COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Lori Hurwitz,
Petitioner

v. Docket No. CR-20-0642

State Board of Retirement,
Respondent

Appearance for Petitioner:

Lori Hurwitz, *Pro Se*

Appearance for Respondent:

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State Board of Retirement
One Winter St., 8th Floor
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Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals the State Board of Retirement's decision to deny her request to prorate two of her positions to Group 2: Clinical Social Worker A/B and Clinical Social Worker C, both for the Department of Mental Health. The Board's decision with respect to the Clinical Social Worker A/B position is affirmed. Its decision with respect to the Clinical Social Worker C position is reversed.

As a Clinical Social Worker A/B, the Petitioner's duties included performing detailed clinical assessments of youths to determine whether the youths were eligible for DMH services and what those services should be. Those assessments are not "care" within the meaning of the statute. The Petitioner also performed temporary case management services during the pendency of the service authorization process. Those activities constituted Group 2 qualifying care, but the Petitioner did not spend more than half of her work time performing those duties.

> As a Clinical Social Worker C, the Petitioner had supervisory duties, but most of her work time was spent performing case management services that involved her personally interacting with youths and their families. She would also meet with youths and their families to determine their case management needs. These activities constituted care within the meaning of the statute.

DECISION

The Petitioner, Lori Hurwitz, appeals the decision of the State Board of Retirement ("the Board") to deny her request to prorate two of her positions, Clinical Social Worker A/B and Clinical Social Worker C, in Group 2.

I held an in-person hearing on April 5, 2023. I admitted into evidence Petitioner's Exhibits 1-4 and Respondent's Exhibits 1-3. Ms. Hurwitz was the sole witness. Both parties submitted post-hearing memoranda, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Hurwitz was a Clinical Social Worker A/B for the Department of Mental Health ("DMH") from October 29, 2006 through April 19, 2014 and a Clinical Social Worker C from April 20, 2014 through July 9, 2016. (Petitioner's Exhibit 1).
2. In both positions, Ms. Hurwitz also served as a DMH screener, which required her to evaluate referrals from inpatient units for youths to be committed to long-term locked residential care. (Testimony).

A. <u>Clinical Social Worker A/B</u>

3. In her Clinical Social Worker A/B position, Ms. Hurwitz was a "service

authorization specialist." Her job was to determine whether youths (up to nineteen years of age) met the clinical criteria for DMH services. This determination required clinical assessments, with a "primary focus on emotional, social, and environmental needs through psychological diagnostic evaluations." (Testimony; Petitioner's Exhibit 1).

4. Ms. Hurwitz's interactions with youths would first start with her introducing herself and the types of services DMH provides. Ms. Hurwitz would gather detailed clinical information, as well as information from the youth and/or the youth's family about what services they thought the youth needed. To the extent possible, Ms. Hurwitz would elicit information from the youth about his or her preferences. When conducting clinical interviews, she would thus attend to "their voice, their choice." Ms. Hurwitz also observed that face-to-face contact is important in "our world." (Testimony). I infer from the testimony that Ms. Hurwitz also took this approach in performing her case management responsibilities as a Clinical Social Worker A/B and Clinical Social Worker C.
5. Her clinical interviews took between one and two hours. She performed approximately 25-30 such interviews per month. (Testimony).
6. Some of Ms. Hurwitz's clinical interviews were with the youth alone; some were with the youth in the company of his or her guardians; and some would consist of some combination of the two. This would depend on the age of the youth. Ms. Hurwitz could not provide a breakdown of how much time she spent interviewing youths alone. (Testimony).
7. Even when Ms. Hurwitz was dealing with a youths who, because of age or other

issues, was limited in what he or she could or would communicate to Ms. Hurwitz, she would, as much as possible, place the youth at the center of interactions. (Testimony).

8. Ms. Hurwitz provided short-term case management services while the authorization request was pending. Also, even if a youth did not meet the eligibility criteria for certain DMH services, Ms. Hurwitz would provide assistance, such as helping a youth in advocating with the schools or helping families connect with non-DMH services, such as those offered through MassHealth. (Testimony). (Case management duties will be described in more detail in the next section discussing the Clinical Social Worker C position).
9. Families would often reach out to Ms. Hurwitz later down the road to seek guidance or information. (Testimony). Based on the testimony as a whole, I infer that these communications did not occupy a substantial amount of time as compared to Ms. Hurwitz's clinical interviews and short-term case management services.
10. Out of the 37.5 hours in her workweek, Ms. Hurwitz spent at least 25 hours interacting with youths and their families, inclusive of her service authorization interviews, short-term case management services, and other contacts. (Testimony).
11. Ms. Hurwitz's duties also required her to write reports, contact service providers, review supporting documentation as it arrived, and participate in team meetings relating to the provision of services. These duties occupied a relatively small percentage of her work time. (Testimony).

B. Clinical Social Worker C

12. In her Clinical Social Worker C position, Ms. Hurwitz supervised case managers. (Testimony; Exhibit 1). The activities involved in this position were generally directed towards youths who had undergone the service authorization process and been determined to meet the clinical criteria for DMH services. (Testimony).

13. The Form 30 for this position recites several responsibilities relating to the supervision of case managers. The Form 30 also recites other duties, the most relevant of which for this decision include:

    - (12) Maintains assigned caseload including development of [Individual Service Plans], Comprehensive Assessment, coordination of services, advocacy, provision of case management including support/assistance with life management tasks (finding appropriate housing, applying for entitlements/funding eligible for, applying for medical insurance, maintaining up-to-date documentation, accompanying client to access community resources/appointments, monitoring service provision and addressing issues as needed, assistance in management of budget/funds, addresses transportation needs, and risk management plan development).
    - (14) Provides back-up coverage to case management staff in order to ensure continuity of services to clients in the absence of a case manager.
    - (15) Arrange schedule to meet with client and families as needed outside of regular working hours.
    - (20) Responsible for monitoring services for clients who are not case managed. Including [p]eriodic check-ins and need evaluation.

    (Petitioner's Exhibit 1).

    Based on Ms. Hurwitz's testimony, I find that she performed these work duties.

14. The Form 30 for the Clinical Social Worker C position recites duties similar to those contained in the Form 30 for the Mental Health Case Manager III position, which Ms. Hurwitz had also held, and which was deemed eligible for inclusion in Group 2. (Testimony; Petitioner's Exhibit 1; Respondent's Exhibits 1-2).

15. Ms. Hurwitz's Fiscal Year 2015 Employee Performance Review Form lists multiple work activities that require client interactions, including:

> Duty 1: On an as needed basis, for clients not case managed, initiates and develops supportive relationships with clients and their families or guardians by providing consultation in order to refer to needed services and to monitor the quality of services received.
>
> Duty 3 (Performance Criterion 3): Provides short-term case management through the intake process until case manager is assigned.
>
> Duty 5: Maintains an active caseload as determined by agreement of employer and supervisor

(Petitioner's Exhibit 1).

Based on Ms. Hurwitz's testimony, I find that she was responsible for performing these duties.

16. In her Clinical Social Worker C position, Ms. Hurwitz supervised three case managers, each of whom carried a caseload of between eighteen to twenty clients. (Testimony).
17. Ms. Hurwitz generally provided supervision every other week, though some case managers may have required additional supervision. Ms. Hurwitz would also consult on some of the more difficult cases. (Testimony).
18. Ms. Hurwitz accompanied assigned case managers to meetings with youths and their families if the case manager needed her assistance. (Testimony).
19. After youths were found clinically eligible for DMH services, Ms. Hurwitz would meet with them and their families to determine the youths' case management needs. This would include determining which case manager would be a good fit for the youth and whether the youth, in fact, required case management. (Testimony).

20. Ms. Hurwitz would routinely step in and perform most of the duties of a case manager when a case manager was unavailable, including unavailability due to unfilled vacancies and extended absences.[1] At one point, Ms. Hurwitz covered for an unfilled position for one year. (Testimony).

