

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Elizabeth Laliberte,
Petitioner

v.

Docket No. CR-21-0547
Date Issued: August 8, 2025

New Bedford Retirement System,
Respondent

Appearance for Petitioner:

Leah Marie Barrault, Esq.
Barrault and Associates, LLC

Appearance for Respondent:

Michael Sacco, Esq.
Sacco & Collins, P.C.

Administrative Magistrate:

Melinda E. Troy

Summary of Decision

A retirement board's refusal to waive repayment of a retirement allowance overpayment is affirmed because the member received two estimates prior to retiring that should have alerted her that the benefit she was receiving, which was well in excess of the estimates, was in error.

DECISION

Elizabeth Laliberte retired from the New Bedford Retirement System ("NBRS") in 2015. In 2021, the New Bedford Retirement Board ("Board") notified her that she had been overpaid by almost \$50,000. She sought a waiver of repayment. When the Board denied the waiver request, she filed a timely appeal.

I held a hearing at the Division of Administrative Law Appeals ("DALA") on September 30, 2024. Prior to the hearing, the parties filed a joint prehearing memorandum that contained a statement of agreed facts. I accepted into evidence the 23

exhibits proposed by the parties.¹ The witnesses were Ms. Laliberte; Gerard Arnaudet, the former Executive Director of the New Bedford Retirement Board; and its current Executive Director, Eric Cohen. The parties filed closing briefs on December 2, 2024, thereby closing the record.

Findings of Fact

Based on the agreed statement of facts, the testimony and exhibits presented by the parties, and reasonable inferences drawn from them, I make the following findings of fact:

1. Elizabeth Laliberte began working for the New Bedford Public School System in 1998 as the secretary to an assistant principal of a middle school. She worked full-time, year-round in this position for 19 years. (Statement of Agreed Facts 1; Laliberte testimony.)

2. In 2015, the New Bedford Public Schools hired a new superintendent. Ms. Laliberte's boss was promoted to middle school principal. The superintendent put pressure on school administrators to "clean house". Although Ms. Laliberte had a fine working relationship with her boss for the seven years that he was an assistant principal, now that he was the principal, he began to question some of her actions. (Laliberte testimony.)

¹ Exhibits 22 and 23 were filed by agreement after the hearing concluded.

3. Ms. Laliberte began to consider retirement. She called the Board and asked for an estimate of her benefits if she decided to retire. On July 16, 2015, Helen DeForge, the Board's financial analyst, sent a letter to Ms. Laliberte providing her with an estimate of what her retirement benefit would be if she retired on January 8, 2017.² These figures were:

Option Type	Option A	Option B	Option C
Monthly Allowance	\$1,094.17	\$1,081.67	\$1,003.02
Annual Allowance	\$13,130.04	\$12,980.04	\$12,036.24

(Statement of Agreed Facts 2; Ex. 1; Laliberte testimony.)

4. Ms. Laliberte's knowledge of retirement at that time was limited. She knew she would be entitled to an increased benefit the more years she worked, and her co-workers had told her there was an advantage to retiring on your birthday. She was overwhelmed by the details in the estimate she received, which not only provided the figures just mentioned, but also the breakdown of how much of her monthly benefit payment would be attributable to her pension and how much was attributable to her annuity, and how much her spouse would receive under Option C if she predeceased him. Although her son works in finance, she does not recall consulting him or the Board about what the estimate meant. (Laliberte testimony.)

5. On September 8, 2015, the middle school where Ms. Laliberte worked sent her a letter stating it was going to conduct an investigation regarding allegations that she had "engaged in conduct unbecoming of a clerk." It instructed her to call human resources by September 14, 2015 to arrange a meeting to discuss the charges against her. (Ex. 14.)

² There is no evidence in the record that would explain why the estimate was

6. Ms. Laliberte decided to retire rather than go through the human resources discipline process. On September 15, 2015, she went to the Board's offices and spoke to the then Executive Director, Gerard Arnaudet, a man she had not previously met.

(Laliberte testimony.)

7. Mr. Arnaudet is a certified public accountant with 20 years of experience in auditing, including one and one-half years as the chief auditor for the Public Employee Retirement Administration Commission ("PERAC"), and over a decade as the Executive Director of the New Bedford Retirement Board. (Arnaudet testimony.)

8. Prior to the meeting, Mr. Arnaudet prepared an estimate to show Ms. Laliberte what benefit she would receive if she retired on October 3, 2015, which was her birthday. (Arnaudet testimony.)

9. Much of what happened at the meeting is disputed. What is undisputed is as follows: Ms. Laliberte's husband accompanied Ms. Laliberte to the meeting. She acknowledged that she was overwhelmed by the whole retirement process. Mr. Arnaudet shared the retirement estimates that he had prepared in advance. The figures Mr. Arnaudet showed Ms. Laliberte were as follows:

Option Type	Option A	Option B	Option C
Monthly Allowance	\$974.50	\$962.82	\$897.60
Annual Allowance	\$11,694.00	\$11,553.844	\$10,771.20

(Ex. 7.)

10. By the end of the meeting, Mr. Arnaudet had helped Ms. Laliberte fill out a retirement application that listed October 3, 2015 as her retirement date. Ms. Laliberte

chose Option C to provide a benefit to her husband if she died before he did. (Exs. 7 and 13; Laliberte and Arnaudet testimony.)

11. Ms. Laliberte resigned from the New Bedford Public Schools on September 15, 2015. (Ex. 2.)

12. On October 21, 2015, the Board approved Ms. Laliberte's retirement application. On October 27, 2015, it sent her a letter informing her that her monthly benefit would be \$1,520.96. However, on October 22, 2015, the Board had performed a calculation showing that Ms. Laliberte should be receiving a \$897.87 monthly benefit under Option C, the option she had chosen. (Ex. 8.) It is not clear from the record why this calculation did not impact the retirement benefit figure listed in letter the Board sent Ms. Laliberte a few days later. (Statement of Agreed Facts 3; Ex. 3.)

13. The \$1,520.96 figure is significant because Ms. Laliberte testified that, at the September 15, 2015 meeting, she told Mr. Arnaudet she could not get by on an \$897.60 monthly retirement allowance (i.e., the retirement allowance estimate he presented to her). At the hearing, Ms. Laliberte further claimed that Mr. Arnaudet responded by asking her if \$1,500 would be enough, a figure to which she and her husband allegedly agreed. (Laliberte testimony.)

14. Mr. Arnaudet met with approximately 1,600 members to discuss their benefits during his time as Executive Director. He does not recall the meeting with Ms. Laliberte and her husband. (Arnaudet testimony.)

15. At the hearing, Mr. Arnaudet denied that he would have agreed to provide a retirement benefit to a member to which someone was not entitled. His reputation would have been on the line. In addition, such a promise would be futile because PERAC checks the accuracy of retirement benefit calculations during the audits it

performs of retirement boards every three years. (Arnaudet testimony.)

16. Mr. Arnaudet does not know how the Board's letter ended up telling Ms. Laliberte that her monthly retirement benefit was \$1,520.60. The letter she received was created by payroll, not Mr. Arnaudet. Mr. Arnaudet speculated at the hearing that either he told payroll the wrong number or payroll made an error when drafting the letter. (Arnaudet testimony.)

17. On November 19, 2015, PERAC sent the Board a letter approving Ms. Laliberte's Option C retirement effective October 3, 2015. It informed the Board that her monthly retirement benefit should be \$897.87. Ms. Laliberte was not copied on this letter. (Statement of Agreed Facts 4 and 7; Ex. 6.)

18. In the normal course of events, the PERAC letter would have been compared to the retirement benefit the Board was actually providing to Ms. Laliberte and then the error would have been discovered. This did not happen in this instance. Mr. Arnaudet does not know why this check of the accuracy of the benefit did not happen. (Arnaudet testimony.)

19. PERAC would normally have performed an audit no more than three years after Ms. Laliberte began receiving her retirement benefit. That did not happen because PERAC was short-staffed. (Cohen testimony.)

