

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

ABBY LEVIN,
Petitioner

v.

MASSACHUSETTS TEACHERS'
RETIREMENT SYSTEM,
Respondent

Docket No. CR-20-0430

Date: April 28, 2023

Appearance for Petitioner:

Abby Levin, *pro se*
Salem, NH 03079

Appearance for Respondent:

Massachusetts Teachers' Retirement System¹
Charlestown, MA 02129

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System's determination that the Petitioner is not eligible to purchase her prior service as a social worker is affirmed. The Petitioner's work as a social worker did not qualify her as someone "who was previously engaged in teaching pupils" as required under G.L. c. 32, § 4(1)(p). She taught the students social and emotional skills; "teaching pupils," on the other hand, involves teaching traditional academic and vocational subjects.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Abby Levin, appeals the October 5, 2020, decision by the Respondent, the Massachusetts Teachers' Retirement System ("MTRS") denying

¹ MTRS was originally represented by Marko Samardzic. Attorney Samardzic is no longer at this position.

her request to purchase creditable service under G.L. c. 32, § 4(1)(p). DALA issued a scheduling order indicating that the matter could be decided without a hearing and instructing the parties to file memoranda and evidence in support of their positions. The Petitioner had previously submitted a letter with her appeal. On May 7, 2021, the Petitioner filed a memorandum along with an exhibit. On July 2, 2021, the Petitioner filed another memorandum and another exhibit. MTRS filed a memorandum and exhibits on July 28, 2021. At that point, the record closed.

MTRS submitted 8 exhibits, which I admit into evidence. One of the Petitioner's exhibits is contained within MTRS's submission; I admit the Petitioner's other exhibit into evidence.

FINDINGS OF FACT

Based on the exhibits, I find the following facts:

1. The Petitioner is an active member of the MTRS and is presently employed with the Andover Public Schools. (Exhibit 2.)
2. The Petitioner filed an application for nonpublic school creditable service with the MTRS for her work as a social worker at the Northampton Center for Children and Families from 1979-1980. (Exhibit 2.)
3. At Northampton, the Petitioner worked directly with students, but she did not teach academic courses. Instead, she worked on their learning, functioning and emotional issues; she taught them "academic management skills, peer interaction skills, anger management skills, and how to work successfully within the school settings." (Exhibit 8.)
4. On October 5, 2022, the MTRS denied her application because her service as a social worker did not qualify her as someone "who was previously engaged in teaching pupils" as required under G.L. c. 32, § 4(1)(p). (Exhibit 1.)
5. The Petitioner filed a timely appeal with a letter postmarked October 19, 2022.

CONCLUSION AND ORDER

A summary decision may be granted when “there is no genuine issue of fact relating to all or part of a claim.” 801 Code Mass. Regs. § 1.01(7)(h). “In such a circumstance, a hearing serves no useful purpose.” *Jordan v. State Bd. of Ret.*, CR-21-0201, 2022 WL 16921458 (DALA Feb. 18, 2022). This is such a case.

“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).

The Petitioner argues that she is entitled to creditable service because she “spent a year teaching students in their residential setting.” However, to be eligible for creditable service, the Petitioner must show that her job involved “teaching pupils.” See G.L. c. 32, § 4(1)(p). Unfortunately for the Petitioner, “teaching pupils” is about what you taught, not who you taught. DALA and CRAB have interpreted what constitutes “teaching pupils” under § 4(1)(p) more and less generously in the past, but recently CRAB has clarified its position. The term “engaged in teaching pupils . . . include[s] instruction in the academic and vocational subjects that are typically taught for credit in the public schools, generally in the classroom, but not the myriad of other special education services that are provided in alternative day and residential schools, including instruction in life, coping, social, and emotional skills.” *Lukasik v. Mass. Teachers' Ret. Sys.*, CR-15-668 (CRAB Feb. 21, 2020).

The Petitioner’s duties at Northampton consisted almost exclusively of assisting students with activities of daily living. She helped them with social and emotional learning which, as she

notes, "is the foundation for the creation of a healthy productive adult." The Petitioner provided an invaluable service. But credit for service under § 4(1)(p) is reserved exclusively for members who taught academic or vocational subjects in a school setting. *See, e.g., Verbits v. Mass.*

Teachers' Ret. Sys., CR-17-1032 (DALA May 27, 2021) (school psychologist who taught social and emotional skills to students not eligible); *Burke v. MTRS*, CR-16-259 (DALA July 24, 2020) (teacher who taught "functional academics" and life skills not eligible); *Dibella v. MTRS*, CR-10-0181 (DALA March 4, 2016) ("A therapist, even one who provides services in a classroom to students, is not teaching students academics.")

For these reasons, the MTRS' decision denying the Petitioner's application to purchase out of state creditable service is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate