COMMONWEALTH OF MASSACHUSETTS

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

Scott Monroe,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-24-0627

Dated: September 5, 2025

Appearances:
For Petitioner: Scott Monroe (pro se)
For Respondent: Yande Lombe, Esq.
For Massachusetts Teachers' Retirement System: James C. O'Leary, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

Retirement credit cannot be purchased for out-of-state teaching service that was accompanied by a "retirement allowance." G.L. c. 32, § 3(4). A published regulation defines the term "retirement allowance" as excluding a "defined contribution plan offered . . . as a supplemental plan." 807 C.M.R. § 19.04. The petitioner participated in a "hybrid cash balance plan" at his out-of-state teaching position. In an effort to adjudicate his entitlements on clear and narrow grounds, this decision makes various assumptions in the petitioner's favor and focuses on whether his "hybrid cash balance plan" was a "defined contribution plan." Because the answer is no, the petitioner is not entitled to make a purchase under § 3(4).

DECISION

Petitioner Scott Monroe appeals from a decision of the State Board of Retirement (state board) denying his application to purchase retirement credit for a period of pre-membership, out-of-state teaching service. The appeal was submitted on the papers without objection. The parties submitted memoranda and exhibits. The Massachusetts Teachers' Retirement System (MTRS) filed a brief, and the Public Employee Retirement Administration Commission (PERAC) declined to participate. I admit into evidence exhibits marked 1-17.

Findings of Fact

1. In 2007-2009, Mr. Monroe served as a teacher in the California public schools. While there, he participated in two state-administered pension plans. (Exhibit 1.)

2. The first plan was a traditional "defined benefit" plan, i.e., one that calculated its members' benefits without reference to the amounts of their contributions.[1] Mr. Monroe's employer never contributed to the defined benefit plan on his behalf; and Mr. Monroe never "vested" in that plan in the sense of becoming entitled to benefits from it. (Exhibit 4.)

3. The second plan was known as the "Defined Benefit Supplement Program" (DBSP). The DBSP was not a traditional defined benefit plan. But it also was not a traditional "defined contribution" plan, namely one that entitles participants only to the risk-exposed assets accumulated in their individual accounts (e.g., a 401(k) plan). Instead, the DBSP was characterized as a "hybrid cash balance plan." More specifically, the DBSP tracked a balance for each employee; increased the balance based on contributions from the employee, contributions from the employer, and a guaranteed annual percentage (untied to market performance); and offered employees lifetime annuities derived from their closing balances. Mr. Monroe's employer made contributions to his DBSP account in connection with his pay for work exceeding his standard teaching schedule. (Exhibits 5-8.)

4. Approximately in 2015, Mr. Monroe moved to Massachusetts, became a professor at the University of Massachusetts, and established membership in the retirement system administered by the state board. In 2022, Mr. Monroe presented the state board with an

[1] These findings' characterizations of the various types of retirement plans are drawn both from record documents and from pertinent precedents. *See, e.g.*, *Boston Globe Media Partners, LLC v. Retirement Bd. of Mass. Bay Transp. Auth. Ret. Fund*, 33 Mass. L. Rptr. 374 (Super. Ct. 2016); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439-41 (1999).

application to purchase retirement credit for his two years of work in California. The state board denied the application on the basis that the DBSP was "a retirement allowance from any other state." G.L. c. 32, § 3(4). Mr. Monroe timely appealed. (Exhibits 13, 14.)

Analysis

A Massachusetts public employee may purchase retirement credit for out-of-state teaching service only if that service did not earn the employee an out-of-state "retirement allowance." G.L. c. 32, § 3(4). Under an MTRS regulation, the term "retirement allowance" in this context does not include a "defined contribution plan offered . . . as a supplemental plan." 807 C.M.R. § 19.04(2). The questions presented in this appeal are whether that regulatory interpretation of § 3(4) covers Mr. Monroe's case; what that interpretation means; and ultimately, whether Mr. Monroe's participation in the DBSP makes him ineligible to purchase credit for his California service. The discussion that follows makes several assumptions in Mr. Monroe's favor and concludes that he nevertheless remains ineligible to make a § 3(4) purchase.

I. Context

The retirement benefits of a Massachusetts public employee depend in part on the employee's tally of "creditable service." G.L. c. 32, § 5(2)(a). As a general rule, employees receive credit only for periods when they worked for Massachusetts governmental units and belonged to Massachusetts public retirement systems. *Id.* § 4(1)(a).

