THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Susan Lauder,

**Petitioner**

v. Docket No. CR-15-303

DATED: June 16, 2017

Massachusetts Teachers’

Retirement System,

**Respondent**

**Appearance for Petitioner:**

*Pro Se*

530 Pleasant Street

Leicester, MA 01524

**Appearance for Respondent:**

James C. O’Leary, Esquire

General Counsel

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue, Suite 210

Charlestown, MA 02129-1628

**Administrative Magistrate:**

Judithann Burke

**Case Summary**

The Petitioner, who failed to purchase her service from September 1993 through June 1994 in the Wachusett Regional School District by August 16, 2014, is not entitled to purchase the remainder of her state service at the earlier-imposed interest rate. Rather, she is bound by the statutorily-imposed current actuarial interest rate.

**DECISION**

The Petitioner, Susan Lauder, is appealing from the June 9, 2015 decision of the Respondent, Massachusetts Teachers’ Retirement System (MTRS) denying her request for an updated invoice of her Refund Buyback. (Exhibit 1.) The appeal was timely filed on June 23, 2015. I held a hearing on November 10, 2016 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester, MA. I marked Exhibits 1-15. The Petitioner testified and argued in her own behalf. The MTRB presented no witnesses. The parties submitted pre-hearing memoranda of law. (MTRS-Attachment A; Petitioner-Attachment B.) The hearing was digitally recorded.

**FINDINGS OF FACT**

Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Susan Lauder, was employed as a substitute teacher in the Wachusett Regional School District from September 1993 through June 1994. (Petitioner Testimony & Exhibits 8-10.)
2. In 2011, the Massachusetts General court passed Chapter 176 of the Acts of 2011 that amended G.L. c. 32, § 3(8)(b) and changed the interest rate for creditable service purchases from the “buyback” rate of 4.25% to the “Actuarial Assumed Interest” rate of 8.25%.
3. The November 2011 amendment to Section 3(8)(b) provided that if certain members wished to preserve their rights to certain types of service at the “buyback rate”, they were required to “pay” (or enter into an installment agreement) before April 2, 2013.
4. In June 2004, the Petitioner originally applied to purchase creditable service for time she was employed in the Wachusett Regional School System for the period of time from September 1989 through June 1993. (Exhibits 2-4.)
5. In June 2004, the MTRS billed the Petitioner for this service. She paid the invoice through a rollover and an installment plan. The purchase was completed by February 2008. (*Id.*)
6. In February 2013, the Petitioner applied to purchase time in the Wachusett Regional School District from September 1993 through June 1994. (Exhibit 8.)
7. In June 2014, the MTRS billed the Petitioner for this service, including with the invoice an Interest Increase Alert informing her that if she wished to have the “buyback” interest rate applied to her purchase, by the due date of the invoice (August 16, 2014), she needed to make either: 1) payment in full; or 2) enter into an installment plan and make her first payment by the invoice’s due date. (Exhibit 9.)
8. The invoice was addressed to the Petitioner at her home address of 530 Pleasant Street, Leicester, MA 01524-1239.
9. The Petitioner does not recall receiving this invoice or the Interest Increase Alert. She did not pay the invoice or enter into an installment agreement. (Petitioner Testimony.)
10. In October 2014, the Petitioner and her husband changed from having mail delivered to their mailbox at home to receiving it in a post office box. The home mailbox was located at the end of the long driveway on the property and could not be seen from the home. (*Id.* & Exhibit 15.)
11. In response to several phone inquiries from the Petitioner, in a letter dated July 25, 2014, Kelsey Andrews, Senior Benefits Coordinator at the MTRS, informed the Petitioner of the total amount of creditable service as of June 30, 2014. There was no mention of the earlier invoice or Interest Increase Alert in this letter. (Exhibit 14.)
12. The MTRS billed the Petitioner for the service in question again in May 2015. This invoice applied the new, actuarial interest to the purchase. (Exhibit 10.)
13. In a letter dated June 9, 2015, the MTRS denied the Petitioner’s request to have the buyback interest rate applied to the purchase. (Exhibit 1.)
14. The Petitioner filed a timely appeal on June 23, 2015.
15. The Petitioner retired effective October 11, 2015.

**CONCLUSION**

The Petitioner is not entitled to prevail in this appeal. She has not identified any factual or legal basis upon which to set aside the clear requirements of the law that she must pay the actuarial interest rate. It is through no fault of the MTRS that she did not respond to the invoice in 2014 or heed the Interest Increase Alert enclosed therewith. The MTRS fulfilled its obligation by mailing the documents to her home address and bears no additional burden for any problems related to her home mail box. Further, Kelsey Andrews was under no duty to inform her of the June 2014 invoice or the Interest Increase Alert in the July 25, 2014 letter.

The clear language of [Section] 3(8)(b) does not permit s member to receive the buyback rate if [he] does not make payment within the time specified, regardless of that member’s efforts.

See *Turner v. MTRS,* CR-13-306 (Division of Administrative Law Appeals 2/11/15) (no Contributory Retirement Appeal Board Decision) and *Dunse v. MTRS,* CR-14-285 (Division of Administrative Law Appeals 12/4/15) (no Contributory Retirement Appeal Board Decision.)

In summary, the Petitioner has not demonstrated any arbitrary or capricious actions, mistakes or other wrongdoing of the MTRS. Rather, the MTRS has applied the principles of retirement law correctly. It should be noted that neither G.L. c 32, § (8)(b) or § 25 (5)(c)(3) provide for any equitable remedies, although no equitable considerations are due in this case. See *Bristol County Retirement Board v. Contributory Retirement Appeal Board,* 65 Mass. App. Ct. 413 (2006). The decision of the MTRS is affirmed.

So ordered.

BY:

Division of Administrative Law Appeals,

Judithann Burke

Administrative Magistrate DATED: June 16, 2017

DATED: November 2, 2016