21. Case management services would include responsibilities such as meeting with youths at their schools or at programs they were attending to determine how they were doing and whether the services they were receiving met their needs. Ms. Hurwitz would also advocate for youths with schools or other entities by attending school or other meetings with youths and their families. Ms. Hurwitz would also connect youths and their families with services and assist them in obtaining services and benefits. (Testimony).

22. Separate from her provision of coverage for case manager absences and vacancies, Ms. Hurwitz would provide limited case management services for youths who were not eligible for full case management, but who were receiving some services. (Testimony).

23. Most of Ms. Hurwitz's time was spent interacting with youths and their families. Most of those interactions were in the context of case management activities. (Testimony).

C. DMH Screener Role

24. Both positions required Ms. Hurwitz to serve as a DMH screener, which entailed her evaluating referrals from inpatient units for youths to be committed to long-

[1] One duty normally performed by case managers, but not performed by Ms. Hurwitz when she was stepping in, was the preparation of individualized service plans and "comp. assessments." (Testimony).

term locked residential care. (Testimony).

25. While she was a Clinical Social Worker A/B and a Clinical Social Worker C, Ms. Hurwitz handled about one DMH screening per month. The process involved clinical interviews with the youths that could last between two to two and one-half hours. Ms. Hurwitz would also speak with treatment providers, the family, and others. Ms. Hurwitz would also review records and documentation. (Testimony).

26. Ms. Hurwitz's efforts would culminate in a detailed report that would take about four hours to prepare. (Testimony).

27. Ms. Hurwitz would monitor the youth for the next sixty days to ensure that the services she recommended were being implemented in the youth's treatment. (Testimony).

D. <u>Group 2 Application</u>

28. On or about August 28, 2020, Ms. Hurwitz completed Group 2 Classification Questionnaires and requested that four of her prior positions with DMH be prorated and classified to Group 2. (Petitioner's Exhibit 1; Respondent's Exhibit 1).

29. Two of her positions, Mental Health Case Manager II and Mental Health Case Manager III, were approved for Group 2 classification. The Clinical Social Worker A/B and Clinical Social Worker C positions were denied. No reason was provided for the denials. (Petitioner's Exhibit 2; Respondent's Exhibit 2).

30. Ms. Hurwitz timely appealed the Board's decision denying the Group 2 classification request for her Clinical Social Worker A/B and Clinical Social

Worker C positions.

CONCLUSION AND ORDER

The retirement benefits of a Massachusetts public employee are shaped in part by the employee's classification into one of four "groups." G.L. c. 32, § 3(2)(g). For purposes of this decision, the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." G.L. c. 32, § 3. Group 2 includes employees "whose regular and major duties require them to have the care, custody, instruction or other supervision" of, among others, "persons who are mentally ill." G.L. c. 32, § 3.

Group 2 classification is "properly based on the sole consideration of [the member's] duties." *Maddocks v. Contributory Ret. Appeal Bd.*, 369 Mass. 488, 494 (1975). It is Ms. Hurwitz's burden to establish that her regular and major job duties – that is, those she spent more than 50% of her working hours performing – required "the care, custody, instruction or other supervision" of "persons who are mentally ill." *England v. State Bd. of Ret.*, CR-17-653, at *6-7 (DALA Nov. 2, 2018). The Board does not dispute here that the youths with whom Ms. Hurwitz worked belonged to this cohort. Instead, the focus is on whether Ms. Hurwitz's regular and major job duties constituted "care" within the meaning of G.L. c. 32, § 3.

An oft-cited interpretation of "care" for purposes of Group 2 classification is recited in *Rebell v. Contributory Ret. App. Bd.*, 30 Mass. App. Ct. 1108, No. 89-P-1259, at *3-4 (March 20, 1991) (Memorandum of Decision and Order under former Appeals

Court Rule 1:28). The Court observed that the term "care" connotes "charge, oversight, watchful regard, and attention." *Id.* (quotation omitted). The "member must shoulder a measure of 'responsib[ility] for ... the physical or psychological needs of [individuals].'" *Hong v. State Bd. of Ret.*, CR-17-843, 2022 WL 16921455, at *3 (DALA May 6, 2022) (quoting *Sutkus*, *supra*) (alterations in original). "Care, then, is not merely conferring a benefit or performing some discrete service, but taking on responsibility for some aspect of an individual's well-being." *Long v. State Bd. of Ret.*, CR-20-0440, CR-21-0287, 2023 WL 6900305, at *5 (DALA Oct. 13, 2023)*; see also McKinney v. State Bd. of Ret.*, CR-17-230, CR-17-868, 2023 WL 6537982, at *10 (DALA Sept. 29, 2023) (individuals providing care "are responsible not just for performing a specific task conscientiously and well, but for attending more broadly to the well-being of those in their care.").

Accordingly, care "for purposes of group 2 does not include administrative or technical duties." *Larose v. State Bd. of Ret.*, CR-20-357, 2023 WL 4548411, at *2 (DALA Jan. 27, 2023, *aff'd* Contributory Retirement Appeal Board ("CRAB") Sept. 4, 2024). Narrowly scoped interactions, such as collecting blood or urine samples, are undoubtably valuable, but they do not constitute care for purposes of grounding a Group 2 classification. *Sutkus v. State Bd. of Retirement*, CR-09-837 (CRAB Feb. 17, 2011); *Azziz v. State Bd. of Ret.*, CR-00-1135 (DALA Aug. 31, 2001, *aff'd* CRAB Feb. 4, 2002).

Before turning to the Clinical Social Worker A/B and Clinical Social Worker C positions, specifically, I acknowledge the Board's argument that it is not entirely clear how much time Ms. Hurwitz spent alone with the youths in either of these roles. For example, the Board notes with respect to the Clinical Social Worker C position that when "Ms. Hurwitz was interacting with kids in the company of their families, in the company

of hospital personnel or school or program personnel, she was only in contact with the kids and did not have care, custody, control, or instruction, or supervision of them." (Post-Hearing Brief, at 11).

The Board's suggestion that the presence of other responsible individuals automatically strips otherwise qualifying work duties of their Group 2 characteristics (or that only one individual may exercise care at any given time) is incorrect. *Desautel v. State Bd. of Ret.*, CR-18-0080, at *6 (CRAB Aug. 2, 2023) (noting that the member was "accompanied by other care providers, and patients had other staff providing care on a day-to-day basis" and concluding that the "fact that he was not a primary caregiver for any one individual does not render the provision of care any less a part of his regular duties"); *Dewey v. State Bd. of Ret.*, CR-12-58, at 3 (CRAB Nov. 28, 2018) (concluding that supervisor nurse was engaged in "direct care" notwithstanding the fact that while giving this care she was simultaneously providing instruction to other nurses); *see also Larose*, *supra*, at *3 n. 1 ("The board notes that Mr. Larose's patients often were accompanied by other individuals during their sessions with Mr. Larose. This fact has no apparent bearing on whether Mr. Larose provided 'care' to his patients within the meaning of § 3(2)(g)."); *Harrington v. State Bd. of Ret.*, CR-17-826, at *12-13 (DALA April 2, 2021) (time a supervisor spent accompanying supervisees when interacting with members of statutory population properly included in tally of time spent on Group 2 duties); *White v. State Bd. of Ret.*, CR-06-895, 2007 WL 809842, at *1-2 (DALA Jan. 19, 2007) (member working with another employee was engaged in Group 2 "supervision" of

inmates at DOC central clothing warehouse).[2]

A. Clinical Social Worker A/B

Ms. Hurwitz's Clinical Social Worker A/B position has three sets of work duties that could potentially ground a Group 2 classification: her clinical service authorization interviews; her short-term case management functions; and her work as a DMH screener.[3]

1. Clinical Service Authorization

At least one prior decision from this Division has held that a DMH social worker who, like Ms. Hurwitz, performed service authorization interviews and provided interim case management during the authorization process, was entitled to Group 2 classification. *Murphy v. State Bd. of Ret.*, CR-13-325, at *2-6 (DALA Aug. 19, 2016). The decision does not expressly state, however, that the service authorization duties were Group 2 qualifying tasks, and it does not state how much time the member spent on his service authorization duties as opposed to his other responsibilities. Moreover, at least one prior decision has concluded that a member who performed service authorizations for DMH was not entitled to Group 2 classification. *Flacks v. State Bd. of Ret.*, CR-03-348 (DALA

