COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

One Congress Street, 11th Floor

Boston, MA 02114

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**MARY MORREALE**, Fax: (617) 626-7220

Petitioner **www.mass.gov/dala**

Docket No: CR-15-332

*v.*

**STATE BOARD OF RETIREMENT**,

Respondent

**Appearance for Petitioner:**

Galen Gilbert, Esq.

Gilbert and O’Bryan, P.C.

333 Washington Street, Suite 623

Boston, MA 02108

**Appearance for Respondent:**

Kathryn Doty, Esq.

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02108-4747

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY OF DECISION**

The State Board of Retirement’s determination that a RN III for the Department of Public Health was ineligible to participate in the Employee Retirement Incentive Program (ERIP) because her job was classified in Group 2, rather than Group 1, is reversed. G.L. c. 32, § 3(2)(g). The Petitioner demonstrated that she was not a Group 2 employee, responsible for the care, custody, instruction or other supervision of persons who are mentally defective or mentally ill, because her job involved supervising those who provided care for them rather than providing direct care herself. Acts 2015, c. 19, § 3.

**DECISION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Mary Morreale, appealed from the June 20, 2015 decision of the Respondent, State Board of Retirement (Board), to classify her in Group 2 rather than Group 1, thereby making her ineligible for participation in the Employee Retirement Incentive Program (ERIP). Ms. Morreale appealed the Board’s decision to the Contributory Retirement Appeal Board (CRAB) on July 1, 2015.

I held a hearing on November 30, 2016 at the Division of Administrative Law Appeals (DALA), One Congress Street, Boston, MA. I admitted eight exhibits (Exhibits 1-8) into evidence. Ms. Morreale testified on her own behalf. The hearing was digitally recorded.

The parties submitted their Post-Hearing Briefs on January 9, 2017, whereupon the administrative record closed.

**FINDINGS OF FACT**

From the Petitioner’s testimony and the exhibits submitted into evidence, I make the following findings of fact:

1. Mary Morreale worked for the Department of Public Health’s (DPH) from July 24, 2005 until June 30, 2015. She began working as a Registered Nurse III (RN III) at the DPH Massachusetts Hospital School (MHS) on December 19, 2010. (Exhibits 4 and 5.)
2. Ms. Morreale graduated from Laboure College with an Associate’s degree in nursing, and from Northeastern University with a Bachelor’s degree in English. (Testimony of Morreale.)
3. The Massachusetts Hospital School, now known as the Pappas Rehabilitation Hospital for Children, is a pediatric chronic care hospital serving children and young adults (7-22 plus) who have needs including ongoing medical intervention and care, difficulties with activities of daily living (ADL), and perceptual impairment affecting safety and/or reasonable functioning. Among its services, the hospital provides “comprehensive 24/7 nursing care.” (Exhibit 8.)
4. Ms. Morreale reported to supervisor Sarah Varghese, the Nurse Manager. Ms. Varghese’s supervisor was Elizabeth Lievi, the Assistant Director of Nursing. (Testimony of Morreale.)
5. There were five units at the MHS. Ms. Morreale worked as the day shift Charge Nurse in the 28-bed Nelson Unit. The daily staff at the Nelson Unit was comprised of 3 RNs (including Ms. Morreale), 2 LPNs and 6 NAs. (Testimony of Morreale.)
6. The Nelson Unit included specialized units not present in the other units, such as precaution rooms for contagious illnesses. The pediatric specialties included infectious disease, cardiology, neurology, physical medicine and rehabilitation, pulmonary, dental, orthopedics, psychiatry, behavioral and mental health services, and complementary and alternative medicine. (Exhibit 8; Testimony of Morreale.)
7. 80-85% of the children in the Nelson Unit were considered acute care patients who were completely dependent on the nursing staff for their personal care and mobility needs. Some of the patients could not speak. Some used feeding tubes. (Exhibits 4-6.)
8. Sometimes the patient census grew to 30 patients, and expanded to 42 patients with the opening of summer camp. (Testimony of Morreale.)
9. Ms. Morreale’s work day began at 7:00 a.m., with a review of the current patient census and the assigning of nursing staff to the patients. She also consulted with the outgoing Charge Nurse for twenty to twenty-five minutes. She ended her day with twenty to twenty-five minute report to the oncoming Change Nurse. During the day, Ms. Morreale met with the pediatrics department, and issued orders to the nursing staff based on that conference. She anticipated patient needs, and carefully coordinated with the case management, dietary, pharmacy and nursing departments when patients left the facility. (Exhibit 6; Testimony of Morreale.)
10. Ms. Morreale spent a lot of time consulting with the Tewksbury Hospital pharmacy staff after the MHS pharmacy position was eliminated, and Tewksbury undertook that role. (Exhibit 6; Testimony of Morreale.)
11. Ms. Morreale updated patients’ families and fielded calls from them. She updated departments as the status of the patients changed. She arranged the frequent planned visits of the patients to local and Boston hospitals, overseeing the paperwork, assigning accompanying staff, and arranging a follow-up with pediatrics. Some of the visits were acute transfers, requiring a discharge and a readmission to the MHS. Sometimes the acute transfer process took three hours to complete. On occasion, Ms. Morreale had three acute transfers in one week. (Exhibit 6; Testimony of Morreale.)
12. Once every two to three months, Ms. Morreale had to work as a direct care nurse. Other than these infrequent occasions, she provided direct care only in emergency situations, e.g. a patient suffering a seizure or a patient’s G tube (feeding tube) falling out. (Testimony of Morreale.)
13. On June 1, 2015, the Board received Ms. Morreale’s 2015 ERIP Application Payroll Certificate/Sick Vacation Payment Consent Form. (Exhibit 4.)
14. On June 1, 2015, Ms. Morreale submitted the 2015 ERIP Application Group Classification Questionnaire (Questionnaire). She attached a Form 30 job description for the position of RN III, dated May 26, 2015 and signed by herself and the supervisor. She also attached an unsigned, separate, self-prepared job description dated May 20, 2015. (Exhibit 5.)
15. According to the Form 30 job description for RN III at the time of Ms. Morreale’s [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit10)ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit12) application, her regular and major job duties required her to supervise a therapeutic environment for her patients. The Form 30 provided the following “General Statement of Duties and Responsibilities”:

