

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Thomas Hicks,**  
Petitioner

v.

Docket No. CR-21-0377

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Gerald A. McDonough, Esq.  
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2400 Massachusetts Avenue  
Cambridge, MA 02140

**Appearance for Respondent:**

Yande Lombe, Esq.  
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State Board of Retirement  
One Winter Street, 7th Floor  
Boston, MA 02108

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Medical doctor deserved Group 2 classification, because he spent more than 50% of his time in his last year of work caring for people with mental illness.

**DECISION**

The petitioner, Dr. Thomas Hicks, appeals the denial by the State Board of Retirement (SBR) of his application for Group 2 classification.

I held a hearing on December 19, 2023 by Webex, which I recorded and which was

transcribed. Dr. Hicks testified and called as witnesses two physician's assistants who worked with him, Amy Pinkham and Lesley Martin. SBR did not call any witnesses. I admitted Exhibits 1, 2, and 14-35. The parties submitted briefs at the end of May 2024.

### **Findings of Fact**

1. Dr. Hicks is a medical doctor. (Tr. 33)

2. In Dr. Hicks's last year of employment with the Commonwealth of Massachusetts, November 1, 2020 to October 31, 2021, he worked at the Worcester Recovery Center and Hospital (WRCH). His title was physician specialist. (Tr. 34, 36)

3. WRCH is the flagship inpatient hospital of the Department of Mental Health. (Tr. 34)

4. In his last year there, the hospital had 260 adult patients and 60 adolescent patients. They had mental illness, including schizophrenia, psychosis, bipolar disorder, mood disorders, and major depressive disorders. (Tr. 34)

5. The patients' primary diagnosis was psychiatric. (Tr. 36)

6. The patients' medical conditions included hypertension, diabetes, high cholesterol, cancer, and renal disease. Patients received chemotherapy, dialysis, and hospice care, among other treatment. (Tr. 39)

7. Dr. Hicks's job was to confer with and treat patients and supervise physician assistants as a primary care doctor, not a psychiatrist. (Tr. 36-37)

8. Dr. Hicks's annual review for Fiscal Year 2020 listed three duties: "General medical care of patients"; "Supervision of PA, NP, Internist, Dentist for providing medical care to patients"; and "Hospital Leadership." (Ex. 14, p. 4)

9. Dr. Hicks's annual review listed 12 performance criteria:

1. Oversee medical care, management, and referral to appropriate facilities/providers for patients at WRCH.

2. Provide consultation to psychiatrists and other clinicians to assure comprehensive and continuous care of patients.
3. Provide direct, ongoing medical care to patients on designated units. Provide medical coverage as needed for continuity of care at the Hospital. Provide urgent/emergency care to all staff and patients as needed.
4. Admission history and physical.
5. Address and order labs, EKGs and X-rays as needed.
6. Assess and consult on difficult cases.
7. Routine daily evaluations of patients.
8. Surgical procedures as needed – placement and removal of sutures.
9. Responding to emergency calls.
10. Discharge summaries and doctor to doctor contacts as needed.
11. Assess and conduct all necessary medical procedures pursuant to WRCH protocols.
12. Participate in and develop materials for staff development activities, ongoing educational activities for patients.

(Ex. 19)

10. Items 1 and 12 do not entail direct patient care. Items 3, 7, 8, and 11 entail direct patient care (except when providing urgent/emergency care to staff members). It is unclear whether Items 2, 4, 5, 6, and 10 entail direct patient care.

11. In his last year of work, Dr. Hicks provided care to mentally ill people for more than half of his work time. I so find on the basis of this evidence, which I accept:

A. Dr. Hicks testified that his administrative duties took approximately 25 percent of his working time, his supervisory duties took approximately 12 percent of his working time, and the rest of the time, he was caring for patients. (Tr. 37-38, 73) For approximately 10 to 15 percent of his working time, he was alone with patients. (Tr. 41)

B. Ms. Pinkham and Ms. Martin both testified that over 50 percent of Dr. Hicks's working time was with patients. (Tr. 79, 83)

C. Dr. Hicks had to fill out paperwork, called surveys, that documented how he spent his time. Surveys were submitted to the Centers for Medicare Services. (Tr. 44) As exhibits, Dr. Hicks submitted only some of his time sheets for his last year of work: for the

weeks ending January 30, February 16, and April 3 and 10, 2021. (Exs. 35) The selected surveys generally showed that Dr. Hicks cared for patients six to seven hours per day, and more than half of his time.

12. On August 6, 2021, Dr. Hicks applied for Group 2 classification. He did so for his position as Physician Specialist from August 4, 2013 to October 30, 2021. (Ex. 14)<sup>1</sup>

13. On October 1, 2021, SBR denied Dr. Hicks's application. (Ex. 22)

14. On October 5, 2021, Dr. Hicks timely appealed. (Ex. 23)

### **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....” G.L. c. 32, § 3(2)(g).

For an employee who began service before 2012, their group generally depends on their duties when they retire. *Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488, 494 (1976). See also G.L. c. 32, § 3(2)(g)(an employee “must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding ...retirement”).

“A key factor in assessing a member's ‘regular and major’ duties is the member's job title and description.” *Peter Forbes v. State Board of Retirement*, CR-13-146 (CRAB 2020). See *Maddocks*, 369 Mass. at 495 (title and description of duties can be used to determine group classification). A job description can

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<sup>1</sup> When Dr. Hicks became a member of a retirement system is not in evidence, or at least I cannot find the date. It was October 30, 2011 or earlier. Otherwise, Dr. Hicks would not have been eligible for a state pension. G.L. c. 32, 5(1)(m).

serve as helpful evidence of actual duties but are not dispositive factors. [Footnote omitted.] ...[I]individuals 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.[Footnote omitted.]

*Desautel v. State Board of Retirement*, CR-18-0080 (CRAB 2023).

Dr. Hicks's job description in his evaluation contains supervisor and administrative duties but also duties that support his eligibility for Group 2. He provided care to mentally ill people for more than half of his time in the last year of his work, entitling him to Group 2 classification.

### **Conclusion and Order**

The denial by the State Board of Retirement of Dr. Hicks's application for Group 2 classification is reversed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: July 19, 2024