhibit 12 at the hearing. After the hearing, on April 25, 2023, the respondent submitted an “updated Exhibit 12” with a revised group classification questionnaire from the Executive Office of Health and Human Services. The revised questionnaire specified a period of employment for the position that is consistent with the petitioner’s application and testimony, thereby resolving an inconsistency in the period of service under the original group classification questionnaire (which had specified a period of employment of June 29, 1997, to January 8, 2021). To avoid confusion, I have marked the respondent’s post-hearing submission as Exhibit 12B, and the original group classification application as Exhibit 12A, both of which are admitted into evidence.

² The Department of Mental Retardation’s name was changed to the Department of Developmental Services effective June 30, 2009. *M.D. v. Department of Developmental Servs.*, 83 Mass. App. Ct. 463, 463 n.2 (2013). For simplicity, I use the abbreviation “DDS” throughout this decision to refer to the agency, regardless of its name at the time.

2. DDS provides services to individuals with various mental illnesses and developmental delays.³ (Testimony.)

On-Site Nursing Supervisor

3. From November 23, 1986, through January 31, 1997, Ms. Hayter worked as an on-site nursing supervisor at the Hogan Regional Center (Hogan) in Danvers and its “satellite” facility, John T. Berry Center (Berry) in North Reading. Her formal position title during that time was Registered Nurse IV On Site Nursing Supervisor. (Testimony; Exhibit 11.)
4. Ms. Hayter’s primary responsibility as an on-site nursing supervisor was to provide medical care and support to approximately 400 individuals under DDS care at the two facilities (around 300 individuals at Hogan and 100 at Berry). (Testimony.)
5. Ms. Hayter worked an afternoon/evening shift, from 3:00-11:00 P.M. (Testimony.)
6. Upon her arrival at 3:00, Ms. Hayter would first get a report from the on-site nursing supervisor who worked the prior shift. (Testimony.)
7. She would then begin doing clinical rounds starting around 3:30-3:45 P.M., with the goal of visiting briefly with as many of the residents as possible at both the Hogan and Berry campuses. The number of clients she was able to visit each day varied depending on the number of emergency calls and other matters that took her away from doing rounds, but on average she would visit most of the clients at Hogan daily and the clients at Berry 2-3 times per week. (Testimony.)

³ The Board does not dispute that the individuals Ms. Hayter served qualified as “mentally ill or mentally defective” for purposes of G. L. c. 32, § 3(2)(g). See 115 Code Mass. Regs. §§ 2.01 & 6.04 (eligibility requirements under current regulations); *Tartarini v. Department of Mental Retardation*, 82 Mass. App. Ct. 217, 218-219 (2012) (discussing eligibility requirements for services for a “mentally retarded person” under regulations in effect in 2006).

8. The time spent with each client also varied depending on the client’s specific needs and medical status. The tasks she performed during her nursing assessment of each client included checking their vital signs, listening to lungs and bowel sounds, observing non-verbal patients for signs of pain or other symptoms requiring medical attention, helping to feed patients who are prone to choking, and evaluating whether the client needs to be seen by a physician or referred to an outside provider for additional medical care.

(Testimony.)

9. Ms. Hayter was also responsible for responding to client emergencies, both medical and psychiatric. She was responsible for imposing physical restraints on a client when necessary, evaluating clients who presented symptoms of illness (e.g., fever, vomiting, etc.) or signs of medical infirmity, determining whether a client required a physician or psychiatrist for further evaluation or medication, providing intravenous therapy, and performing CPR or other emergency treatment until emergency medical responders arrived. (Testimony; Exhibit 11.)

10. At the end of her shift, Ms. Hayter would prepare a report for the on-site nursing supervisor assigned to the subsequent shift. (Testimony.)

11. DDS was unable to submit any pertinent documentation from Ms. Hayter’s personnel records regarding her service as an on-site nursing supervisor, such as employee performance reviews or a description of her work duties, apparently due to its inability to access those records. (Testimony; Exhibit 13.)

