COMMONWEALTH OF MASSACHUSETTS

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

Massachusetts Teachers' Retirement System,
Petitioner,

Dated: January 14, 2022

v.

Blue Hills Regional School Retirement Board,	No. CR-19-226
Andover Contributory Retirement Board,	No. CR-19-227
Needham Retirement System,	No. CR-19-266
Stoneham Retirement Board,	No. CR-19-281
and **Plymouth County Retirement Board**,	No. CR-19-566

Respondents.

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Administrative Magistrate:
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SUMMARY OF DECISION

A retirement system paying a retirement allowance is entitled to proportional reimbursement from any other system in which the retiree served. G.L. c. 32, § 3(8)(c). Prior DALA decisions have not applied any limitations period to administrative appeals seeking § 3(8)(c) reimbursement. But the recent case of *Suburban Home Health Care, Inc. v. EOHHS*, 488 Mass. 347 (2021), compels the conclusion that a six-year statute of limitations applies, even when reimbursement is pursued through administrative proceedings.

DECISION

The Massachusetts Teachers' Retirement System (MTRS) appeals from five decisions of other retirement systems declining full payment on MTRS's requests for reimbursement under G.L. c. 32, § 3(8)(c). The appeals were submitted on the papers and consolidated for briefing purposes.[1] The Public Employee Retirement Administration Commission (PERAC) intervened and filed a brief.[2] I admit into evidence exhibits marked 1-51.

Findings of Fact

I find the following facts based on the exhibits and MTRS's uncontested assertions. An appendix to this decision compiles specific names and dates in table form.

1. One MTRS retiree pertinent to this case was formerly a member of the retirement system administered by the Blue Hills Regional School Retirement Board (Blue Hills). She retired in 2005. In July 2017, MTRS asked PERAC to calculate the Blue Hills' proportional responsibility under G.L. c. 32, § 3(8)(c) for the retiree's pension. PERAC issued its calculation in June 2018. In February 2019, MTRS invoiced the Blue Hills for a proportional share of the pension payments made to the retiree from her retirement through that date. The Blue Hills honored the request as to only six years' worth of reimbursement, memorializing its decision in handwritten notations. MTRS timely filed appeal number CR-19-226. (Exhibits 7-9.)

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[1] The consolidated briefing also covered *MTRS v. Bristol Cty. Ret. Bd.*, No. CR-20-182, which is being decided separately, and where the briefing (with exhibits) is filed.

[2] After moving unsuccessfully for a stay, the respondents filed neither briefs nor other materials in support of their position. The appeals are nevertheless being decided on the merits and not by default. *See* G.L. c. 30A, § 10; 801 C.M.R. § 1.01(7)(g)(2); *Miller v. Superintendent, Massachusetts Corr. Inst., Shirley*, 99 Mass. App. Ct. 395, 400 n.12 (2021). However, facts asserted by MTRS and not disproved by the exhibits are treated in this decision as uncontested.

2. Four pertinent MTRS retirees were formerly members of the system administered by the Andover Retirement Board (Andover). They retired on various dates between 1998 and 2005. During July-October 2017, MTRS asked PERAC to calculate Andover's proportional responsibility for the Andover retirees' pensions. PERAC issued its calculations during June-September 2018. In February 2019, MTRS invoiced Andover for proportional shares of the pension payments made to the Andover retirees from retirement through that date. Andover responded with a spreadsheet indicating that it would pay only six years' worth of reimbursement. MTRS timely filed appeal number CR-19-227. (Exhibits 10-15.)

3. Seven pertinent MTRS retirees were formerly members of the Needham Retirement System (Needham). They retired on various dates between 2008 and 2010. Between October 2016 and March 2017, MTRS asked PERAC to calculate Needham's proportional responsibility for the Needham retirees' pensions. PERAC issued its calculations between January and August of 2017. In February 2018, MTRS invoiced Needham for proportional shares of the pension payments made to the Needham retirees from retirement through that date. Needham responded on July 20, 2018, stating that it would not pay for "charges . . . relating back more than six years from the date issued." In a letter dated April 8, 2019, MTRS asked Needham to reconsider its position. Forty-five days later, MTRS filed appeal number CR-19-266. (Exhibits 16-24.)

