

## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Diane McFarland McMorrow,**  
Petitioner

v.

Docket No. CR-22-0627

Date: Jan. 24, 2025

**Massachusetts Teachers'  
Retirement System,**  
Respondent

**Appearance for Petitioner:**

Diane McMorrow, *pro se*

**Appearance for Respondent:**

Lori Curtis Krusell, Esq.  
Massachusetts Teachers' Retirement System  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129

**Administrative Magistrate:**

Kenneth J. Forton

### SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System properly determined that Petitioner was not eligible to purchase creditable service for work performed at the Worcester Prevention Center because she was an employee of two not-for-profits and not a governmental unit. Receiving grant funding from government agencies does not make the Center a governmental unit.

### DECISION

Petitioner Diane McFarland McMorrow appealed timely under G.L. c. 32, § 16(4), the December 13, 2022 decision of Respondent Massachusetts Teachers'

Retirement System (MTRS) that determined she was not eligible to purchase creditable service for her work at the Massachusetts Prevention Center in Worcester from February 1, 1995 to June 15, 2001.

On October 12, 2023, the Division of Administrative Law Appeals (DALA) ordered the parties to file pre-hearing memoranda and supporting documents. Ms. McMorrow submitted supporting documents and a letter dated November 1, 2023. MTRS submitted a memorandum of law and supporting documents on January 19, 2024.

I held a hearing by Webex videoconference on December 5, 2024 at DALA, 14 Summer Street, 4th floor, Malden, MA 02148. It was digitally recorded. I admitted 36 exhibits into evidence at the hearing. (Exhibits 1-36.) Ms. McMorrow testified on her own behalf. She also called Charles Radlo, a former Department of Education employee, and Lisa Federici, a similarly situated worker from the Cambridge Prevention Center. MTRS called no witnesses.

At the conclusion of the hearing, I left the administrative record open for the parties to provide additional documents probative of the relationship between Massachusetts government agencies and the Worcester Prevention Center. On December 15, 2024, Ms. McMorrow submitted her closing brief and 6 additional exhibits, which I now admit as Exhibits 37-42. On January 3, 2025, MTRS submitted its closing brief and one additional exhibit, which I now admit as Exhibit 43.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties, I make the following findings of fact:

1. Diane McMorrow is an active member of MTRS. She is employed with the Quabbin Regional School System, beginning on or around September 1, 2002. Before that, she was employed by the Nashoba Regional School District from August 29, 2001 until June 30, 2002. She holds a professional teaching license. (Testimony McMorrow; Ex. 9, 10.)

2. From February 1, 1995 through March 27, 1997 and January 1999 through June 15, 2001, Ms. McMorrow worked at the Worcester Prevention Center. During her first stint, she was a Community Health Specialist. During the second period, she was Assistant Director. (Testimony McMorrow; Exs. 3-8, 11.)

3. A regional network of Prevention Centers, which included the Worcester Center, was funded by grants from the Massachusetts Department of Public Health (DPH) and the Massachusetts Department of Education (DOE). (Testimony McMorrow, Radlo, Federici.)

4. Each Prevention Center was managed by a host organization, like Community Health and Prevention Services (CHAPS) or Spectrum Health, each of whom managed the Worcester Center. (Testimony McMorrow, Federici; Ex. 11.)

5. A 1998 Prevention Center newsletter describes the Worcester Center as “a program of Spectrum Health Systems, Inc.” (Ex. 43.)

6. Promotional material for the Prevention Centers explained that the Centers were “supported by” DPH and DOE. (Ex. 26.)

7. A variety of contemporaneous literature, guides, pamphlets and other papers describe how the network of Prevention Centers was funded by DPH, DOE, and

the Bureau of Substance Abuse Services. They also describe how the Prevention Centers worked with local schools and addiction programs. (Exs. 37-42.)

8. Each year, each local Prevention Center created an annual plan to address local community public health issues; the plans were approved by DPH and DOE. Ms. McMorrow and the other Prevention Center employees met approximately monthly with representatives from the state agencies to report on progress. (Testimony McMorrow, Radlo; Ex. 11.)

9. Some of the subject areas that Ms. McMorrow worked in include tobacco policy, substance abuse prevention, sexuality education, peer leadership training, and comprehensive health education. Ms. McMorrow spent a substantial part of her time meeting with public schools to help them in these areas. (Testimony McMorrow; Exs. 11, 12.)