Certain statutes allow employees to purchase credit for periods of pre-membership work. The statute pertinent here is G.L. c. 32, § 3(4), which governs purchases of "service in any other state . . . as a teacher . . . in the public day schools." Such purchases may be made by "[a]ny member in service . . . who is employed in a teaching position . . . in a school or college." *Id.*

Most members in "teaching position[s]," *id.*, are "teachers" under the retirement law and therefore members of MTRS. *See id.* §§ 1, 20(2). But there are exceptions. As pertinent here,

higher-education employees like Mr. Monroe may serve in teaching positions at colleges while belonging to retirement systems other than MTRS. *See Lally v. State Bd. of Ret.*, No. CR-06-0251 (Contributory Ret. App. Bd. Feb. 24, 2010); *Kehoe v. State Bd. of Ret.*, No. CR-99-619 (Contributory Ret. App. Bd. July 6, 2001), *overruled on other grounds by Mackay v. Contributory Ret. Appeal Bd.*, 56 Mass. App. Ct. 924 (2002).

A proviso to § 3(4) says: "provided, that no credit shall be allowed . . . for any service for which the member shall be entitled to receive a retirement allowance from any other state." The meaning of the term "retirement allowance" in this passage is the focus of this appeal.

A key question in this context is whether the term "retirement allowance" specifically denotes defined benefit plans—i.e., the same general type of plan that Massachusetts public employees receive under chapter 32. *See Early v. State Bd. of Ret.*, 420 Mass. 836, 841 (1995). In an important case, the Contributory Retirement Appeal Board (CRAB) declined to read § 3(4) so narrowly. At issue there was a defined contribution plan under 26 U.S.C. § 403(b). CRAB wrote:

> [The member] argues . . . that the reference in G.L. c. 32, § 3(4) to receipt of a "retirement allowance" from another state for the same service years refers only to receipt of a defined benefit allowance . . . . We reject this assertion . . . .
>
> Where the General Laws do not define "retirement allowance" in the context of other states' plans, it is reasonable to conclude that the Legislature intended to include *payments from any type of retirement plan provided by other states for the relevant teaching positions*. . . . [S]ome states provide only defined contribution plans . . . .

Sullivan v. Massachusetts Teachers' Ret. Syst., No. CR-07-639, 2012 WL 13406337, at *2-3 (Contributory Ret. App. Bd. Nov. 16, 2012) (emphasis added).

Sullivan is not necessarily the last word on the exact meaning of § 3(4). While the case was being litigated, and after the underlying events had occurred, a regulation interpreting § 3(4)

was promulgated by MTRS and approved by PERAC. The regulation defines the term "retirement allowance" under § 3(4) to mean:

> any out of state governmental defined benefit plan, *or defined contribution plan offered* in lieu *of a defined benefit plan or as the sole retirement plan but not as a supplemental plan*, in which a member is eligible to receive, or has received, a benefit based in whole or in part upon employer contributions.

807 C.M.R. § 19.04(2) (emphasis added). One important element of this definition is that it views any plan as a "retirement allowance" only if the plan includes some "employer contributions." A plan funded solely by the member is not the kind of duplicative benefit that the Legislature sought to prohibit. *See Telesco v. State Bd. of Ret.*, No. CR-24-313, 2025 WL 561901 (Div. Admin. Law App. Feb. 14, 2025).

Another aspect of § 19.04 is key here. Consistent with *Sullivan*, the regulation does not view the term "retirement allowance" in § 3(4) as limited to defined benefit plans. But the regulation's definition does not reach *all* defined contribution plans: it makes an exception for a "defined contribution plan offered . . . as a supplemental plan."

Returning to the DBSP, that program is a "type of retirement plan provided by other states for the relevant teaching positions." *Sullivan*, 2012 WL 13406337, at *3. Under *Sullivan* alone, the DBSP would have been a purchase-disqualifying "retirement allowance" for purposes of § 3(4). The overarching question in this appeal is whether the addition of § 19.04 into the mix changes the outcome.

II. Disputed Issues

Three subsidiary questions are presented: One, does the rule stated in 807 C.M.R. § 19.04 apply to Mr. Monroe's purchase application even though he is not a member of MTRS? Two, generally speaking, what does § 19.04 mean when it speaks of non-disqualifying

"supplemental" plans? Three, more specifically, is the DBSP a non-disqualifying "supplemental" plan?

In an effort to adjudicate Mr. Monroe's entitlements on clear and narrow grounds, this decision assumes answers favorable to him to the first two questions. More specifically, I assume: (a) that § 19.04 accurately reflects the rule applicable to Mr. Monroe's case; and (b) that a permissible "supplemental" plan under § 19.04 is any "defined contribution plan" that an employer offers to its employees *in addition to* a defined benefit plan. Even so, Mr. Monroe is not entitled to purchase credit for his California service, because the DBSP in particular does not count as a defined contribution plan; it therefore is not a qualifying supplemental plan even under § 19.04. The following sections explain.

A. The Regulation's Applicability

Eight hundred and seven C.M.R. § 19.04 was promulgated by MTRS, to which Mr. Monroe does not belong. PERAC, the agency with "over-all responsibility to administer the . . . retirement system," *Barnstable Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 43 Mass. App. Ct. 341, 345 (1997), reviews all retirement-system regulations for their "conformity with law and regulations," G.L. c. 7, § 50(b); but even so, the case law indicates that each retirement system's regulations control only that system's members. In *Evans v. Contributory Ret. Appeal Bd.*, 46 Mass. App. Ct. 229 (1999), a member of the Boston Retirement Board complained about a DALA magistrate's citation to an MTRS regulation. The Appeals Court brushed off the issue, saying: "The magistrate of course understood that regulations of [MTRS] did not extend to the Boston Retirement Board." *Id.* at 233 n.3.

Evans's approach does not foreclose the possibility that § 19.04 accurately describes G.L. c. 32, § 3(4)'s meaning. MTRS is an expert on the retirement law's teacher-focused provisions. PERAC is an expert on the public retirement scheme generally. Their joint interpretation is

necessarily weighty. *See Massachusetts Teachers' Ret. Syst. v. Contributory Ret. Appeal Bd.* (*Walsh*), 466 Mass. 292, 297 (2013). With these considerations in mind, and in order to allow this decision to rest on clear and narrow grounds, the remainder of the discussion assumes without deciding that § 19.04 correctly interprets § 3(4) even in the context of applications that it does not formally control.

B. The Regulation's Meaning

The resulting next question is what 807 C.M.R. § 19.04 means, as a general matter, when it speaks of "supplemental" plans that do not count as "retirement allowances." To reiterate the context, § 19.04 defines a "retirement allowance" as including any "defined contribution plan offered *in lieu* of a defined benefit plan or as the sole retirement plan but not as a supplemental plan . . . ."

The briefs suggest essentially two interpretations of this provision. MTRS maintains that the phrase "supplemental plan" denotes a "qualified governmental excess benefit arrangement" (QEBA) under 26 U.S.C. § 415(m). In a nutshell, QEBAs are trusts that enable public employers to pay certain members pensions higher than those ordinarily permitted under federal tax law. *See Matsuda v. Cook Cty. Employees' & Officers' Annuity & Ben. Fund*, 687 N.E.2d 866, 870 (Ill. 1997). *See also* G.L. c. 32, § 104; 807 C.M.R. 16.01.

The alternative to MTRS's view is a plainer-English reading of the word "supplemental," as denoting "something additional." *Black's Law Dictionary* 1667 (10th ed. 2014). *See Merriam Webster's Collegiate Dictionary* 1255-56 (10th ed. 1994). On that approach, a defined contribution plan is "offered . . . as a supplemental plan" when it is offered *in addition to* a defined benefit plan. If § 19.04 is interpreted in this manner, then Mr. Monroe's DBSP was clearly "supplemental," and the only remaining point to resolve under § 19.04's rule is whether the DBSP was a defined contribution plan.

The competition between these alternative positions revolves around the reasonableness of MTRS's interpretation. *See generally DeCosmo v. Blue Tarp Redevelopment, LLC*, 487 Mass. 690, 696 (2021); *Jose v. Wells Fargo Bank, N.A.*, 89 Mass. App. Ct. 772, 776 (2016). The measure of deference owed to MTRS's position here may be impacted by the fact that MTRS only recently espoused an entirely different reading of § 19.04. *See Siegal v. Massachusetts Teachers' Ret. Syst.*, No. CR-24-77, 2024 WL 5186708, at *4 (Div. Admin. Law App. Dec. 13, 2024). Once again, in order to concentrate on the clearest and most solid grounds for resolving this case, I assume in Mr. Monroe's favor that a "supplemental" defined contribution plan within the meaning of § 19.04 is one that is offered to employees *in addition to* a defined benefit plan.