4. Two pertinent MTRS retirees were formerly members of the Stoneham Retirement System (Stoneham). They retired in 1998 and 1999, respectively. In approximately September 2017, MTRS asked PERAC to calculate Stoneham's proportional responsibility for the Stoneham retirees' pensions. PERAC issued its calculations in September-October 2018. In May 2019, MTRS invoiced Stoneham for proportional shares of the pension payments made to

the Stoneham retirees from retirement through that date. Stoneham responded that it would "only . . . reimburse the MTRS for . . . the 2013 to 2018 period." MTRS timely filed appeal number CR-19-281. (Exhibits 25-28.)

5. Seventeen pertinent MTRS retirees were formerly members of the system administered by the Plymouth County Retirement Board (Plymouth). They retired on various dates between 1998 and 2012. Between July 2017 and May 2018, MTRS asked PERAC to calculate Plymouth's proportional responsibility for the Plymouth retirees' pensions. PERAC issued its calculations during June-October 2018. In February 2019, MTRS invoiced Plymouth for proportional shares of the pension payments made to the Plymouth retirees from retirement through that date. Plymouth declined by letter to reimburse amounts "greater than six years in arrears." MTRS timely filed appeal number CR-19-566. (Exhibits 29-46.)

6. During 2015, PERAC staff prepared an internal document titled "Calculation Policy 15-001," which memorialized PERAC's practice with regard to G.L. c. 32, § 3(8)(c) calculation requests received long after a member's retirement. In essence, PERAC issues a calculation in the ordinary course as long as the calculation request is made within ten years of retirement. However, if the request follows retirement by more than ten years, PERAC describes its calculation as "prospective only," with no reimbursement due for prior years. During 2017, PERAC publicized its approach by attaching its once-internal document to a formal memorandum. PERAC Memo No. 37 / 2017 (Dec. 11, 2017).

7. After publishing its 2017 memorandum, PERAC assured MTRS that all § 3(8)(c) calculations requested by the end of 2017 would be "grandfathered" and would "receive a complete . . . calculation, retroactive to the retirement date." (Exhibits 49-51.)

Analysis

I. Jurisdiction

A threshold question is whether the appeals are properly before DALA. Although no party has argued otherwise, a tribunal is duty-bound to assure itself of its own jurisdiction. *Sullivan v. State Bd. of Ret.*, No. CR-19-435, at 1-2 (CRAB Feb. 8, 2021) (citing *Flynn v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 668, 370 (1984)).

One potential jurisdictional issue arises from CRAB's holding that "a decision by a retirement board . . . is not an appealable 'decision' . . . unless it . . . expressly states that it is an appealable decision." *Barnstable Cty. Ret. Bd. v. PERAC*, No. CR-07-163, at 12 (CRAB Feb. 17, 2012). Among the decisions at issue here, only Plymouth's satisfies this requirement.

It is not entirely clear whether the *Barnstable* rule reaches disputes between retirement systems.[3] Such disputes do not tend to implicate *Barnstable*'s core purpose, which is "to protect the rights of litigants who may not be aware of their appellate rights." *Lutes v. Clinton Ret. Bd.*, No. CR-07-1100, at 3 (CRAB Nov. 16, 2012). CRAB did not enforce *Barnstable* in a prior dispute between retirement systems over § 3(8)(c) reimbursement. *Lynn Ret. Syst. v. MTRS*, No. CR-10-134 (CRAB Mar. 28, 2014), *aff'd*, 32 Mass. L. Rptr. 501 (Suffolk Super. 2015).[4] Against this backdrop, the Chief Administrative Magistrate concluded in *MTRS v. Waltham Ret. Bd.*, No. CR-18-307 (DALA Oct. 23, 2020), that a decision on the merits of a non-*Barnstable*-compliant

[3] CRAB also has not apparently confirmed head-on that *Barnstable* defects are jurisdictional. *See, e.g.*, *Chan v. MTRS*, No. CR-17-823 (June 26, 2020).

[4] The *Lynn* appeal was filed pre-*Barnstable* and decided (at both DALA and CRAB) post-*Barnstable*. *Lynn* was within *Barnstable*'s chronological scope because no evidentiary hearing was held in that appeal before *Barnstable* issued. *See Barnstable*, *supra*, at 1-2, 12-13.

§ 3(8)(c) dispute was most consistent with DALA's statutory mandate. *Id.* at 2 n.1. The same approach is warranted here.

A particular problem arises with regard to MTRS's appeal from Needham's decision. MTRS did not file that appeal until ten months after Needham had announced its decision. The retirement statute imposes a fifteen-day deadline to file DALA appeals, G.L. c. 32, § 16(4), and that deadline is jurisdictional. *Sanphy v. MTRS*, No. CR-11-510, at 3 (CRAB Mar. 29, 2013). MTRS's request to Needham for reconsideration, while perfectly proper, did not revive MTRS's right to appeal the original decision. *Fernandez v. State Bd. of Ret.*, No. CR-15-124, at 3 & n.3 (CRAB Dec. 21, 2016); *Jordan v. State Bd. of Ret.*, No. CR-18-6, at 12 (DALA Feb. 5, 2021).

MTRS's briefing appreciates that a petitioner must prove each appeal's timeliness. *Bailey v. State Bd. of Ret.*, No. CR-07-724, at 5 (CRAB Nov. 16, 2012). But the evidence presented clearly establishes that the appeal concerning Needham was late. That appeal must therefore be dismissed for lack of jurisdiction. *Sanphy*, *supra*. The remaining analysis concerns the four other appeals.

II. Statutory Background

It is commonplace for a public employee, over the course of his or her career, to work for successive governmental employers connected to different retirement systems. The retirement system from which an employee retires is responsible for paying his or her retirement allowance. However, the retirement law arranges for the employee's previous retirement systems to bear proportional shares of the retirement allowance's financial burden. G.L. c. 32, § 3(8).

The pertinent statutory provisions distinguish between two elements of the retirement allowance: the annuity, which derives from the employee's own retirement contributions; and the pension, which derives from the employer's contributions. G.L. c. 32, § 1. When an employee moves from one system to another, so too does his or her annuity account (within

ninety days). *Id.* § 3(8)(a). That money is therefore already in the hands of the system paying the allowance at the time of the employee's retirement.

As for the pension, the retirement system paying the allowance initially pays out that sum fully from its own coffers. But that system is then entitled to be "reimbursed in full" by any prior system for a proportional share attributable to the employee's service in the prior system. *Id.* § 3(8)(c). The essential purpose of the statutory reimbursement scheme is "to ensure long-term stability of all public pension plans in the Commonwealth of Massachusetts." *MTRS v. Clinton Ret. Bd.*, No. CR-18-348, at 8 (DALA Jul. 26, 2019) (citing *Haverhill Ret. Sys. v. Contributory Ret. Appeal Bd.*, 82 Mass. App. Ct. 129, 132-33 (2012)).

The proportional share owed by an employee's prior system is "computed by the actuary," namely PERAC, upon request. G.L. c. 32, § 3(8)(c). PERAC computes a reimbursement amount payable annually (the same amount each year). The retirement system seeking reimbursement is directed to "annually, on or before January fifteenth . . . notify the [other system] of the amount of reimbursement due therefrom for the previous fiscal year." *Id.* The system owing reimbursement then must "take such steps as may be necessary to insure prompt payment of such amount." *Id.* *See MTRS v. Lynn*, *supra*, at 3 (observing that, in practice, reimbursement is accomplished between the retirement systems, not the employers).

The retirement system paying the allowance and seeking reimbursement, "in default of any [reimbursement] payment . . . may maintain an action of contract to recover the same." G.L. c. 32, § 3(8)(c). CRAB has held that a G.L. c. 32, § 16(4) appeal is an appropriate vehicle for challenging a system's § 3(8)(c) reimbursement decision. *Lynn v. MTRS*, *supra*, at 4. MTRS has followed that path here.

III. Applicability of a Limitations Period

A. Whether Any Statute Applies

The appeals center on whether administrative proceedings to enforce § 3(8)(c) reimbursement requests are governed by a statute of limitations. CRAB has not yet addressed this question. Its most pertinent decision holds that a system may seek reimbursement not only for the immediately prior year. *MTRS v. Lynn*, *supra*, at 2. But the reimbursement requests at issue in that case did not implicate a statute of limitations because they "went back only two to five years." *Id.* at 2 n.3.

Prior DALA decisions have concluded that no statute of limitations applies to § 3(8)(c) claims litigated in § 16(4) appeals. *MTRS v. Waltham*, *supra*; *MTRS v. Clinton*, *supra*; *MTRS v. Stoneham Ret. Syst.*, No. CR-18-324 (DALA Jan. 15, 2021). These decisions flow from three simple reasons. First, § 3(8)(c) says nothing about any limitations period. *MTRS v. Waltham*, *supra*, at 5. Second, the usual statutes of limitations do not invariably apply in administrative proceedings. *MTRS v. Stoneham*, *supra*, at 8. Third, a limitations period would disturb § 3(8)(c)'s goal of distributing the burden of retirees' pensions in fair and fiscally stable manner. *MTRS v. Clinton*, *supra*, at 8.

The Supreme Judicial Court's recent decision in *Suburban Home Health Care, Inc. v. EOHHS*, 488 Mass. 347 (2021), dictates a revised approach.[5] That case arose from an effort by MassHealth to recoup an overpayment it had made to a Medicaid provider. MassHealth sought the recoupment in an administrative action, maintaining that no limitations period applied. *Id.* at 348.

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[5] An order issued on December 21, 2021 invited the parties to consider *Suburban Home* in their briefs.

The governing Medicaid statute and regulations did not state any limitations period. Even so, the Supreme Judicial Court was "most hesitant to conclude that the Legislature intended no statute of limitations to apply, absent express guidance to that effect." 488 Mass. at 355. The Court recalled that statutes of limitations "preserve the integrity and accuracy of the judicial process by ensuring that courts have sufficient, reliable evidence to decide cases." *Id.* at 354. Accordingly, if the Legislature had "intended that actions *not* be time-limited . . . it would have been natural . . . to express such an intention." *Id.* at 355 (emphasis added) (quoting *Nantucket v. Beinecke*, 379 Mass. 345, 347-48 (1979)).

Suburban Home discussed and rejected the thesis that statutes of limitations generally pass over administrative proceedings. The Court stated that the term "action," as used in most statutes of limitation, generally includes administrative actions. 488 Mass. at 357-59. The Court reasoned that it would be "absurd . . . [if] no administrative proceeding would have a time deadline for commencement or conclusion unless the Legislature expressly imposed a statute of limitations." *Id.* at 359. Recognizing that a line of prior cases viewed certain administrative actions as exempt from statutes of limitation, the Court characterized those cases as reliant on "clear legislative guidance to that effect." *Id.* at 358.[6]

Suburban Home recognized that, by nature, limitations periods tend to frustrate the objectives that underlie otherwise-valid claims. 488 Mass. at 354. It is only normal for substantive legal rights to be driven by good reasons of justice and policy. The legislation in *Suburban Home* served the important goal of protecting Medicaid funds against inadvertent windfalls to providers. The Court emphasized, however, that statutes of limitations strike a

[6] The prior line of cases tended to support DALA's decisions in *Waltham*, *Stoneham*, and *Clinton*.

balance: they "represent a policy determination by the Legislature as to the point at which even meritorious claims should be barred." *Id.* This balancing exercise forces even an agency serving the public "to proceed expeditiously and diligently to enforce its rights," without the benefit of "an unlimited period of time to collect." *Id.* at 356.

Suburban Home squarely addresses the fundamental concerns cited in the *Waltham*, *Stoneham*, and *Clinton* decisions. Its essential holding is that legislative silence or ambiguity results in *some* statute of limitations applying, even in administrative proceedings, and even where that result upsets otherwise-decisive policy objectives.

