

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

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CHRISTOPHER IZZO,  
*Petitioner*

Docket No. CR-21-0019

v.

Date: June 23, 2023

MASSACHUSETTS TEACHERS'  
RETIREMENT SYSTEM,  
*Respondent*

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**Appearance for Petitioner:**

Christopher Izzo, *pro se*  
Feeding Hills, MA 01030

**Appearance for Respondent:**

James O'Leary, Esq.  
Massachusetts Teachers' Retirement System  
Charlestown, MA 02129

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

The Petitioner is not eligible to purchase his prior service at School Based Services and Springdale Education Center. The Petitioner was not "engaged in teaching pupils," as required under G.L. c. 32, § 4(1)(p), during his service as Clinical Coordinator and Case Manager.

**DECISION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Christopher Izzo, appeals the November 18, 2020 decision of the Respondent, the Massachusetts Teachers' Retirement System ("MTRS"), denying his request to purchase non-public school service under G.L. c. 32, § 4(1)(p). DALA issued a scheduling order indicating that the matter could be decided on written submissions pursuant to 801 Code Mass. Regs § 1.01(10)(c). Neither party objected to the order.

MTRS filed a memorandum along with supporting exhibits on April 7, 2022. I admit each of MTRS's six exhibits into evidence. I also admit, as exhibit seven, the Petitioner's appeal letter with MTRS's denial letter attached. The Petitioner submitted no documents beyond his initial appeal letter.

### **FINDINGS OF FACT**

Based on the exhibits, I find the following facts.

1. The Petitioner is an active member of MTRS. (Ex. 1.)
2. The Petitioner worked at Springdale Education Center from August 1, 2005, through August 26, 2007. He worked at School Based Services from August 27, 2007, through March 2008. (Exs. 1, 3, 4, 6.)
3. On August 16, 2018, the Petitioner applied to purchase creditable service for his work at School Based Services. The Petitioner explained he was a "Clinical Coordinator." (Ex. 1.)
4. As Clinical Coordinator, the Petitioner "managed day to day operations and quality of support services." The Petitioner's duties included "evaluations, counseling/therapy, and development/implementation of treatment plans." (Exs. 4, 5.)
5. On June 15, 2020, the Petitioner filed another application to purchase service for his work at Springdale Education Center. His title there was "Case Manager/Clinician." (Ex. 1.)
6. The Petitioner's function as Case Manager was "to develop positive relationships and facilitate ongoing communication between and amongst all related parties of SEC students." In doing so, the Petitioner "conducted individual psychoeducational and group therapy" and "offered academic/behavioral support in classrooms." (Exs. 1, 2.)

7. Laura Ferriter, the Director of Administrative Operations for both places of employment, submitted letters in support of the Petitioner's application. She did not have records about the "amount of retirement contribution paid, if any, by [the] employer." However, she noted the Petitioner was 20% vested in a 401(k) retirement plan during the length of his service. The Petitioner had, in fact, deferred 10% of his salary to this plan from October 1, 2006, through March 27, 2008. (Exs. 3, 6.)
8. On November 18, 2020, MTRS denied the Petitioner's application. It gave two reasons. First, it explained, neither his service as Clinical Coordinator nor Case Manager/Clinician constituted "teaching pupils" as required under G.L. c. 32, § 4(1)(p). Second, from October 2006 to March 2008 the Petitioner deferred 10% of his salary to the 401(k) retirement plan, and G.L. c. 32, § 4(1)(p) prohibits members from purchasing service for which they were entitled to receive a retirement allowance, annuity, or pension from any other source. (Ex. 7.)
9. The Petitioner filed his appeal on December 10, 2020. (Ex. 7)

### **CONCLUSION AND ORDER**

A decision on the merits may be granted without a hearing pursuant to 801 Code Mass. Regs. § 1.01(10)(c). "The Petitioner has the burden of proving by a preponderance of the evidence that the [Retirement Board] has applied the law and[/]or its regulations incorrectly or has been culpable in perpetrating a correctible administrative mistake." *Patterson v. State Bd. of Ret.*, CR-20-0324, 2023 WL 415581 (DALA Jan. 20, 2023), quoting *Byrne v. Mass. Teachers' Ret. Sys.*, Docket No. CR-15-609 (DALA Jan. 6, 2018).

First, it appears the Petitioner may not have filed a timely appeal. Parties have fifteen days from the time they receive notification of MTRS's actions to file an appeal with DALA. *See*

G.L. c. 32, § 16(4). Failing to do so removes the case from our jurisdiction. MTRS denied the Petitioner's application on November 18, 2020. The Petitioner did not appeal until December 10, 2020, more than fifteen days later. It is, however, unclear when the Petitioner received notification of MTRS's decision. It is possible that he received it after November 25, 2020, making his appeal timely. Still, it is more likely than not that he received it only a few days after it was sent, and therefore we may lack jurisdiction over his appeal.

Second, even if we have jurisdiction, the Petitioner's appeal would nevertheless fail. The Petitioner is not entitled to purchase his service from August 2005 to March 2008 because he was not "engaged in teaching pupils." *See* G.L. c. 32, § 4(1)(p). CRAB has interpreted "teaching pupils" narrowly to mean "instruction in the academic and vocational subjects that are typically taught for credit in public schools, generally in the classroom." *Lukasik v. Mass. Teachers' Ret. Sys.*, CR-15-668, \*12 (CRAB Feb. 21, 2020). Moreover, CRAB has explicitly excluded from the definition of instruction in the academic and vocational subjects work that provides a "related or supportive service" such as therapy. *Id.* at 2.

The Petitioner's duties as Clinical Coordinator consisted of performing clinical evaluations, conducting counseling and therapy sessions, and developing and implementing student treatment plans. The Petitioner's duties as Case Manager included conducting psychoeducational therapy and offering academic and behavioral support in the classrooms. Neither set of duties demonstrate "instruction in the academic and vocational subjects." *Lukasik, supra*. On the contrary, both demonstrate work that provides "related or supportive service[s]." *Id.* at 2. Indeed, the Petitioner himself describes his role as Clinical Coordinator in part as a manager of student "support services."

That the Petitioner provided an invaluable service is immaterial. *See Levin v. Mass. Teachers' Ret. Sys.*, CR-20-0430 (DALA Apr. 28, 2023). It matters only that he did not instruct students in traditionally academic or vocational subjects. *See Verbits v. Mass. Teachers' Ret. Sys.*, CR-17-1032 (DALA May 27, 2021) (finding school psychologist ineligible); *Dibella v. Mass. Teachers' Ret. Sys.*, CR-10-0181 (DALA Mar. 4, 2016) (finding in-classroom therapist ineligible).

For these reasons, the MTRS's decision denying the Petitioner eligibility to purchase non-public school creditable service from August 2005 to March 2008 is affirmed.<sup>1</sup>

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

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Eric Tennen  
Administrative Magistrate

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<sup>1</sup> MTRS also reasoned the Petitioner was ineligible to purchase his service for the period from October 2006 to March 2008 because he was entitled to receive retirement benefits during this time. "The applicability of this section does not depend on the size of the benefit, but on whether it comes from 'any other source,' that is, on whether the private employer funded the retirement benefit. The purpose of the limitation is to prevent double-dipping by receiving two employer-funded retirement benefits for the same work." *Siska v. Mass. Teachers' Ret. Sys.*, CR-13-443 (DALA Sept. 21, 2018) (citations omitted). Because the employer's letter could not confirm whether it contributed anything to the Petitioner's retirement, there is not enough evidence to support this additional ground for denial.