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[2] In support its argument, the Board cites *England*, *supra*, at *6-7. *England* notes several instances in which the member did not exercise care or custody over mentally ill youths where other persons where present. If the member, for example, was meeting with a youth at his or her home following inpatient treatment, the youth remained in the custody of his or her parents. *Id.*, at *5. I do not construe the *England* decision as suggesting categorically that only one person can exercise care or custody at any given time, only that there are circumstances and situations in which the presence of one person or persons may preclude the existence of a care or custodial relationship by the member.

[3] Ms. Hurwitz also prepared reports and reviewed documents, but those are administrative tasks outside the ambit of Group 2.

June 18, 2004). These decisions are in apparent tension, if not opposition, and, standing by themselves, do not provide quite enough detail to confidently determine which provides better guidance in this case.

Stepping a small distance outside the context of DMH service authorizations, several of this Division's decisions, many of more recent vintage than *Murphy* and *Flacks*, have concluded that performing assessments does not constitute direct care where "the assessments were performed either to determine eligibility for care or to determine what care would be provided by a third party." *Potter v. State Bd. of Ret.*, CR-19-0519, at *9 (DALA Dec. 16, 2022) (collecting cases).[4] An alternative way of describing this view is that where contact with statutory populations is to "assess this population for eligibility for government assistance and to determine appropriate services," such contact is "administrative in nature and not eligible for Group 2 classification." *Frazer v. State Bd. of Ret.*, CR-18-0318, at *7 (DALA Nov. 19, 2021).

Not all assessments are outside the scope of care, however. *Cf. Ryan v. State Bd. of Ret.*, CR-22-0038, at *8 (DALA Aug. 16, 2024) ("[I]t would be a serious mistake to ossify a presumption that the work of 'assessing' qualifying populations does not belong in group 2."). In *Potter*, the member took psychosocial histories of patients newly admitted to the Pocasset Mental Health facility (an acute psychiatric care facility) to determine what care he and the other members of the staff would be providing to the new patient. *Potter, supra*, at *4. First Magistrate Rooney observed:

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[4] These decisions include: *Frazer v. State Bd. of Ret.*, CR-18-0318 (DALA Nov. 19, 2021); *Gasser v. State Bd. of Ret.*, CR-15-254 (DALA March 3, 2017); *Albano v. State Bd. of Ret.*, CR-15-327 (DALA July 29, 2016); and *Whitman v. State Bd. of Ret.*, CR-12-169 (DALA Dec. 14, 2012).

> These assessments cannot be separated from the treatment itself. Anyone who has ever visited a doctor for an illness will recognize that the doctor will first ask how long you have been sick and what symptoms you have been experiencing before figuring out how to treat you. The time spent taking this history is part of the care the doctor provides. The same can be said for the assessments performed by Mr. Potter. They were part and parcel of the care provided by him and the other staff at the Pocasset Mental Health facility, and thus they were direct care.
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> *Id.* at *10.

Unlike the assessments discussed in many of its predecessors, the assessments in *Potter* did not focus on determining eligibility for care or the care to be provided by third parties. The individuals Mr. Potter assessed were not being screened for service eligibility (they had already been admitted). Instead, they were undertaken to inform the care to be performed by Mr. Potter, himself, and/or his colleagues. *Potter*, *supra*, at *9.

In this case, by contrast, eligibility determinations were central to Ms. Hurwitz's assessments. This case thus falls within the line of cases holding that assessments performed to determine eligibility for services are not "care" for purposes of grounding a Group 2 classification.

2. Case Management

I will discuss case management responsibilities in the following section, but for the reasons stated in that section, I conclude that Ms. Hurwitz's case management activities as a Clinical Social Worker A/B constituted Group 2 qualifying care.