Section 3(8)(c) says nothing to suggest a freedom from limitations periods. The only portion of the statute meriting discussion in this regard is its reference to reimbursement "in full." But those words cannot be read as a clear, unambiguous anti-prescription directive. *See Suburban Home*, 488 Mass. at 348, 358, 360. Indeed, even if such a reading were textually plausible, it would contradict the case law stating that a six-year statute applies to § 3(8)(c) actions in the courts. *State Bd. of Ret. v. Woodward*, 446 Mass. 698, 705-06 (2006). The phrase "in full" likely means only that reimbursement must be entirely proportional, with no extra weight placed on service performed nearer to retirement. *Cf. Suburban Home*, 488 Mass. at 360 (statute's reference to recovery of "all overpayments owed" did not imply the absence of a limitations period).

Suburban Home's result also anticipates the fairness-oriented concerns that MTRS emphasizes here. MTRS points out that the respondent systems have benefitted from continued custody of, and returns from, the funds to which MTRS lays a claim. But the same was true of *Suburban Home*'s overpaid provider, and indeed of most defendants to suits seeking payment. MTRS adds that the respondents have long known about their § 3(8)(c) liability, because their

own records reflect their former members' arrival at MTRS. But many or most defendants to meritorious lawsuits are aware of their substantive liability. The point of statutes of limitations is that, after a certain period of plaintiff inaction, the merits stand aside. A defendant pleading a statute of limitations defense is not required to *also* offer a substantive defense.

There remains one significant distinction between *Suburban Home* and the current context. Here, the two sides of the dispute are *both* state agencies. It is easy to imagine a normative scheme requiring all disputes among sister agencies to be resolved informally on the merits, without regard to procedural maneuvering. But *Suburban Home*'s interpretive approach applies equally to all statute-based entitlements. *See* 488 Mass. at 360-61 (expressing skepticism that federal-versus-state recovery proceedings are "unlimited" and "open-ended"). That approach subjects all such entitlements to statutes of limitations absent contrary "clear legislative guidance," *id.* at 348, which § 3(8)(c) does not provide. Moreover, the § 3(8)(c) context is one in which the Legislature clearly viewed the agencies as formal adversaries litigating "an action of contract," with its attendant procedural implications. *Woodward*, 446 Mass. at 705-06.

The *Suburban Home* framework is therefore controlling and clear. Because § 3(8)(c) is silent on the question of limitations, the inquiry is limited, even in administrative proceedings, to "*which* statute of limitations applies." 488 Mass. at 348 (emphasis added).[7]

[7] MTRS has not argued that it made its requests for reimbursement pursuant to either its statutory authority to correct "errors," G.L. c. 32, § 20(5)(c)(2), or an "inherent authority to reconsider [administrative] decisions." *Winthrop Ret. Bd. v. LaMonica*, 98 Mass. App. Ct. 360, 365 (2020) (quoting *Moe v. Sex Offender Registry Bd.*, 444 Mass. 1009, 1009 (2005)). In the unlikely event that either type of authority is applicable, the question would remain whether an agency may exercise these powers without any chronological limit, "[l]ike Rip Van Winkle . . . wak[ing] up twenty or even a hundred years later." *Suburban Home*, 488 Mass. at 359.

B. Which Statute Applies

The narrow question of *which* statute applies is easily answered. The Legislature authorized a retirement system pursuing § 3(8)(c) reimbursement to bring "an action of contract." This classification of the reimbursement claim views the relationship among systems as essentially agreement-based. *See also Kagan v. Levenson*, 334 Mass. 100, 103 (1956). If a reimbursement claim is contractual in nature, then it is governed by the rule that "[a]ctions of contract . . . shall . . . be commenced only within six years next after the cause of action accrues." G.L. c. 260, § 2.

It is common ground that this six-year statute would govern judicial-branch actions seeking § 3(8)(c) reimbursement. *Woodward*, 446 Mass. at 705-06; *MTRS v. Stoneham*, *supra*, at 8. *Suburban Home*'s holding that the term "action" tends to embrace administrative proceedings, 488 Mass. at 357-59, indicates that the same statute should apply in G.L. c. 32, § 16(4) appeals.