Provides and supervises the provision of direct nursing care and treatment to pediatric patients of a unit of a state facility within the Department of Mental Health by participating as a member of the multi-disciplinary team; assessing health care and educational needs of patients and their families, assisting in admission and discharge of patients, facilitating rehabilitation and supervising assigned staff. Performs related duties as required.

(Exhibit 5.)

1. The Form 30 provided the following “Detailed Statement of Duties and Responsibilities”:
2. Provides nursing care to pediatric patients by assessing their health and mental health status, recording related data (including entering patient information into the DPH Meditech medical record), administering treatment and medications. Evaluates patients’ responses, and in conjunction with the other team members, adjusts their care in order to ensure the treatment needs, dignity and human rights of the patients are met.
3. Assists with patient admissions by collecting data, assessing learning needs, and participating in treatment planning with a multidisciplinary team.
4. Assists with the coordination and implementation of patients’ individual treatment plans, as determined by multidisciplinary team, by conferring with appropriate health professionals in the hospital to ensure that treatment plans are carried out as intended.
5. Assists patients in preparing for transfer or discharge to a less restrictive setting by providing health and mental health teaching to maximize the rehabilitation potential of each patient.
6. Performs related duties such as responding to health and safety issues and initiating appropriate action, communicating with appropriate staff and preparing and maintaining pertinent documentation.
7. Investigates complaints by patients and others regarding such matters as methods of treatment, room assignments, etc., and attempts to resolve such complaints to promote safety and satisfaction.
8. Supervises and provides leadership to nursing staff by utilizing professional standards of practice to ensure that patients receive appropriate care and treatment.
9. Plans and assigns nursing duties according to the nature of the activity to be accomplished utilizing the principles and practices of supervision by evaluating the capabilities of subordinates … to provide a safe environment.
10. Evaluates nursing activities by reviewing patient medical records, observing nursing care, and visiting patients to ensure that nursing care is carried out as directed, and that treatments and medications are administered in accordance with physician orders and completes annual employee evaluations in a timely manner.
11. Practices and promotes good communication with the multidisciplinary team by actively participating in formal meetings and casual discussions to ensure safe and therapeutic patient care delivery and establishes rapport with patients and other staff to aid in patient care and enhance good working relationships.
12. Actively supports the goals and mission of the organization and assigned unit by discussing strategies for achieving these goals with the Nurse Manager, and serving as a role model for coworkers, promoting the rehabilitation model of treatment, and actively participating organizational committees.
13. Actively participates in the identification, planning and implementation of hospital wide and unit based performance improvement and team building activities. Remains informed of hospital and department policies and procedures, as well as JC and CMS standard, in order to ensure that regulatory and department standards are met and a safe therapeutic environment is provided.
14. Attends seminars, workshops, conferences, and staff meetings to maintain professional proficiency and/or licensure.
15. Performs other appropriate nursing duties as assigned.