10. Ms. McMorrow reviewed and purchased comprehensive health education materials for the Center's lending library, helped school districts set up comprehensive health education programs, train teachers on health education/science-based curricula, and trained peer leaders. (Testimony McMorrow; Ex. 34.)

11. Ms. McMorrow was hired by, and reported to, the Director of the Worcester Prevention Center. The Director managed Ms. McMorrow day-to-day and evaluated her work. The state agencies did not deal with Ms. McMorrow's individual performance. She submitted her time sheets to CHAPS and Spectrum Health. (Testimony McMorrow; Ex. 11.)

12. Ms. McMorrow met at least monthly with representatives from DOE and DPH to review how her work was going. (Testimony McMorrow, Radlo.)

13. Ms. McMorrow's 1995, 1996, and 1997 W-2s list (CHAPS), 71 Pleasant Street, Suite 8, Leominster, MA as her employer. (Exs. 3, 4, 5.)

14. CHAPS was a non-profit corporation. It merged into Spectrum Health Systems, Inc., another non-profit corporation, on July 1, 1997. (Exs. 35, 36.)

15. According to her 1999, 2000, and 2001 W-2s, she was employed by Spectrum Health Systems, Inc., 100 Locke Drive, Marlboro, MA. The same employer is listed on a paystub dated May 19, 2000. (Exs. 2, 6, 7, 8.)

16. CHAPS and Spectrum Health paid Ms. McMorrow directly. She received her benefits from these employers. They also granted her sick time and managed that time. Ms. McMorrow contributed to Social Security and a 401(k) account and did not participate in the state retirement system. (Testimony McMorrow; Exs. 3-8.)

17. Ms. McMorrow first applied to purchase service credit for her Worcester Prevention Center employment in 2013. She failed to submit Part 2 of the application, which is supposed to be filled out by a payroll official of a Massachusetts governmental unit. She was reminded several times by MTRS that she needed to complete her application. She ultimately abandoned this application. (Ex. 34.)

18. On May 2, 2022, Ms. McMorrow re-applied to purchase service credit for "other Massachusetts public service" under G.L. c. 32, § 3(5). (Ex. 30.)

19. On the application, she identified her employer as "MDPH and MA Department of Education" with the position/title of "Community Health Specialist." She listed her period of service as February 1, 1995 through June 15, 2001. (Ex. 30.)

20. By letter dated December 13, 2022, MTRS denied Ms. McMorrow's application. The reason listed was "service must have been rendered as an employee of

the city, town, municipal or state governmental agency in Massachusetts. Since you were employed by a private entity, your service is ineligible at this time.” (Ex. 28.)

21. On December 16, 2022, Ms. McMorrow timely appealed the Board’s denial. (Ex. 29.)

### **CONCLUSION AND ORDER**

When a Chapter 32 retirement system member retires from public service, she is entitled to a superannuation retirement allowance that is based on age, years of creditable service, an average of three or five years of regular compensation, and group classification. G.L. c. 32, § 5(2)(a). Creditable service, at issue in this case, is defined as “all membership service, prior service and other service for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive.” G.L. c. 32, § 1. “Generally, teachers accumulate creditable service by working in public schools in Massachusetts, which is counted as membership service.” *Cintolo v. Massachusetts Teachers’ Retirement System*, CR-13-514 (DALA Jan. 16, 2015). Teachers may also purchase creditable service, as Ms. McMorrow is seeking to do under G.L. c. 32, § 3(5), for certain non-membership service. *Levy v. Cambridge Retirement Bd.*, CR-11-636 (DALA Mar. 30, 2012).

Section 3(5) states, in relevant part, that a member may purchase credit for service rendered “as an employee of any governmental unit other than that by which he is presently employed.” The retirement law defines “employee” as someone who was “paid by any political subdivision of the commonwealth.” G.L. c. 32, § 1. *See MacLeod v. MTRS*, CR-16-318 (DALA May 17, 2019) (pay checks and tax documents came from Temp Ed Associates, a private company, so Petitioner could not purchase prior service

because she was not employed by a governmental entity). Consequently, service rendered to a private entity is ineligible for purchase under § 3(5). *See Filkins v. State Bd. of Ret.*, CR-11-715 (CRAB Jan. 8, 2020) (“Employment with a nonprofit organization is not considered employment with a governmental unit.”); *Bagley v. MTRS*, CR-16-166 (DALA March 8, 2019) (“A private corporation is not a political subdivision of the Commonwealth.”).

MTRS rejected Ms. McMorrow’s application because it concluded that she did not work for a governmental unit. Ms. McMorrow argues that, although she was paid by private, not-for-profit corporations for her work, those entities were merely conduits for state grant funding and she took a majority of her direction from employees of DPH and DOE. A preponderance of the evidence supports MTRS’s conclusion.

The Worcester Prevention Center, like the other Prevention Centers, was a program run by private, not-for-profit corporations: CHAPS and subsequently Spectrum Health. The Centers were funded by annual grants from DOE and DPH. Each year, each of the 10 regional Centers generated an annual action plan for the spending of the grant. Those plans were then approved by DPH and DOE. DALA has made it clear that receipt of grant funds does not mean that an entity is functioning as a governmental unit. *Pavoni v. State Bd. of Retirement*, CR-05-1365 (DALA Feb. 17, 2006).

In Ms. McMorrow’s roles, she met monthly, and sometimes more frequently, with government liaisons who helped her navigate state bureaucracy and achieve the goals stated in the annual plan. However, Ms. McMorrow was hired by the Director of the Worcester Prevention Center and was managed and reviewed by the Director. She spent

a majority of her time in the field at public schools and other public locations, but, when she was in the office, she worked at the Prevention Center Office.

Ms. McMorrow was paid directly by CHAPS and Spectrum Health. She filled out company time sheets. Her sick and vacation time were administered by CHAPS and Spectrum Health. She contributed to Social Security and a 401(k) plan. She did not participate in a contributory retirement plan to which public employees belong. “These are well-established signs that the corporation was independent and not a political subdivision of the Commonwealth.” *Clough v. MTRS*, CR-14-11, at \*5-6 (DALA Feb. 28, 2018) (Petitioner was an employee of the corporation, she was hired and evaluated by the corporation, and her checks were issued by a fiscal agent of the corporation).

Ms. McMorrow seems to think that because the work of the Prevention Centers was supported by state grants, that must mean that they were governmental units. She has not been able to point me to any legislation or other supporting evidence that would lead me to conclude that the Prevention Centers were instrumentalities of the state.<sup>1</sup> It appears that they functioned like many other government contractors: helping the government achieve policy goals. That does not make the Centers governmental units. *See Carter v. MTRS*, CR-07-1155 (DALA Apr. 27, 2012) (petitioner was not working for a “governmental unit” even though it was funded by block grants, discussing definitions section in the retirement statute that offers guidance as to which organizations may be

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<sup>1</sup> It is unclear what legal status the Prevention Centers had. It is possible that they were funded by appropriations made by the Legislature from the Health Protection Fund. Acts 1992, c. 254 (establishment of Health Protection Fund); *see also, e.g.*, Acts 2001, c. 177, § 2, line items 4590-250 and 4590-0300 (annual appropriations). Some of the appropriations also possibly came from the Tobacco Settlement Fund. *See* G.L. c. 29, § 2XX (repealed Acts 2003, c. 26, § 156).



properly categorized as governmental units); *Davis v. Teachers' Ret. Sys.*, CR-02-46 (DALA May 24, 2002) (alcohol and substance abuse program incorporated as non-profit corporation receiving appropriations from a municipality and the state plus a federal grant not a governmental unit).

Ms. McMorrow's final argument is that because MTRS allowed Ms. Federici, a former employee of the Cambridge Prevention Center, to purchase her service, Ms. McMorrow should be allowed as well. MTRS concedes that it may have been mistaken in its determination that Ms. Federici was eligible to purchase the service. Even if this is the case, however, Ms. McMorrow is entitled only to what Chapter 32 provides for her. *See Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Moynihan v. Contributory Ret. App. Bd.*, 104 Mass. App. Ct. 1108, at \*7-8 (2024) (unpublished memorandum opinion). If MTRS mistakenly determined that Ms. Federici was eligible, it cannot be allowed to compound its mistake by thereafter allowing ineligible employees to also purchase their service.

For the above-stated reasons, the decision of MTRS to deny Ms. McMorrow's application to purchase service credit for her work at the Worcester Prevention Center from February 1, 1995 through March 27, 1997 and January 1999 through June 15, 2001 is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ *Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

DATED: Jan. 24, 2025