A more general principle leads to the same conclusion. Under Massachusetts law, a statute of limitations' applicability depends on the "gist of the action," *Anthony's Pier Four, Inc. v. Crandall Dry Dock Engineers, Inc.*, 396 Mass. 818, 823 (1986); *Siebe, Inc. v. Louis M. Gerson Co.*, 74 Mass. App. Ct. 544, 557 (2009), also called "the essential nature of the party's claim." *Oliveira v. Pereira*, 414 Mass. 66, 72 (1992); *Royal-Globe Ins. Co. v. Craven*, 411 Mass. 629, 636 (1992). The effect of this perspective is that "limitation statutes should apply equally to similar facts regardless of the jurisdiction invoked." *City of New Bedford v. Lloyd Inv. Assocs., Inc.*, 363 Mass. 112, 119-20 (1973); *Passatempo v. McMenimen*, 461 Mass. 279, 292 (2012) (citing *Hendrickson v. Sears*, 365 Mass. 83, 85 (1974)).

Neither form nor jurisdiction affect the "gist" or "essential nature" of a retirement system's case for reimbursement under § 3(8)(c). The same statute should therefore apply in

administrative proceedings as would apply in the courts. Indeed, the case law's insistence that the limitations analysis is driven by essence, not form, is a powerful reason to depart from the pre-*Suburban Home* presumption that administrative actions are ordinarily free of the limitations periods applicable in corresponding court actions.

C. How the Statute Applies

The G.L. c. 260, § 2 limitations period commences when "the cause of action accrues." A contractual action for payment accrues when payment becomes due. *Flannery v. Flannery*, 429 Mass. 55, 58 (1999); *Timberline Enterprises, Inc. v. Padre*, 86 Mass. App. Ct. 1121 (2014) (unpublished memorandum opinion). No payment under § 3(8)(c) is payable until a retirement system seeks reimbursement in accordance with a PERAC-issued calculation.[8] It may therefore appear that the clock did not begin to run on MTRS's claims until it invoiced the various respondents in 2018-2019.

The case law concerning analogous situations dispels this impression. Early relevant cases concerned contractual instruments that required a plaintiff to make a formal demand as a condition precedent to bringing suit. As a technical matter, the cause of action did not accrue prior to that demand, and an idle plaintiff could ostensibly extend the limitations period forever. The Supreme Judicial Court averted this result by insisting that the demand must be made "within a reasonable time," operationalized to mean "within the time limited by the statute for bringing the action." *Codman v. Rogers*, 27 Mass. 112, 120 (1830); *Campbell v. Whoriskey*, 170 Mass. 63, 67 (1898); *Town of Warren v. Ball*, 341 Mass. 350, 353 (1960).

[8] The parties have not suggested that a retirement system is ever able, in practice (and contrary to the statute's language), to seek reimbursement without PERAC's involvement.

The case law extended this rule to any suit requiring "the perfection or completion of an inchoate cause of action . . . whether the cause of action and the [condition precedent] result from contract or from statute." *Norwood Tr. Co. v. Twenty-Four Fed. St. Corp.*, 295 Mass. 234, 237 (1936). In any such case, the statute of limitations operates "by analogy," so that the plaintiff "must perfect his right of action within that period, or lose it." *Id.* The obvious impetus for this doctrine is that "[o]therwise a defendant might at the option of the plaintiff be kept for a long period in a state of uncertainty." *Barton v. Auto. Ins. Co. of Hartford, Conn.*, 309 Mass. 128, 134 (1941).

It is clear under this body of cases that a retirement system's claim to § 3(8)(c) reimbursement is enforceable only if the system acts to perfect that claim within the limitations period. But the act or acts sufficient to satisfy this requirement are complicated by PERAC's role in the statutory scheme. No reimbursement is payable until PERAC issues its calculation. A retirement system controls the promptness of its request for a PERAC calculation, but not the ensuing waiting period while PERAC performs its work. That period was approximately one year long in the case of some retirees at issue here.

Circumstances in which perfection of a claim is only partly within a plaintiff's control are infrequent but not new. In *Barton*, the plaintiff's right to insurance coverage was contingent on an appraisal from a panel of appraisers. The Supreme Judicial Court reasoned that "some limit must be placed upon the right to perfect a cause of action by appraisal, just as a limit must be placed upon the right to perfect a cause of action by demand." 309 Mass. at 134. Accordingly, within the limitations period, the plaintiff was obligated to "do all that he could," i.e., to demand the appraisal. *Id.* *See generally* 54 C.J.S. Limitations of Actions § 143 (1987).