(Exhibit 5.)

1. The Form 30 provided that the RN III position received supervision from a registered nurse of a higher grade “who reviews and assigns work through observation and supervision for compliance with hospital policies and procedures, and standards set by external regulatory agencies. (Exhibit 5.)
2. The Form 30 provided direct reporting staff to the RN III position of the positions of RN I, RN II, LPN II, NA I, NA II, NA III and NA IV, while in some of the other MHS units, there were only two nurses for every twelve patients. (Exhibit 5.)
3. The Form 30 provided the following “Qualifications Required at Hire”:
4. Knowledge of the principles and practices of Nursing.
5. Knowledge and ability to apply skilled management and leadership skills.
6. Knowledge and ability to communicate effectively with staff and other disciplines and to write accurate reports.
7. Ability to motivate staff and to maintain a calm manner in stressful situations and/or emergency situations.
8. Ability to direct interventions appropriate to special client groups such as physically and/or emotionally handicapped.
9. Knowledge and ability to direct cardio-pulmonary resuscitation (CPR) and advanced life saving measures.
10. Ability to gather information through observation, application of interviewing techniques and examination of records and documentation.
11. Ability to function independently.
12. Knowledge of the principles and practices of supervision, including planning and assigning work according to the nature of the job to be accomplished, the capabilities of subordinates and available work resources, and determining employees training needs.
13. Knowledge of computer data entry, or ability to use the computer in daily work.

(Exhibit 5.)

1. In her addendum to the ERIP Questionnaire, Ms. Morreale wrote the following:

Duties: Charge Nurse on day shift on a 28 bed unit.

* Supervise RN’s, LPN’s and nursing attendants.
* Give daily patient care assignments to nurses and nursing attendants.
* Assign specific duties to nurses and nursing attendants and monitor for completion. Review documentation by licensed and unlicensed staff and monitor for timeliness and accuracy.
* Manage daily work flow on unit to provide optimal patient care. Implement nursing plans of care.
* Give daily morning report on patients’ status to Pediatric staff. After conferring with Pediatric staff, give instructions for patient care to licensed and unlicensed staff.
* Assess patients and report changes in status to Pediatric staff and Nurse Manager. Note physician orders from Doctors’ Order Book and from Meditech and notify licensed staff of new orders.
* Prepare and give nursing report to oncoming shift.
* Prepare team notes and participate in interdisciplinary team meetings. Confer with members of interdisciplinary team to set patient goals and assist patients to achieve goals.
* Perform employee reviews. Evaluate specific competencies of nursing attendants and provide education as needed.
* Orient new staff and evaluate nursing skills; provide education as needed.
* Investigate and act on complaints by patients, families and others.
* Provide patient/family teaching. Notify parents/guardians of changes in patients' status. Notify parents/guardians of changes in medications and treatments.
* Assist patients and families in the discharge process.
* Monitor environment of care for cleanliness and safety; contact appropriate staff for repairs or assistance.
* Promote standards of infection control and monitor staff for compliance; provide education to staff as needed.

(Exhibit 4.)

1. On June 20, 2015, the Board notified Ms. Morreale of its decision to classify the RN III position in Group 2, thus making her ineligible for participation in [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit11)ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit13). (Exhibit 1.)
2. On June 25, 2015, Ms. Morreale sent the Board an email documenting her duties, in order “to further explain my duties as the Charge Nurse for the Nelson Unit at Mass Hospital School.” In the email, she emphasized that her supervisory role as a Charge Nurse in the Nelson Unit differed from the responsibilities of direct care responsibilities incumbent upon the position in the other MHS units. (Exhibit 6.)
3. On June 30, 2015, Ms. Morreale retired upon a superannuation retirement benefit. (Exhibits 2 and 4.)
4. On July 1, 2015, Ms. Morreale appealed the Board’s decision to DALA. (Exhibit 3.)

