

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

STEPHEN LAROSE,
Petitioner-Appellee

v.

STATE BOARD OF RETIREMENT
Respondent-Appellant.

CR-20-357

DECISION

The respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing its decision denying petitioner Stephen Larose Group 2 classification. The magistrate held a hearing on January 3, 2023 and admitted twelve exhibits. The DALA decision is dated January 27, 2023. SBR filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by the parties, we incorporate the DALA decision by reference and adopt the magistrate's Findings of Fact 1-8 as our own. We affirm the DALA decision for the reasons stated in the Analysis. Mr. Larose was properly classified in Group 2 for retirement purposes. Although Mr. Larose treated patients for physical medical conditions, each patient's principal illness and admission to Worcester Recovery Center and Hospital was for a severe mental illness. Mr. Larose spent more than 50% of his time engaged in the "care, custody, instruction or other supervision" of mentally ill persons pursuant to G.L. c. 32, § 3(2)(g).

Background

Mr. Larose is a physician's assistant (PA) who began his employment at Worcester Recovery Center and Hospital (WRCH) in 2012.¹ The WRCH is a locked facility operated by the

¹ Finding of Fact #1; Testimony of Mr. Larose; Ex. 10,12.

Department of Mental Health (DMH). Patients admitted to this facility have diagnoses of severe mental illnesses and require continued treatment for those conditions. Some of the most frequent diagnoses included schizophrenia, bipolar disorder, and paranoid personality disorder.² WRCH has several locked areas where patients are escorted by mental-health workers for treatment in the clinic.³

As a physician assistant, Mr. Larose's focus was on treating the patients' physical medical conditions. The patients were frequently treated for hypertension, hyperlipidemia, diabetes, and infections, which in many instances were caused or worsened by self-harm or lack of self-care resulting from the patients' mental illnesses. The patients' mental illnesses also resulted in them resisting or refusing treatments, impacting treatment of their physical medical conditions. Patients also reported side effects from psychotropic medications.⁴

Mr. Larose's duties varied from conducting physical examinations, performing medical procedures, prescribing medicines, and evaluating patients' responses to treatment. Mr. Larose did not have any administrative or supervisory responsibilities.⁵ He split his working hours between the patient wards and the medical-care clinic, spending approximately 5-6 hours of his 8.5-hour workday with direct patient interactions. The remaining hours of Mr. Larose's workday involved other aspects of medical care including communicating with nurses, writing treatment notes, and preparing referral papers.⁶ The treating providers at WRCH generally listed the physical issue as the primary diagnosis for billing purposes. From the WRCH's internal perspective, the primary diagnosis of each facility patient was a severe mental illness.⁷

On June 19, 2020, Mr. Larose submitted a Group Classification Application Form requesting his position be classified as Group 2. In support of his request, he explained that most of his days were spent in the mental health units providing primary care services to mentally ill patients. He also stated that many of the patients would not seek out care, so he would have to

² Finding of Fact #2; Testimony of Mr. Larose; Testimony of Dr. Hicks.

³ Finding of Fact #2; Finding of Fact #4; Testimony of Mr. Larose; Testimony of Dr. Hicks; Ex. 11.

⁴ Finding of Fact #6; Testimony of Mr. Larose; Testimony of Dr. Hicks.

⁵ Finding of Fact #3; Testimony of Mr. Larose; Ex. 5, 10.

⁶ Finding of Fact #5; Testimony of Mr. Larose; Testimony of Dr. Hicks; Ex. 6-11.

⁷ Finding of Fact #7; Testimony of Dr. Hicks.

check on them in the units.⁸ On September 1, 2020, SBR denied Mr. Larose's request to be classified in Group 2 for retirement purposes on the basis that he did not spend more than half of his time engaged in the "care, custody, instruction or other supervision" of patients with mental illnesses pursuant to G.L. c. 32, § 3(2)(g).⁹ Mr. Larose appealed to DALA. The magistrate allowed Mr. Larose's request for Group 2 classification, explaining that the conditions that brought patients into the facility were severe mental illnesses and that all of Mr. Larose's duties throughout the workday constituted direct patient care.¹⁰ The SBR timely appealed to CRAB on April 26, 2023, requesting that we reverse the DALA decision. Specifically, SBR avers that the care Mr. Larose performed fails to meet the statutory criteria of M.G.L. c. 32, §3(2)(g), contending that because the patients did not have mental illnesses as their primary diagnoses, Mr. Larose was not providing care to a patient population within the Group 2 classification.¹¹

Discussion

At issue in this case is G.L. c. 32, §3(2)(g)'s provision that Group 2 classification includes "employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of...persons who are mentally ill or mentally defective..." The member must show that they spent more than half of their time engaged in the "care, custody, instruction or other supervision" of the population referred to in §3(2)(g) to qualify for Group 2 classification.¹²

The magistrate found, and SBR does not dispute, that Mr. Larose spent more than half his workday providing direct care to patients at WRCH and that all patients had a diagnosed mental illness. Instead, the issues in this appeal involve whether the magistrate properly determined that Mr. Larose cared for a patient population that was mentally ill pursuant to §3(2)(g). SBR contends that the patients being treated by Mr. Larose must have primary diagnoses of a mental illness in order to be classified in Group 2, and because their primary diagnoses were not mental disorders, Mr. Larose was not providing the care specified in §3(2)(g) for a Group 2 population.

⁸ Petitioner Ex. 10.

⁹ Petitioner Ex. 1.; Respondent Ex. 10.

¹⁰ Petitioner Ex. 2.

¹¹ Respondent Memorandum of Specific Objections, p. 2-7.

¹² *Forbes v. State Bd. of Ret.*, CR-13-146 (DALA decision Dec. 23, 2016; CRAB decision Jan. 8, 2020).

Specifically, SBR contends that he was not engaged in the “care, custody, instruction or other supervision” of mentally ill persons, and therefore, he is not eligible for Group 2 classification. We do not find this argument compelling.

While we have held that persons must have a “primary diagnosis” of mental illness to qualify for Group 2 under G.L. c. 32, §3(2)(g),¹³ we explained in *Popp v. State Bd. of Retirement*, CR-17-848 (CRAB 2023) that a strict application of the primary diagnosis analysis would deviate from the plain reading of § 3(2)(g) and noted that the purpose of the primary diagnosis test is to distinguish between mental illness diagnoses that are incidental to physical illnesses from principally mentally ill patients.¹⁴

In this instance, the magistrate properly concluded that the patients Mr. Larose treated were mentally ill or mentally defective and that he determined the physical medical conditions listed as the patients’ primary diagnoses was for billing and procedural purposes. The record reflects that WRCH is a locked facility that is operated by the DMH. Patients are admitted to the facility with the primary focus of continuing treatment for serious mental illnesses.¹⁵ As the magistrate highlighted, DALA had deemed in *Tomaszewski v. State Bd. of Retirement*, CR-16-431 (DALA Dec. 2019)(*aff’d* CRAB Apr. 2024) that patients admitted to WRCH suffered from mental illnesses.

Despite the physical diagnoses, much of the treatments Mr. Larose provided centered on the patients’ mental illnesses. Mr. Larose explained that he treated them for adverse medical effects of their mental illnesses, including where their mental disorders were caused or worsened

¹³ *Pulik v. State Bd. Of Ret.*, CR-10-605 (CRAB Jul. 10, 2012) (holding that CRAB does not rely on secondary diagnoses in concluding that patients are mentally ill under G.L. c. 32 §3(2)(g)); *Lorrey v. State Bd. of Ret.*, CR-09-553 (DALA decision Nov. 22, 2013; affirmed by CRAB Dec. 19, 2014).

¹⁴ *Nowill v. State Bd. Of Ret.*, CR-08-558 (DALA decision July 21, 2011; affirmed by CRAB May 17, 2012; CRAB decision on motion for reconsideration as corrected July 10, 2012) (excluding patients admitted for treatment of neuromuscular disorders with secondary mental illnesses); *Pulik*, CR-10-605 at 7 (discussing the unimportance of symptoms that merely correlate with a patient’s principal illness); *Popp v. State Bd. Of Ret.*, CR-17-848 (DALA decision Oct. 22, 2021; affirmed by CRAB Nov. 16, 2023) (held that an LPN II is not excluded from Group 2 classification because the purpose of the patient’s hospice diagnosis was to allow patients better access to care for dementia and that Popp’s work was still centered on the patient’s mental infirmities).

¹⁵ Finding of Fact #2; Testimony of Mr. Larose; Testimony of Dr. Hicks.

by self-harm or lack of self-care, resulted from the patients' resisting or refusal of treatments because of their mental illnesses, or resulted from side effects of psychotropic medications. He also reported frequently spending time in the patient wards providing care.¹⁶ Mr. Larose reported, and Mr. Hicks confirmed, that the patients' physical health were often caused or worsened by the effects of their mental illnesses.¹⁷ Further, Mr. Hicks explained that while the patients had physical medical conditions listed as their primary diagnoses, this was for billing and procedural purposes.¹⁸ Based on the above, the magistrate determined that the patient population cared by Mr. Larose was mentally ill and therefore, Mr. Larose was properly classified in Group 2. In so deciding, the magistrate credited the testimonies of Mr. Larose and Mr. Hicks. We conclude the magistrate's decision is reasonable and defer to the magistrate's subsidiary and credibility findings. *Vinal*, Mass. App. Ct. 85, 97, 100 N.E.2d 440 (1982), *Kalu v. Boston Retirement Bd.*, 61 N.E.3d 455, 464 (Mass. App. 2016).

With regard to SBR's argument that the primary diagnosis test requires that the "care" in the context of §3(2)(g) is restricted to psychiatric or psychological treatment, we find this also lacks merit. We agree with the magistrate that this produces an erroneous result by excluding prisoners or mentally ill persons, who receive various types of "care, custody, instruction or other supervision." "We interpret the language of the statute 'in accordance with its plain meaning, and if the language is clear and unambiguous, it is conclusive as to the intent of the legislature,'" *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words); See also *Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003) (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001))("[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature

¹⁶ Finding of Fact #6; Testimony of Mr. Larose; Testimony of Dr. Hicks.

¹⁷ Finding of Fact #32, 6; Testimony of Mr. Larose; Testimony of Dr. Hicks. *Micle v. State Bd. of Ret.*, CR-18-0657 (DALA decision Dec. 23, 2022, no CRAB decision) (denying Group 2 classification because the condition that led to the patient's admission to a facility, or more properly known as the principal diagnosis, was neurorehabilitation, and only secondarily received mental health care).

¹⁸ Finding of Fact #7; Testimony of Dr. Hicks; *Popp*, CR-17-848 at 6 (the primary diagnosis of hospice was a matter of procedure and was used to designate the patients' care, the direct care that was provided to patients was centered on their dementia).

unless to do so would achieve an illogical result."). Thus, we do not read §3(2)(g) as limiting care to psychiatric or psychological treatment.

Moreover, the cases cited by SBR to support its argument that the care referred to in §3(2)(g) refers to mental health treatment are distinguishable from this matter.¹⁹ In *Miers*, DALA determined that there was no evidence that the patients who were admitted to the Western Massachusetts Hospital for treatment of their neuromuscular conditions and not psychiatric disorders, suffered from mental illnesses. Therefore, Group 2 classification was denied. Unlike the patients in *Miers*, the record here reflects that Mr. Larose cared for patients with mental illnesses. In *Pulik*, the primary issue was whether dementia is deemed to be a mental illness. In this instance, the parties do not dispute that the patients served by Mr. Larose have mental illnesses. The *Borucki*, *Digris*, and *Massai* cases all involve the issue of whether the petitioners satisfied the criteria that they spent more than half their time engaged in the "care, custody, instruction or supervision" of mentally ill persons. This is not at issue here. There is no dispute that Mr. Larose spent more than half his time engaged in direct care of the patients. In *Richard*, the patients were admitted for treatment in response to a medical diagnosis and not a psychiatric diagnosis. Here, WRCH is a locked facility operated by DMH, where patients are admitted for treatment of their mental illnesses.²⁰ These cases do not assist the SBR in this appeal.

Conclusion

Mr. Larose's major and regular duties involved the "care, custody, instruction, or other supervision" of mentally ill individuals pursuant to G.L. c. 32, §3(2)(g). Accordingly, Mr. Larose is entitled to Group 2 classification for his service with the Worcester Recovery Center and Hospital. The DALA decision is affirmed. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Clyen M. Tran

¹⁹ *Miers v. State Bd. of Retirement*, CR-06-441 (DALA Aug. 2007); *Pulik v. State Bd. of Retirement*, CR-10-605 (DALA Aug. 2011)(*aff'd* CRAB July 2012); *Borucki v. State Bd. of Retirement*, CR-12-683 (DALA Apr. 2016); *Digris v. State Bd. of Retirement*, CR-13-109 (DALA July 2015); and *Massai v. State Bd. of Retirement*, CR-15-6 (DALA Feb. 2018).

²⁰ Finding of Fact #2; Testimony of Mr. Larose; Testimony of Dr. Hicks.

Uyen M. Tran, Esq.
Assistant Attorney General
Chair
Attorney General's Appointee

Nicolle M. Allen

Nicolle M. Allen, Esq.
Governor's Appointee

Patrick M. Charles

Patrick M. Charles, Esq.
Public Employee Retirement Administration
Commission Appointee

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