20. Eric Cohen became the Board's Executive Director in or around January 2021.³ Shortly thereafter PERAC performed an audit of the Board and discovered the discrepancy between the retirement benefit Ms. Laliberte should have been receiving and the benefit she was actually receiving. Mr. Cohen prepared an income verification report showing that Ms. Laliberte had, by the end of 2020, received \$108,804 in retirement

³ Mr. Cohen testified that he became the director in 2022, but since he sent Ms. Laliberte a letter in January 2021, he must have been mistaken as to his start date.

benefits when she should have received only \$59,231.53 in benefits, a \$49,582.47 difference. (Cohen testimony; Ex. 5.)

21. On January 18, 2021, Mr. Cohen sent Ms. Laliberte a letter stating that a recent PERAC audit determined that the monthly retirement allowance she had been receiving was “substantially higher than the legitimate monthly retirement allowance afforded [her] under the correct calculation” and informing her that it was going to reduce her upcoming monthly allowance to reflect a recalculation of her benefit. The letter did not mention anything about recouping past overpayments. (Statement of Agreed Facts 5; Ex. 15.)

22. On April 13, 2021, Ms. Laliberte requested that the Board waive repayment of the overpayment. (Statement of Agreed Facts 8; Ex. 10.)

23. On May 27, 2021, Ms. Laliberte’s attorney appeared at a meeting of the Board. She informed the Board that her client had no knowledge that she was being overpaid and that she retired “in large part due to the amount that the Board informed her she would receive.” The Board tabled further action on the waiver until it could hear from Ms. Laliberte. (Ex. 22.)

24. On July 29, 2021, Ms. Laliberte appeared before the Board and stated that “she did not know or have reason to know about the alleged overpayment.” When asked why she believed Mr. Arnaudet could obtain a \$1,500 retirement allowance per month for her when the estimate that he had showed her listed her monthly retirement allowance as \$897, Ms. Laliberte stated that she trusted Mr. Arnaudet. (Ex. 22.)

25. That day, the Board voted 3-2 against waiving Ms. Laliberte’s overpayment. In a November 2, 2021 letter to Ms. Laliberte’s attorney, Mr. Cohen explained that the Board “found Ms. Laliberte knew or should have known that the error

existed.” The Board expressed that it was aware of the “potential hardships” its decision would cause Ms. Laliberte. In an “effort to work with Ms. Laliberte in establishing repayment terms that reflect her current financial situation,” the Board asked her to fill out a financial statement. The financial statement the Board sent counsel was one used by the Probate and Family Court for people whose annual income is no more than \$70,000. (Statement of Agreed Facts 10; Exs. 11 and 16.)

26. On November 15, 2021, Ms. Laliberte appealed the Board’s refusal to grant her a waiver of repayment. (Ex. 11.)

27. Mr. Cohen informed Ms. Laliberte’s attorney on March 14, 2022 that the Board would make a final decision regarding the payment terms of Ms. Laliberte’s repayment at its meeting on March 21, 2022. On March 20, 2022, Ms. Laliberte’s attorney told Mr. Cohen that she was commuting to Vermont, and would work on the form there, but under protest because Ms. Laliberte’s appeal had not yet been heard. (Exs. 11 and 20.)

28. In a March 27, 2022 email, Mr. Cohen informed Ms. Laliberte’s counsel that the Board had voted at its March 21, 2022 meeting to suspend Ms. Laliberte’s retirement allowance beginning the following month. He encouraged her to submit the financial form, and suggested that if she did so, the Board would take it up at its meeting on April 28, 2022. Ms. Laliberte’s attorney responded on April 28 that she would not have her client complete a probate form whose purpose is to determine whether child support should be granted. (Ex. 18.) Ms. Laliberte acknowledged at the hearing that she did not complete the financial information form. She thought the Board kept changing what it wanted from her. However, at the DALA hearing she testified about the income she and her husband were receiving. (Statement of Agreed Facts 12 and 13; Ex. 12;

Laliberte testimony.)

29. Following the meeting, Ms. Laliberte's attorney wrote a letter to the Board objecting to the Board's decision to suspend payment of Ms. Laliberte's retirement benefit until the overpayment was repaid.⁴ (Ex. 11.)

DISCUSSION

There is no dispute that Ms. Laliberte's retirement allowance was overpaid by \$49,582.47 or that the Board had the authority to correct this error. *See* G.L. c. 32, § 20(5)(c)(3). The same section of the public employee retirement statute provides that a retirement board may waive recovery of an overpayment provided that:

- (i) the error in any benefit payment or amount contributed to the system persisted for a period in excess of one year;
- (ii) the error was not the result of erroneous information provided by the member or beneficiary; and
- (iii) the member or beneficiary did not have knowledge of the error or did not have reason to believe that the benefit amount or contribution rate was in error.

Notably, the statute does not require a retirement board to grant a waiver if all three of these criteria are met. Rather, the statute leaves waiver to the discretion of a retirement board. *See Bristol County Retirement Board v. Contributory Retirement Appeal Board*, 65 Mass. App. Ct. 443, 452 (2006). While the Appeals Court was not certain that an appeal would lie from a retirement board's discretionary decision not to waive repayment, it concluded that, if review were available, "it is clear" that review of a retirement board's decision on a waiver request is "limited to the question whether the...board abused its discretion." *Id.* at 451.

⁴ The letter is dated April 26, 2021, but the contents of the letter show that it was mailed after the Board's April 28, 2021 meeting.

For a decision to constitute an abuse of discretion, the decision must be arbitrary and capricious, that is, lacking any rational explanation that reasonable persons might support. *Frawley v. Police Commissioner of Cambridge*, 473 Mass. 716, 729 (2016); see *Dufresne v. State Board of Retirement*, CR-19-0572 (Div. Admin. Law App. July 29, 2022).

Here, the Board concluded that Ms. Laliberte did not prove that she lacked “reason to believe that the benefit amount or contribution rate was in error.” The Board had reason to reach this conclusion.

Ms. Laliberte claims that Mr. Arnaudet told her she could receive a \$1,500 per month retirement allowance. I do not find that claim to be credible. I credit Mr. Arnaudet’s testimony and doubt that a person as experienced as Mr. Arnaudet would have informed a member that she could receive a benefit far greater than the one she to which she was entitled. He would have known that he would face serious consequences for such a misrepresentation, and he would also have known that an effort to pay a benefit more than allowed would have done the recipient no good. The error would be discovered and the person receiving the unearned benefit would have to pay it back.⁵

Just as significantly, when Ms. Laliberte received a letter from the Board’s payroll department telling her she would be receiving a monthly benefit of \$1,520.96, she had previously received two estimates informing her that her benefit would be far less. I recognize that Ms. Laliberte was overwhelmed by the retirement process, but the stark difference between the information she received prior to retiring and the information she received after retiring should have alerted her to the existence of a problem. She had

⁵ While Ms. Laliberte may well have thought an \$897.60 retirement allowance was insufficient, it is significant that she had already decided not to return to her job and go through a discipline process.

enough information by then that should have led her to contact the Board to obtain an explanation of the discrepancy.

This appeal presents an unfortunate number of errors that have led to this point, many of them having nothing to do with Ms. Laliberte. Nevertheless, because the evidence shows that the Board had reason to believe that Ms. Laliberte should have known that the retirement allowance amount she was receiving was in error, the board did not abuse its discretion when it declined to waive repayment of the \$49,582.47.

I note that it was not until after Ms. Laliberte appealed the Board's waiver decision did the Board decided to recoup the overpayment by stopping to pay her entire retirement allowance until the funds were restored. Thus, her present appeal does not cover that later Board decision. Although I doubt that decision can be appealed, it appears the Board remains open to adjusting its approach if it receives financial information from Ms. Laliberte. She, in turn, seems willing to provide relevant details, as long as the request is not made using a probate court form.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E Troy
Administrative Magistrate

Dated: August 8, 2025