**CONCLUSION AND ORDER**

The Board’s denial of Ms. Morreale’s application for [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit12)ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit14) is reversed. Ms. Morreale is eligible to participate in [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit13)ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit15) because her position was improperly classified in Group 2 instead of Group 1.



To be eligible for [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit15)ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit17), an employee must be employed by an executive department, be a member of the State Employee Retirement System, and be classified in Group 1 pursuant to G.L. c. 32, § 3(2)(g). Acts 2015, c. 19, § 3(b). ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit16) was established by Chapter 19 of the Acts of 2015 to decrease state expenditures by reducing the number of high-earning executive department employees. [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit7) Acts 2015, c. 19, § 2(a), (b). ERIP[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab16f-64&type=hitlist&num=0#hit9) applications were accepted from May 11, 2015 through June 12, 2015, with the eligible employees retiring effective June 30, 2015. Acts 2015, c. 19, § 4.

http://sll.gvpi.net/images/1x1.pngG.L. c. 32, § 3(2)(g) classifies members into groups for retirement purposes. Group 1, the classification sought by Ms. Morreale, includes “[officials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G.L. c. 32, § 3(2)(g). Group 2 includes, in relevant part, “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 … .” *Id*.

Group classification is “properly based on the sole consideration of [the member’s] duties.” *Maddocks v. Contributory Retirement Appeal Bd*., [369 Mass. 488](http://sll.gvpi.net/document.php?id=sjcapp:369_mass_488), 494 (1975). A member’s duties are largely determined by consulting his or her title or job description. *See Gaw v. Contributory Retirement Appeal Bd.*, [4 Mass. App. Ct. 250](http://sll.gvpi.net/document.php?id=sjcapp:4_mass_app_ct_250), 256 (1976).



The Board classified Ms. Morreale’s position in Group 2 based on its determination that her regular and major job duties required her to “have the care, custody, instruction or other supervision of … persons who are mentally ill or mentally defective ... .” Ms. Morreale belongs in Group 2 if her regular and major duties involve direct patient care. *See Serafin v. State Bd. of Retirement,* CR-06-160 (DALA 2008).



When it is disputed whether the member had care, custody, instruction or other supervision of a class of persons specified in the Group 2 description, the resolution depends on an individualized examination of the regular and major duties of that employee. Ms. Morreale must prove each and every element of her case by a preponderance of the evidence. *Blanchette v. Contributory Retirement Appeal Bd*., 20 Mass. App. Ct. 479, 483 (1985).

The Massachusetts Hospital School, now known as the Pappas Rehabilitation Hospital for Children, is a pediatric chronic care hospital serving children and young adults (7-22 plus) who have needs including ongoing medical intervention and care, difficulties with activities of daily living (ADL), and perceptual impairment affecting safety and/or reasonable functioning. One of the hospital’s services is “comprehensive 24/7 nursing care.” For the purposes of Chapter 32, the patients of MHS qualify as mentally defective.

The 28-bed Nelson Unit of the MHS housed the most acute children of the 5 MHS units. The daily staff consisted of 3 RNs (including Ms. Morreale), 2 LPNs, and 6 NAs for the entire unit. Of the patients assigned to Ms. Morreale’s unit, approximately 80-85% were considered acute care patients who are totally dependent upon nursing staff for all of their personal care and mobility needs. The acute pediatric patients used feeding tubes and slept in specialized beds, and some of them could not verbalize. The Nelson Unit housed specialized rooms, not available in the other units, including precaution rooms for contagious illnesses. The Nelson Unit was the only MHS unit open on Fridays. It was the only unit open during school vacations and holidays.

Ms. Morreale testified that she worked at the MHS for ten years as the Charge Nurse in the Nelson Unit. She testified that the Nelson Unit Charge Nurse, unlike the Charge Nurses in the other MHS units, did not have direct care duties. Ms. Morreale testified that once every two or three months she would have step in and serve a shift as a direct care nurse. Other than these infrequent occasions, she only touched a patient in order to instruct or demonstrate a medical procedure to a RN, or in the case of a medical emergency, e.g. if a patient had a seizure in front of her.