12. Instead, DDS submitted a Form 30 position description for an “RN IV On Site Nursing Supervisor/Administrator” that was prepared in August 2016—i.e., nearly a decade after Ms. Hayter had ceased working in that position. The position description is not specific

to Ms. Hayter’s service at DDS or to the Hogan/Berry facilities; it does not identify who prepared the form or contributed to it; and it is not signed by Ms. Hayter, anyone who supervised her work, or anyone else. (Exhibits 2, 11.)

13. The Form 30 does not accurately describe Ms. Hayter’s duties and responsibilities during the period she served as an on-site nursing supervisor at DDS. While it may describe the duties and responsibilities of her former position title *in 2016*, those responsibilities were split between two separate and distinct registered nurse positions at Hogan during the time Ms. Hayter held that position—the on-site nursing supervisor and the on-site nursing administrator. (Testimony.)
14. As the on-site nursing supervisor, Ms. Hayter was responsible for overseeing the nursing care provided by the DDS nursing staff to the residents/clients at the Hogan and Berry campuses. The on-site nursing administrator was responsible for on-site administrative services and monitoring the daily operations of the facility, including assigning staff, supervising all non-nursing personnel, monitoring staff health, and coordinating proper policies and procedures for the facility’s on-call system. (Testimony; see Exhibit 2.)
15. The Form 30 is also inaccurate insofar as Ms. Hayter was supervised only by the Director of Nursing Services. She was not supervised by the Director of Program Services, who “provides supervision of [the] On-site Administrator role.” (Testimony; Exhibits 2, 11.)
16. Ms. Hayter was responsible for the following job duties listed on the Form 30:
 1. Provides on-site nursing support, resident assessment and monitoring for staff by evaluating health needs through nursing assessment and observation. By responding effectively to resident emergencies. By relating pertinent information as appropriate and participating in the intervention proves [*sic*] until resolution is achieved. By providing supervision and training to direct reporting staff [regarding nursing care].
.....
 3. Acts as liaison regarding resident care and/or admission to outside facilities/ medical consults.

-
6. Provides assistance with orientation of nursing staff [regarding client care].

.....

 10. Has knowledge of state and federal regulations governing DDS facilities. Adheres to Nurse Practice Act as well as facility and nursing department policy and procedures.
 11. Monitors all resident areas for infection Control and Safety. Corrects and[/]or communicates concerns to appropriate staff.
 12. Communicates effectively with all staff and guardians both verbally and written when indicated.

.....

 14. Advocates for residents and their rights, promotes dignity and respect

(Testimony; Exhibits 2, 11.)

17. On average, Ms. Hayter spent six out of eight hours of her workday providing direct nursing care to DDS clients (i.e., 75%). (Testimony.)

Area Office Nurse

18. In around 1995-1997, the Commonwealth began moving DDS clients out of residential facilities and into the community. (Testimony.)
19. In 1997, Ms. Hayter accepted a newly created position as an area office nurse for DDS. DDS initially assigned her to both the Metro North and the Lowell service areas, where she served around 2,500 individuals receiving DDS services. From 2002 onward, however, she was assigned to only the Metro North service area, where she continued to be responsible for approximately 1,500-1,600 DDS clients. (Testimony; Exhibits 5, 12A.)
20. Ms. Hayter's formal position title, from February 1, 1997, to February 1, 2019, was Registered Nurse IV – Area Office Nurse. (Testimony; Exhibit 12B.)
21. As an area office nurse, Ms. Hayter provided support to the DDS service coordinators who cared for the individuals, and she served as an advocate for the health needs of those individuals. (Testimony.)