C. The Regulation's Consequences

With the benefit of the assumptions made in the preceding sections, Mr. Monroe is eligible to make a purchase under § 3(4) if his DBSP was a defined contribution plan (offered in addition to his defined benefit plan, which it was).

Neither chapter 32 nor MTRS's regulations provide definitions of the terms "defined benefit plan" and "defined contribution plan." On the other hand, those terms are defined with specificity by federal law. *See* 26 U.S.C. § 414(i)-(k). The pertinent area of federal law is one that chapter 32 and MTRS take pains to obey, namely the rules that define "qualifying" plans for tax purposes. *See Whipple v. Massachusetts Teachers' Ret. Syst.*, No. CR-07-1136, 2014 WL 13121790, at *3-6 (Contributory Ret. App. Bd. Dec. 19, 2014); *Pelletier v. Massachusetts Teachers' Ret. Syst.*, No. CR-19-301, 2023 WL 3434952, at *4 (Div. Admin. Law App. May 8, 2023). Section 19.04's understanding of the pertinent terminology almost certainly flows from the federal definitions, which also are consistent with discussions of the same general concepts in Massachusetts cases. *See Early*, 420 Mass. at 841; *Boston Globe*, 33 Mass. L. Rptr. at 379-80.

Under federal law, "defined contribution plans" are strictly circumscribed: they must offer benefits "based solely on the amount contributed to the participant's account," plus associated expenses, gains, and losses. *See* 26 U.S.C. § 414(i). In that manner, defined contribution plans assign all market risks to the participants. *See Boston Globe*, 33 Mass. L. Rptr. at 380; *Hughes Aircraft*, 525 U.S. 432, 439-41. *All* other types of plans are treated as defined benefit plans. *Id.* § 414(j).

The federal courts have considered on multiple occasions how a "hybrid cash balance plan" like the DBSP fits into the foregoing taxonomy. The answer has been consistent: because hybrid cash balance plans are not based "solely" on contributions, they do not qualify as defined contribution plans. *See Hirt v. Equitable Ret. Plan for Emps., Managers, & Agents*, 533 F.3d 102, 104-05 (2d Cir. 2008); *Register v. PNC Fin. Servs. Grp., Inc.*, 477 F.3d 56 (3d Cir. 2007); *Drutis v. Rand McNally & Co.*, 499 F.3d 608, 612-13 (6th Cir. 2007).

* * * *

To summarize: An employee is ineligible to purchase credit under G.L. c. 32, § 3(4), if the pertinent period of service earned the employee a "retirement allowance." Under 807 C.M.R. § 19.04, the term "retirement allowance" does not include a "defined contribution plan offered . . . as a supplemental plan." This decision assumes without deciding that § 19.04 correctly describes the law applicable to Mr. Monroe's case; and that a defined contribution plan is "supplemental" under § 19.04's rule when it is offered *in addition to* a defined benefit plan. Nevertheless, because a hybrid cash balance plan like the DBSP is *not* a defined contribution

plan, such a plan remains a "retirement allowance" under § 3(4). As a result, Mr. Monroe is ineligible to purchase retirement credit for his California service.[2]

Conclusion and Order

In view of the foregoing, the state board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

[2] In his most recent memorandum, Mr. Monroe emphasizes that his California employer contributed to the DBSP only in connection with certain hours of his work; he hypothesizes that his *other* hours may remain purchasable. The case law does not support this mode of analysis: instead, the eligibility of a period of pre-membership service for purchase turns on an examination of the entire period as an undivided block. By way of analogy, the member in the recent matter of *Siddle* performed "teaching" work during some but not all of her pre-membership working hours. CRAB concluded that the entire pertinent period was ineligible to be purchased. *Siddle v. Massachusetts Teachers' Ret. Syst.*, No. CR-16-385, 2023 WL 11806177, at *6 (Contributory Ret. App. Bd. Aug. 2, 2023), *aff'd*, No. 2384CV01958 (Super. Ct. June 23, 2025). *See Sullivan v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-371, 2024 WL 4345192 (Div. Admin. Law App. Sept. 13, 2024). Practically speaking, the alternative approach proposed by Mr. Monroe would require the boards in numerous cases to determine which exact portions of their members' pre-membership, out-of-state work schedules were connected to which exact pre-membership, out-of-state pension plans. It is hard to imagine that the Legislature intended for § 3(4) and related statutes to require investigations of such intricacy.