The analogy to the present circumstances is straightforward. What is required of a reimbursement-seeking retirement system within the limitations period is to demand a calculation from PERAC. *Barton*, 309 Mass. at 134. Once a system has placed the ball in PERAC's court, it has satisfied the reasonableness-oriented demands of the *Norwood* line of cases. New complications might arise if a system subsequently delays in pursuing payment of the PERAC-computed amount; but no such problem is presented here.

The statute calls for proportional reimbursement to be collected one "fiscal year" at a time. *See* § 3(8)(c). It follows that each fiscal year's reimbursement amount is enforceable only if a PERAC calculation is requested during the ensuing six-year period. *See Flannery*, 429 Mass. at 58-59 (analyzing the accrual of claims for payment due in instalments). Otherwise stated, a system possesses an enforceable right to proportional reimbursement as to the six fiscal years of pension payments immediately preceding its calculation request to PERAC.

D. The PERAC Memorandum

PERAC's role in the § 3(8)(c) scheme adds one more wrinkle to consider. In its 2017 memorandum, PERAC outlined an alternative rule concerning the enforceability of delayed efforts to obtain § 3(8)(c) reimbursement. That rule differs from G.L. c. 260, § 2's provisions in two ways. First, the period of inactivity that generates consequences under PERAC's rule is ten years instead of six. Second, the consequences PERAC envisions are all-or-nothing in nature: a retirement system delaying less than ten years suffers no consequences, whereas a system that misses the ten-year mark loses out on reimbursement for its entire period of delay. By contrast, c. 260, § 2 enables all plaintiffs to seek outstanding reimbursement for a six-year period.

In appellate proceedings, a "position taken in a PERAC memorandum will be considered an 'interpretive' rule, entitled to persuasive weight." *Grimes v. Malden Ret. Bd.*, No. CR-15-5, at 13 (CRAB Nov. 18, 2016) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). The

2017 memorandum does not appear to reflect an interpretive position as much as an on-the-ground practice rooted in pragmatic considerations. In any event, the memorandum cites no authority, predated *Suburban Home*, and overall possesses little "power to persuade." *Skidmore*, 323 U.S. at 140. It does not alter the conclusion that claims to § 3(8)(c) reimbursement are governed by the G.L. c. 260, § 2 framework discussed in the preceding sections.[9]

Conclusion and Order

The results of the foregoing analysis are the following:

1. MTRS's appeal from Needham's decision (CR-19-266) is DISMISSED.

2. The decisions at issue in the other appeals (CR-19-226, CR-19-227, CR-19-281, CR-19-566) are AFFIRMED in part and VACATED in part. They are affirmed inasmuch as they determine that a six-year statute of limitations governs MTRS's requests for § 3(8)(c) reimbursement. They are vacated as far as their remaining analysis. The governing statute time-bars specifically those reimbursement claims arising from fiscal years that predate MTRS's calculation requests (to PERAC) by more than six years. Each respondent is required to recalculate the sum it owes to MTRS accordingly.

SO ORDERED.

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[9] It may be most appropriate for PERAC to refrain from applying *any* limitations period, whether statute-based or policy-based, in its § 3(8)(c) letters. The statute asks PERAC to define the retirement systems' shares of a pension's burden. That role is more substantive than adjudicative in nature. Procedural defenses are irrelevant to it. *See Conservation Comm'n of Norton v. Pesa*, 488 Mass. 325, 332 (2021) (a statute of limitations does not alter any "substantive right"). Moreover, the systems' substantive obligations may carry practical implications even when those obligations are facially time-barred. *See Alpert v. Radner*, 293 Mass. 109, 111-12 (1936) (prescription defense is forfeited in various circumstances); G.L. c. 260, § 36 (time-barred entitlement sometimes may be asserted as a counterclaim). In any event, no particular PERAC decision is challenged in these appeals.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

Appendix of Specific Names and Dates*

Respondent	Retiree Name	Ret. date	Calc. req.	Calc. issued	Reimb. req.	Ex.
Blue Hills	Kathleen Vachon	6/30/2005	7/13/2017	6/22/2018	2/6/2019	7
Andover	Kathie Caramanis	5/30/1998	8/28/2017	8/13/2018	2/6/2019	10
Andover	Patricia Himber	6/30/2002	8/16/2017	8/7/2018	2/6/2019	11
Andover	Elizabeth Jankauskas	6/30/2004	7/7/2017	6/22/2018	2/6/2019	12
Andover	Barbara Whiteside	6/30/2005	10/13/2017	9/28/2018	2/6/2019	13
Needham	Pricilla Carty	7/25/2009	2/2/2017	8/4/2017	2/12/2018	16
Needham	Maureen Graham	8/1/2010	12/1/2016	3/8/2017	2/12/2018	17
Needham	James Modena	6/30/2010	12/1/2016	3/6/2017	2/12/2018	18
Needham	Karen Patriquin	6/30/2008	3/9/2017	8/23/2017	2/12/2018	19
Needham	Ellen Rodman	10/3/2009	2/2/2017	8/7/2017	2/12/2018	20
Needham	Jane Sveden	6/30/2010	10/26/2016	1/24/2017	2/12/2018	21
Needham	Joan Weinstein	2/28/2009	2/2/2017	8/7/2017	2/12/2018	22
Stoneham	Louise Sorabella	6/30/1998	9/15/2017	9/26/2018	5/14/2019	25
Stoneham	Loretta White	9/28/1999	**	10/3/2018	5/14/2019	26
Plymouth	Kathleen Arnold	6/30/2006	7/14/2017	6/22/2018	2/6/2019	29
Plymouth	Raymond Cabral	1/3/2004	7/14/2017	7/18/2018	2/6/2019	30
Plymouth	Charlotte Cloutier	6/30/2006	7/24/2017	8/7/2018	2/6/2019	31
Plymouth	M. Laurel Dudley-Pappas	3/23/2012	4/17/2018	10/26/2018	2/6/2019	32
Plymouth	Sandra Frye	9/20/2004	7/24/2017	8/8/2018	2/6/2019	33
Plymouth	Susan Gagnon	6/30/2003	8/11/2017	8/16/2018	2/6/2019	34
Plymouth	Mary Hough	6/30/2006	7/21/2017	8/15/2018	2/6/2019	35
Plymouth	Maureen Jordan-Salvetti	6/30/2006	7/21/2017	8/15/2018	2/6/2019	36
Plymouth	Candace Kniffen	6/30/2006	7/14/2017	6/29/2018	2/6/2019	37
Plymouth	Sara McKee	12/12/1998	9/14/2017	9/21/2018	2/6/2019	38
Plymouth	Jane Moginot	6/30/1998	9/14/2017	9/21/2018	2/6/2019	39
Plymouth	Cynthia Murphy	10/18/2009	3/16/2018	6/18/2018	2/6/2019	2
Plymouth	Maureen Saunders	6/30/2002	9/14/2017	9/24/2018	2/6/2019	40
Plymouth	Patricia Shea-Vacca	1/28/2005	7/14/2017	6/22/2018	2/6/2019	41
Plymouth	Jayne Snarsky	6/30/2004	7/14/2017	***	2/6/2019	42
Plymouth	Debra Stone	8/31/2012	5/21/2018	8/20/2018	2/6/2019	43
Plymouth	Jane Wilcox	11/15/2002	1/11/2018	6/19/2018	2/6/2019	44

* The table's columns report the following information based on a preponderance of the record evidence: the respondent at issue; the pertinent retiree's name; his or her retirement date; the date of MTRS's request to PERAC for a § 3(8)(c) calculation; the date on which PERAC issued its calculation; the date on which MTRS invoiced the respondent for reimbursement; and the exhibit compiling records relating to the specific retiree.

** I make no finding. This date does not appear in the exhibits, and the briefing offers only an estimate.

*** I make no finding. This date does not appear in the exhibits or the briefing.