22. Initially, Ms. Hayter would “shadow” service coordinators at meetings with the DDS clients, as well as individuals on a waiting list for DDS services, to determine their medical needs. (Testimony.)
23. When a DDS client was identified as “high risk,” Ms. Hayter would determine an appropriate treatment plan for the client. (Testimony.)
24. Ms. Hayter educated clients on pertinent health-related issues, such as holding a nutrition class for clients. (Testimony.)
25. Ms. Hayter attended medical appointments with clients to advocate on their behalf for quality health care. (Testimony; Exhibit 12A.)
26. When a client was admitted for treatment at a hospital, Ms. Hayter would meet with the client and medical providers within 24 hours of being notified of the hospitalization. She would participate in the client’s treatment plan, continue to visit the client on a weekly basis (for extended hospitalizations), and assist with the client’s discharge. (Testimony.)
27. DDS provided the Board with a Form 30 job description for the position of Registered Nurse IV – Area Office Nurse. It provides the following general statement of duties and responsibilities:

The Area Office RN IV provides professional nursing services to Individuals, their families, area office staff and providers. The nurse must have the ability to coordinate multiple complex, highly intense situations, assist with problem solving, mediate and work effectively with cross functional person[nel]. They need to triage and prioritize cases independently using a holistic approach. The nurse should have a high level of confidence and the ability to work in a variety of settings with community agencies and the ability to assess and ensure that each person’s living environment meets adequate health and safety standards.

(Exhibits 4, 12A.)

28. In addition, the Form 30 details the following clinical responsibilities of the position:

1. Clinical review of health status of individuals referred by area office, residential and day providers, families, and health care team:
 - Compile medical and nursing data through chart review, lab review, and interview with individuals, family members/guardians, service coordinators, providers, and other clinical team members.
 - Assess individuals: identifying care needs utilizing independent judgment.
 - Review medical reports from physicians and other health care providers
 - Share information and advocate for individuals with community physicians, area staff, and families around medical and psychiatric issues.
 - Support / educate individuals, families, service coordinators and care providers concerning aging in place and end of life issues.

2. Community Liaison responsibilities:
 - Assist with coordination for hospital admissions / discharges
 - Educate and advise hospital person[nel] on caring for individuals with developmental disabilities in a hospital setting.
 - Participate in discharge meetings as needed
 - Obtain clinical supports in the residential home (VNA, Hospice, PT etc[.]).
 - Recommend alternative supports for nursing facility diversions as appropriate
 - Assist with Nursing facility/ rehab discharges
 - Educate and advise nursing facility person[nel] on caring for individuals with developmental disabilities in a hospital setting
 - Participate in discharge meetings/ RISPs as needed
 - Obtain clinical supports in the residential home (VNA, Hospice, PT etc[.]).
 - Ongoing communication with the Nursing Facility Specialist
 - Review of Rolland Transition Plan part B. (Health Care Record)
 - Collaborate with state facilities around admissions and discharges
 - Stabilization units (medical and psychiatric)
 - DPH hospitals
 - DMR regional centers
 - Educate and advise about community resources
 - Work with community Hospice agencies
 - Work with VNA agencies
 - Attend medical appointments with individuals as needed
 - Day Program consultation
 - Ongoing communication with nursing staff
 - Provide trainings around specific health issues / concerns

- Mediate between residential and day programs and families around health Issues
3. Area Office responsibilities
- Participate in Risk Management Team
 - Assist as needed with questions regarding health insurance issues
 - Member of the Turning 22 Clinical Team
 - Assist with referrals for Personal Support Services and Personal Care Attendants
 - Consult with area office staff on a daily basis
 - Provide consultation to other area offices in Northeast Region as needed
 - Attend area office nursing meetings monthly
 - Member of the Rolland Team
 - Ongoing communication with the Nursing Facility Specialist
 - Attend Rolland meetings
4. Educational/ Training responsibilities
- 1 : 1 training as needed for/ with individuals around health issues
 - Group trainings
 - Nutrition
 - Aging
 - Down syndrome/ Aging issues / Alzheimer's disease
 - Women's issues
 - Sexuality training
 - End of Life
 - Diabetes
 - Dialysis
 - Infection control
 - Any other health related topics
5. Participate as a member of the Neuropsychiatric REACH team
- Screen all potential Neuropsychiatric REACH referrals
 - Prioritize and schedule all accepted Neuropsychiatric REACH referrals
 - Delegate to appropriate team member the health care intake forms to be completed for review
 - Compile info and develop referral packet for presentation
 - Present referral to REACH Neuropsychiatric team monthly
 - Scribe clinic notes for all individuals presented
 - Develop final report for individuals presented from your area office
 - Obtain all required releases for distributions of final report
 - Distribute final report to approved team members
 - Follow up with individuals as needed
6. Participate as a member of the REACH Clinical Team:

- Screen all potential REACH referrals submitted by service coordinators
- Present all accepted REACH referrals at monthly intake REACH team
- Track all referred clients for follow up
- Review all completed referrals, assist with implementation of recommendations as needed,

7. Regional responsibilities

- Member of the Regional mortality review committee
 - Write all Mortality reviews for individuals who meet criteria
 - participate in state wide mortality review committee as needed
- Member of the Ethics committee
 - Refer individuals for review as appropriate
 - Assists with presentation for Ethics Committee as needed
- Confer with Regional Training Department
- Participate in Departments COOP plan as Emergency response team member
- Collaborate with state agencies such as DPH, DMH, DCF, Adult foster care, Elder Services
- Know current MAP regulations and work with Regional MAP coordinator
- Identify the need, develop protocols and guidelines around health care issues such as hospice, scabies

8. Statistical Data Collection

- Hospitalizations/ Diversions
- Rolland members
- Hospice
- Fractures
- Diabetics
- DNR
- Alzheimer disease and Down syndrome
- Obese individuals (those > 300 who require a RISK plan)

(Exhibits 4, 12A.)

29. Ms. Hayter's employee performance review for the 2016-2017 fiscal year identified four primary job duties: (1) provide clinical assessments of individuals to identify their health care needs and make recommendations; (2) provide support to individuals, their families, service coordinators, care providers, and peers; (3) act as liaison, consultant, and

participant for the REACH clinical team; and (4) act as liaison to the Regional Neuropsych team on behalf of the Metro-North office. (Exhibit 9.)

Applications for Group 2 Classification

30. In December 2020, Ms. Hayter submitted two applications seeking Group 2 classification for the on-site nursing supervisor and area office nurse positions she held at DDS, in connection with her request for pro-rated service based on group classification. (Exhibits 11, 12A.)

31. By letter dated January 29, 2021, the Board notified Ms. Hayter that it denied her requests for Group 2 classification. (Exhibit 14.)

32. On February 4, 2021, Ms. Hayter timely appealed the Board's decision. (Exhibits 15, 16.)

DISCUSSION

Under G. L. c. 32, § 3(2)(g), members of the Massachusetts contributory retirement system are classified into four separate groups for retirement purposes (i.e., Group 1, 2, 3, or 4). Among other things, a member's group classification affects the amount of the member's retirement allowance through the corresponding retirement age factor used in calculating the allowance under G. L. c. 32, § 5(2)(a). By default, members whose positions do not meet the criteria for Groups 2, 3, or 4 are classified in Group 1. G. L. c. 32, § 3(2)(g). In addition, "[a]ny active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group[.]" G. L. c. 32, § 5(2)(a).

Ms. Hayter has elected to receive pro-rated benefits based on her years of service in each retirement group, pursuant to G. L. c. 32, § 5(2)(a). At issue is whether her service as an on-site

nursing supervisor and as an area office nurse meets the requirements for Group 2 classification or instead falls under the default classification of Group 1. The specific job titles included in Group 2 under G. L. c. 32, § 3(2)(g) do not include Ms. Hayter's registered nurse positions. To prevail, therefore, she must prove by a preponderance of the evidence that her "regular and major duties" involved the "care, custody, instruction or other supervision" of "persons who are mentally ill or mentally defective." G. L. c. 32, § 3(2)(g); *Peck v. State Bd. of Retirement*, CR-15-282, at *2-3 (CRAB Feb. 8, 2021) (petitioner's burden of proof); *Forbes v. State Bd. of Retirement*, CR-13-146, at *7 (CRAB Jan. 8, 2020). Ms. Hayter may satisfy this burden by showing that she spent more than half of her time engaged in providing such services. *Forbes*, CR-13-146, at *7.