Ms. Morreale testified that her day began at 7:00 a.m., with a review of the current patient population and assigning nursing staff to the patients. Then she met with the outgoing Charge Nurse from the 11:00 p.m. to 7:00 a.m. shift to discuss each patient, review medical problems and unit problems for the previous two shifts. The unit problems could include broken or missing equipment, lack of medical supplies, pharmacy issues or plumbing, electrical, HVAC issues. It was important to review broken equipment at this time because that department operated from 7:00 a.m. to 3:30 p.m.

Ms. Morreale also provided the pediatrics department with a report each morning, lasting from fifteen to twenty minutes. Ms. Morreale and that department would confer on any changes in patient status and mutually decide on which patients needed to be assessed. Ms. Morreale would then convey any instructions to the nursing staff.

Ms. Morreale interacted with the respiratory therapist to provide notification of a change in doctor’s orders or a change in treatments. She interacted with the housekeeping department to prepare rooms for the patients. Ms. Morreale assigned rooms to patients and made sure that the appropriate medical equipment was in place. She worked with the central supply department to make sure that were enough supplies in the unit. She worked with the dietary and the maintenance departments, which operated during the day shift.

Because the position of on-site pharmacist had been eliminated, the Charge Nurse undertook the role of making sure that medications were available. Ms. Morreale spent a lot of time consulting with the pharmacy staff at Tewksbury Hospital, which then supplied all of the MHS medications, due to missing medications, shortages and problems with dosages.

Ms. Morreale was responsible for updating patients’ families regarding illnesses, medication changes or status changes. She also handled inquiries from the 28-plus patients’ families. Ms. Morreale also updated the therapy departments, speech, respiratory and case management departments as the status of the patients changed.

Ms. Morreale handled the paperwork for the patients’ frequent planned visits to both local and Boston hospitals. The planned visits could take up to three hours per patient due to the paperwork, assigning staff to accompany the patient, and the follow-up with the pediatrics department. Acute transfers required a discharge and eventual readmission. Sometimes the Nelson Unit had three admissions in a single week.

Ms. Morreale conducted regular staff competency evaluations and provided training as required. Each day Ms. Morreale composed a computerized report, including interactions with patients, doctors outside of MHS and transfers of patients. Ms. Morreale ended every shift with a twenty to twenty-five minute report to the oncoming Charge Nurse, except for Thursdays when she spent her final two hours in team meetings.

The Board argued that RNs whose regular and major duties require them to care for those with mental defects are properly classified in Group 2. *Bentley v. State Bd. of Retirement,* CR-03- 736 (DALA), *aff’d* (CRAB 2006) (member’s administrative duties while serving as RN II and Charge Nurse did not warrant Group 1 classification, therefore not entitled to ERIP benefit); *Schuler v. State Bd. of Retirement,* CR-05-378 (DALA 2006) (RN III who worked as the Admissions and Discharge Nurse and evaluated patients’ medication needs properly classified in Group 2); *Shorrock v. State Bd. of Retirement,* CR-00-1190 (DALA 2001) (RN III at Wrentham Developmental Center properly classified in Group 2 based on her direct care duties). In another ERIP case, a DDS RN II was classified in Group 2. The Administrative Magistrate found the RN II’s primary responsibilities required her to have the care of persons who were mentally defective, was thus properly classified in Group 2, and ineligible for enhanced retirement benefits under ERIP. *Shea v. State Bd. of Retirement*, CR-02-146 (DALA 2003).[[1]](#footnote-1)

The Board further argued that DALA has upheld cases where Massachusetts Hospital School staff were classified in Group 2. *Green v. State Bd. of Retirement*, CR-06-1121 (DALA 2008) (Social Worker I Case Manager at MHS properly classified in Group 2). The Board cited *Blake-Pease v. State Bd. of Retirement* as a matter where the member, Ms. Blake-Pease, a RN III at MHS, was properly classified in Group 2 because “her regular and major duties required her to have care, custody, instruction, or other supervision of ... persons who are ... mentally defective.” CR-01-575 (DALA 2002), *aff’d* (CRAB 2003), Civil Action No. 03-0226-B (Plymouth Sup. Ct. Nov. 24, 2003) remand to CRAB, (DALA 2004). In the *Blake-Pease* matter, the member worked in the Gates Unit at MHS. Ms. Morreale testified that the staffing structure of the Nelson Unit was different from the other units in the MHS.

In other DALA cases, Human Services Coordinator A/Bfor the Department of Mental Health who assisted in community re-integration of DMH incarcerated inmates transitioning into the community by interviewing inmates or attending release planning meetings in those correctional facilities was held to be a Group 1 member because he spent more than 80% of his time in his office writing or preparing reports. Even though the description of his duties and responsibilities stated that he was to be engaged in “care, custody, instruction or other supervision” of the inmates by conducting face-to-face interviews, his own description of his responsibilities, also supported by his supervisors’ letters, showed that he met with clients on an individual basis less than 20% of his total hours of work. *Mathews v. State Bd. of Retirement,* CR-15-394 (DALA 2016).

Similarly, a Licensed Practical Nurse II (LPN II) employed in the Department of Mental Retardation (DMR) was determined to be in Group 1 because, on the night shift, she was involved in direct care activities for only about 25% of her eight-hour shift. *Francis v. State Bd. of Retirement,* CR-02-84 (DALA 2003). The rest of her time was spent overseeing the direct care staff, training new staff, communicating with a larger number of staff on a given shift, and reviewing vital medical forms and records. *Id.*

In contrast, another DMH Clinical Social Worker A/Bwho worked at a hospital leading group treatment meetings for clients with major mental illness, providing individual therapy to each of these clients, responding immediately to emergency situations, and writing progress notes for clients was classified as Group 2 because her regular and major duties of leading group sessions was directly related to “care, custody, and instruction of mentally ill clients.” *Neild v. State Bd. of Retirement,* CR-02-890 (DALA 2003).

The overall impression given from the duties listed on the Form 30 is that Ms. Morreale’s position is primarily concerned with supervising duties, supervision of those who provided direct care to patients with mental illness or defects. “General Statement of Duties and Responsibilities” states that the position “[p]rovides and supervises the provision of direct nursing care and treatment to pediatric patients ... assessing health care and education needs of patients and their families ... and supervising staff.”

More than half of the duties listed under the “Detailed Statement of Duties and Responsibilities” concern supervision, planning, evaluating or policy duties. According to the Form 30, seven separate staff positions reported to the RN III position. Pursuant to the Qualifications for Hire,” the RN III position required experience managing or supervising subordinate staff. It is clear that Ms. Morreale’s overall responsibilities were supervisory or managerial, and did not require her to provide direct care herself.

In another MHS case, DALA upheld the Board’s Group 1 classification of another supervising RN in *Dewey v. State Bd. of Retirement*. This magistrate found that while the member sometimes filled in as a registered nurse in the Nelson Unit when it was short-staffed, her regular and major duties as a RN V were administrative in nature and did not require her to have the care, custody, instruction or other supervision of persons who were mentally ill or mentally defective. *Dewey v. State Bd. of Retirement*, CR-12-58 (DALA 2016).

Under these circumstances, it cannot be concluded that Ms. Morreale’s major and regular duties involved the “direct care, custody, or instruction” of the Nelson Unit mentally ill patients. Thus she does not fit the statutory category for classification in Group 2.

Chapter 19 of the Acts of 2015, the Employee Retirement Incentive Program, allows certain eligible Group 1 employees to receive enhanced retirement benefits.  The Act applies only to  Group 1 employees.  Since an examination of her regular and major job duties show that Ms. Morreale was improperly classified in Group 2, she must be reclassified in Group 1 for ERIP eligibility.

DALA has reversed decisions and ordered retirement boards to process applications of members who have met the burden of showing that their regular and major duties warranted Group 1 classification, and thereby eligibility for ERIP. *See Gasser v. State Bd. of Retirement*, CR-15-254 (DALA 2017) (Board reversed where member proved that he arranged for subordinates to provide direct care, rather than providing it himself).

The decision of the Board classifying Ms. Morreale in Group 2 for retirement purposes, deeming her ineligible to retire with the enhanced benefits afforded by Chapter 19 of the Acts of 2015 is reversed.

I order the State Board of Retirement to process Mary Morreale’s application.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate

DATED: March 10, 2017

1. This previous ERIP was established by the Chapter 219 of the Acts of 2001, and applied only to Group 1 employees. Acts 2001, c. 219, § 1. [↑](#footnote-ref-1)