3. DMH Screener

Ms. Hurwitz's duties as a DMH screener, like her duties as a service authorization specialist, involved interviewing and assessing members of a Group 2 population. These screener interviews are not undertaken to determine eligibility for services, exactly, but to determine whether a youth should be placed in long-term residential care. Although such

placement might be in the best interest of the youths and the screening interviews might bear on future treatment, on this record, I lack sufficient detail and information to find that these responsibilities --- important though they were --- constituted "care" for purposes of the statute.

4. Regular and Major Job Duties

As noted in the Findings of Fact above, I have found that out of the 37.5 hours in her workweek, Ms. Hurwitz spent at least 25 hours interacting with youths and their families, inclusive of her service authorization interviews, short-term case management services, and other contacts. This amounts to 100 hours of such interactions per month. The service authorization interviews (not Group 2 qualifying activities) occupied between 25 and 60 of those hours per month.[5] The 40 to 75 hours remaining were occupied principally by Ms. Hurwitz's temporary case management activities, which *are* Group 2 qualifying activities.

Thus, out of the 150 working hours per month (37.5 hours x 4 weeks per month), Ms. Hurwitz spent between 40 and 75 hours performing Group 2 qualifying duties. I have no basis to determine that Ms. Hurwitz's case management duties fell consistently at the very upper end of that 40 to 75 hour range. Accordingly, I cannot conclude that more than half of her working hours were devoted to those duties. Ms. Hurwitz has therefore not met her burden of proving that her "regular and major job duties" entailed Group 2 qualifying care.

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[5] Ms. Hurwitz performed approximately 25-30 interviews per month. They lasted between one and two hours. This yields a range of between 25 hours and 60 hours per month conducting these interviews.

B. Clinical Social Worker C

In her Clinical Social Worker C position, Ms. Hurwitz supervised three case workers. Although supervisory tasks are not, themselves, Group 2 qualifying duties, a supervisor in a mental health or social work setting may nevertheless qualify for Group 2 classification if the member's work duties require the member to "provide direct care on a regular basis for more than half of their working hours." *Coe v. State Bd. of Ret.*, CR-20-0007, 2024 WL 215932, at *8 (DALA Jan. 12, 2024) (quoting *Desautel v. State Bd. of Ret.*, CR-18-0080, at *4 (CRAB Aug. 2, 2023)) (internal quotation marks omitted).

I have found that more than 50% of Ms. Hurwitz's work time as a Clinical Social Worker C was spent interacting with youths and their families --- primarily in the context of performing case management duties. A social worker's case management for members of a statutory population may be a Group 2 qualifying work responsibility. *Zilembo v. State Bd. of Ret.*, CR-02-907 (DALA Oct. 7, 2003) (a DMH Case Manager II position); *see also Murphy*, *supra*, at *5-6 (a DMH Case Manager III who performed service authorizations and case management duties); *Burciaga v. State Bd. of Ret.*, CR-03-940, at *4-6 (DALA March 25, 2005) (a DMH Case Manager II position); *Parmenter v. State Bd. of Ret.*, CR-04-341, at *8-11 (DALA Aug. 1, 2005) (a DMH Case Manager II position); *Evans v. State Bd. of Ret.*, CR-03-647, at *1 (Sept. 17, 2004) (a DMH Case Manager II position).

That case management duties may ground a Group 2 classification is indirectly corroborated by the Board's treatment of Ms. Hurwitz's Mental Health Case Manager III position, which the Board approved for a Group 2 classification. The Form 30 for that position is similar to the Form 30 relating to the Clinical Social Worker C position, and

both include case management duties.

In particular, the decisional law provides that certain case management activities --- such as helping a client gain access to services and benefits, ascertaining whether a client is benefitting from services, and advocating on a client's behalf with service providers and public entities --- may ground a Group 2 classification if these activities require meaningful interactions with clients. In *Zilembo*, for example, the member, a DMH case manager, functioned "as an advocate and supporter for her client in her work in securing needed health care, housing, and other community services." *Zilembo, supra*, at *2. Her responsibilities included "coordinating the linkage of client services; monitoring the quality and quantity of services; advocating on behalf of the client; and identifying barriers and gaps in the service system to those responsible for service planning." *Id.* at *4. Ms. Zilembo spent at least 51% of her time in the company of her clients. *Id.* at *7. The decision emphasizes the fact that substantive client contacts were "needed and central to carrying out her case management responsibilities." *Id.*

Other decisions, too, have stressed the centrality of a member's interactions with clients when considering the Group 2 eligibility of case management responsibilities. *See Burciaga*, *supra*, at *4 (observing that successful Group 2 claimant monitored the effectiveness and appropriateness of clients' service plans "not from afar, but with a face to face relationship with her clients" and "worked closely with each client as a client advocate to ensure services needed were obtained"); *Parmenter*, *supra*, at *6 (noting that job requirements of the successful Group 2 claimant included "coordinat[ing] needed services along with the client").

This is not to deny that activities such as connecting clients with services and

monitoring those services may, in many instances, be merely administrative in nature and outside the ambit of Group 2 care. For example, reviewing invoices or reports from a service provider might be considered "monitoring" the provision of services, and may be extremely valuable and important, but it is not Group 2 care.

If, however, the "monitoring" takes the form of a clinical social worker interacting with a client with mental illness to ascertain whether he or she is benefiting from a service, the member is, through personal and direct contact, exercising clinically informed attention and judgment and is assuming a measure of responsibility and oversight over aspects of the client's well-being. These are significant indicia of a Group 2 qualifying activity. *See Long*, *supra*, at *6 (quoting *McKinney*, *supra*, at *19-20) (summarizing the hallmarks of Group 2 qualifying activity as "'personal and direct' interactions with a Group 2 population, 'breadth and depth' of responsibility, and 'watchfulness and attention.'").[6]

Accordingly, the Board perhaps overstates matters to the extent it states categorically that monitoring and coordinating the provision of services is merely administrative in nature and cannot form the basis for a Group 2 classification. (Respondent's Post-Hearing Brief, at 9-10).[7] In the decisions upon which the Board

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[6] The distinction is mirrored in Ms. Hurwitz's testimony. She testified that "probably about 60% of my position was with doing some direct care work with the kids. The other part is supervision and monitoring the services." (Testimony). She also characterized some of her direct care work as "monitoring." (Testimony). I gather from this testimony that Ms. Hurwitz recognized a distinction between "monitoring" that is merely administrative or bureaucratic in nature and "monitoring" that constitutes client care.

[7] The Board does not appear to dispute that advocacy on behalf of a client may constitute "care" for purposes of the statute.

relies, the activities at issue appear to have been performed without much of the personal engagement characteristic of Group 2 care. [8] In *Wheelan*, the magistrate stated that the member's regular and major duties, which included "providing care coordination for the clients," were not Group 2 work tasks, but it is not clear how much of this care coordination involved client contact, or if it involved any client contact at all. *Wheelan v. State Bd. of Ret.*, CR-07-515, at *3 (DALA July 24, 2009). *Passerini* is akin. The member "spent at least 80% of her working time coordinating and supervising vendors, doing paperwork and attending meetings." *Passerini v. State Bd. of Ret.*, CR-15-453, at *5 (DALA Aug. 24, 2018). These tasks evidently required little client contact because the member had "minimal interaction with the DMH clients" and "never had any one-on-one interactions with the clients." *Id.* In *Clement*, the member coordinated services and monitored the delivery of these services, but it is not clear how much client contact was required for these activities. In fact, the member was found to have spent less than 50% of her time in the company of her clients; she spent "the majority of her time coordinating and supervising vendors, doing paperwork, traveling, and conducting team meetings." *Clement v. State Bd. of Ret.*, CR-15-299, at *4-5 (DALA Dec. 8, 2017). As for *Pratte*, the magistrate in that decision stated that "the coordination of client care and ensuring implementation of [Individual Service Plans] is not … direct care and custody[.]" But the coordination and monitoring in that case evidently did not turn on client interactions

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[8] One exception: the member in *Flacks* did meet with clients "to determine whether they were receiving appropriate services," though his "primary function was to determine eligibility for DMH services." These duties were collectively characterized as administrative in nature. *Flacks*, *supra,* at *2. This decision is far less detailed than some of the other decisions discussing this issue, so it is not --- in this case, at least --- a particularly helpful data point.

because the magistrate also noted that "the direct interaction Ms. Pratte had with clients was not a regular and major duty that took more than half her time." *Pratte v. State Bd. of Ret.*, CR-17-226, at *6 (DALA Aug. 18, 2017).

Turning to Ms. Hurwitz's duties, her case management responsibilities bore the hallmarks of Group 2 qualifying activities: they involved "personal and direct" interactions with a Group 2 population, "breadth and depth" of responsibility, and "watchfulness and attention." *McKinney*, *supra*, at *19-20.

First, Ms. Hurwitz was required to form supportive relationships with clients and their families, and she personally and directly interacted with clients to connect them to benefits and services, determine whether they were benefiting from services and programs, and advocate on their behalf.

Second, in performing these work tasks Ms. Hurwitz was "not merely conferring a benefit or performing some discrete service, but taking on responsibility for some aspect of [the youths'] well-being." *Long*, *supra*, at *5. Given her responsibility for understanding the needs of her clients, for helping them secure services and benefits to meet these needs, for ensuring that these needs continued to be met during the pendency of her case management, and for serving as an advocate on their behalf, Ms. Hurwitz's case management responsibilities were marked by depth and breadth of responsibility.

Third, I have little difficulty concluding that Ms. Hurwitz was required to deploy clinically trained watchfulness and attention when interacting with these youths — partly because of her training and the youths' mental health needs, but also based on her credible testimony that it was critical to attend to the needs and wishes of these youths as individuals.

In sum, these case management activities fall within the scope of Group 2 care.

The Board also argues that care provided by a supervisor is not a Group 2 qualifying duty if that care occurs in the context of providing coverage for absent subordinates or to fill a gap left by an open position. That is not correct. *See Murphy*, *supra*, at *3-6 (holding that, notwithstanding lack of formal memorialization in his written job description, supervisor's coverage of absent subordinates' case management duties was within the scope of his duties and constituted direct care); *see also Harrington v. State Bd. of Ret.*, CR-17-826, at *13-14 (DALA April 2, 2021) (concluding that Department of Developmental Service supervisor's provision of coverage for supervisees "when they had a work conflict, were ill, on vacation, or otherwise on leave" was Group 2 qualifying work duty).

In support of its argument, the Board cites *Tudryn v. State Bd. of Ret.*, CR-06-1104 (DALA April 20, 2008) and *Frazer*, *supra*. The Board's reliance on *Tudryn* and *Frazer* is unavailing. In *Tudryn*, the magistrate did not appear to dispute that filling in for absent subordinates to perform case management could constitute a Group 2 eligible responsibility. Instead, she concluded that "the evidence is not sufficient to demonstrate that such tasks constitute a major part of her duties." *Tudryn*, *supra*, at *4. In *Frazer*, the member stepped in to perform temporary case management duties only "occasionally" and "infrequently" (perhaps as seldom as once or twice a month). *Frazer*, *supra*, at *9.

In addition to her case management activities, Ms. Hurwitz interviewed youths and their families to identify the case management services she and her colleagues would need to provide to the youths. Unlike the assessments she performed in her service authorization role, the record indicates that these interviews were directed entirely to

guiding the future provision of services by Ms. Hurwitz and members of her team. These interviews thus fall squarely within the scope of *Potter*. They are Group 2 qualifying activities.

Between her case management activities and her client interviews, I conclude that Ms. Hurwitz spent more than half of her time providing direct care to youths with mental illness. Because Ms. Hurwitz's regular and major duties as a Clinical Social Worker C required her to provide care to members of a Group 2 population, she is entitled to Group 2 classification for this position.

For all of the foregoing reasons, the decision of the Board with respect to the Clinical Social Worker A/B position is affirmed and its decision with respect to the Clinical Social Worker C position is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

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Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: September 13, 2024