"Care" in this context means providing "direct care" to mentally or developmentally disabled patients. *Desautel v. State Bd. of Retirement*, CR-18-0080, at *4 (CRAB Aug. 2, 2023); *Clement v. State Bd. of Retirement*, CR-15-299, at *6 (DALA Dec. 8, 2017). In addition, care connotes "charge, oversight, watchful regard and attention," with a measure of responsibility for the patient's well-being. *In the matter of Rebell*, 30 Mass. App. Ct. 1108, No. 89-P-1259, at *3-4 (Mar. 20, 1991) (memorandum of decision and order under former Appeals Court Rule 1:28). Members who "serve in a supervisory capacity but are required to provide direct care on a regular basis for more than half of their working hours are eligible for Group 2 classification even though their job also involved supervision and administration." *Desautel*, CR-18-0080, at *4. However, "mere contact with patients and the incidental provision of care as part of an administrative role is not sufficient." *Id.*

Ms. Hayter has established that most of her time as an on-site nursing supervisor was spent providing direct care to individuals with developmental disabilities. The majority of her

time was devoted to clinical rounds, during which she checked the clients' vital signs, listened to lung and bowel sounds, assisted clients with feeding, and checked for signs of pain or symptoms indicating that further medical care was needed. She also responded to medical emergencies and provided emergency medical treatment. Ms. Hayter is therefore entitled to Group 2 classification for her service as an on-site nursing supervisor.

With respect to her position as an area office nurse, however, I conclude that her regular and major duties were supervisory and administrative in nature. Her official position description reflects mostly managerial and administrative functions, including assessing the needs of DDS clients, statistical data collection, community liaison responsibilities, and various team member responsibilities. The written employee performance review provided by DDS also describes primarily supervisory and administrative job duties. Ms. Hayter did have substantial contact with DDS clients, but the client meetings typically involved assessing the needs of the client and monitoring the care provided by others rather than providing direct patient care. See *McKay v. State Bd. of Retirement*, CR-09-79, at *8 (DALA July 12, 2013) (concluding that area office nurse was properly classified in Group 1). Although direct care typically involves a face-to-face or "hands on" component, not all direct contact with a patient constitutes direct patient care. *Potter v. State Bd. of Retirement*, CR-19-0519 (DALA Dec. 16, 2022); *Clement*, CR-15-299, at *6. Rather, numerous prior decisions by DALA have distinguished direct contact with patients done primarily for purposes of assessing the patient's eligibility for DDS services, or to determine appropriate services and supports to be provided by other care providers, from the direct patient care that qualifies for Group 2 classification. Both DALA and CRAB have consistently held in those cases that such services primarily involve the "planning, placement, and oversight of the supports provided" to DDS clients, which are considered administrative in

nature and do not qualify as “direct care” for purposes of Group 2 classification. *Albano v. State Bd. of Retirement*, CR-15-327 (CRAB July 23, 2018); *Frazer v. State Bd. of Retirement*, CR-18-0318 (DALA Nov. 19, 2021), and cases cited (compiling cases); *Clement*, CR-15-299, at *6.

CONCLUSION AND ORDER

For the reasons stated above, the State Board of Retirement’s decision denying Ms. Hayter’s applications for Group 2 classification is reversed in part and affirmed in part. Ms. Hayter is entitled to Group 2 classification under G. L. c. 32, § 3(2)(g) for her service as an on-site nursing supervisor during the period of November 23, 1986, through January 31, 1997. For the remainder of her service, from February 1, 1997, to February 1, 2019, the Board’s decision denying Group 2 classification is affirmed.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate