

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**John Narcizo,**  
Petitioner

v.

Docket No. CR-21-0064  
Date: June 30, 2023

**Massachusetts Teachers'  
Retirement System,**  
Respondent

**Appearance for Petitioner:**

Amy Laura Davidson, Esq.  
Sandulli Grace, P.C.  
44 School Street, Suite 1100  
Boston, MA 02108

**Appearance for Respondent:**

James O'Leary, Esq.  
MTRS  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129

**Administrative Magistrate:**

Kenneth J. Forton  
Administrative Magistrate

**SUMMARY OF DECISION**

MTRS correctly applied the 180-day deadline for the Petitioner to purchase his three years of vocational experience service under G.L. c. 32, § 4(1)(h<sup>1</sup>/<sub>2</sub>). Purchasers of such service must pay annual interest at the buyback rate covering the period from the date of the vocational experience through the invoice date.

**DECISION**

Petitioner John Narcizo timely appeals, under G.L. c. 32, § 16(4), the January 12, 2021 decision of Respondent Massachusetts Teachers' Retirement System (MTRS) that determined Mr. Narcizo was ineligible to purchase his vocational experience service because he missed the statutory 180-day deadline to respond to MTRS's invoice.

On July 7, 2021, DALA suggested to the parties that Mr. Narcizo's appeal could be resolved on written submissions under 801 CMR 1.01(10)(c) and ordered them to submit legal memoranda and proposed exhibits. Neither party objected to the magistrate's order. On November 17, 2021, MTRS submitted a memorandum and offered eight exhibits, labeled 1 through 8. On January 11, 2022, Mr. Narcizo submitted a memorandum, and six additional exhibits, labeled 1 through 6. I have admitted these exhibits into evidence as Exhibits R1-R8 and P1-P6, respectively.

**FINDINGS OF FACT**

Based on the record evidence, I make the following findings of fact:

1. John Narcizo is a member of MTRS. (Ex. P1.)
2. In January 2001, Mr. Narcizo began working as an electrical teacher at the Diman Regional Vocational Tech High School in Fall River, MA. (Ex. P1.)
3. When he started teaching in 2001, Mr. Narcizo's salary was \$34,617.00. (Ex. R2.)
4. On or about June 7, 2012, Mr. Narcizo submitted a service purchase application for vocational experience service. (Ex. P1.)
5. MTRS determined that the eligible creditable time periods were March 1, 1987 through August 31, 1989 and January 1, 1999 through June 30, 1999. (Ex. R3.)

6. On May 4, 2016, MTRS mailed an invoice for the service purchase to Mr. Narcizo. The invoice stated that Mr. Narcizo had 180 days to respond to the invoice and included the following direction:

\*If you do not EITHER purchase your service within 180 days of the invoice mailing date or by your date of retirement, whichever comes first, OR sign up for our installment payment plan within 180 days of the invoice mailing date and complete your payment within the five-year installment term or by your date of retirement, whichever comes first, you will **NOT** be able to purchase this service at a later date.

(Ex. R4.) (Emphasis in original.)

7. The invoice stated the interest rates that were used to determine the payments options for the vocational buyback. The amounts owed under the lump sum on the invoice were \$27,866.47 if paid by May 31, 2016, \$28,043.59 if paid by July 31, 2016, and \$28,309.26 if paid by October 31, 2016. Additionally, the invoice stated that if Mr. Narcizo set up the five-year payment plan by May 31, 2016, he would owe a total of \$30,024.55 in five annual payments of \$6,004.91. (Ex. R4.)

8. Mr. Narcizo did not respond to the invoice within 180 days. (Ex. R5.)

9. By letter dated November 24, 2019, Mr. Narcizo acknowledged that he received the 2016 invoice but did not purchase the service then because of “unexpected college tuition and life expenses.” He also claimed that the invoice was miscalculated and contained misinformation. (Ex. R5.)

10. On or about December 6, 2019, MTRS spoke with Mr. Narcizo on the phone, informing him the buyback amount was not miscalculated and he was ineligible for the buyback because he missed the 180-day deadline. (Ex. R5.)

11. On or about October 1, 2020, counsel for Mr. Narcizo requested that Mr. Narcizo be allowed to purchase the service with the interest that would have been due in

2012 when he applied for the purchase. He claims that amount would have been \$8,402.01. (Ex. R6.)

12. By letter dated January 12, 2021, MTRS informed Mr. Narcizo that he was ineligible to purchase his prior vocational experience because he did not respond to the May 4, 2016 invoice within 180 days. (Exs. R7, R8.)

13. On January 18, 2021, Mr. Narcizo timely appealed MTRS's decision. (Ex. P6.)

### **CONCLUSION AND ORDER**

MTRS denied Mr. Narcizo's request to recalculate an old invoice for vocational experience service under G.L. c. 32, § 4(1)(h½) so that a new invoice could be issued and he could purchase the service. MTRS denied the request because it concluded that there was no error in its calculation and Mr. Narcizo failed to purchase the service within 180 days, as required by § 4(1)(h½). For the following reasons, MTRS's decision is affirmed.

G.L. c. 32, § 4(1)(h½) provides, in relevant part:

Any member in service of the teachers' retirement system . . . , and who is or was employed as a teacher as defined by section 1 in a vocational-technical school . . . may receive creditable service for any period or periods of prior work experience in the occupational field in which the member became a vocational-technical teacher and which was required as a condition of the member's employment and licensure under regulations of the department of education. No credit shall be allowed until the member has paid into the Annuity Savings Fund of the system before any retirement allowance becomes effective for the member, in 1 sum, or in installments, *upon the terms and conditions that the board prescribes*, makeup payments of an amount equal to *10 per cent of the regular annual compensation of the member as of the member's most recent date of entry into membership in the teachers' retirement system . . . , for each year of service purchased plus buyback interest thereon. . . .* The creditable service allowable under this paragraph for any member shall not exceed 3 years. Members in service of a retirement system who make application for this creditable service shall be notified by the retirement board of their eligibility for such creditable service, and, if they are eligible, shall also be

notified by the retirement board that they have the following options: (1) to purchase the service in a lump sum within 180 days of the notice, or (2) to enter into an installment agreement within 180 days of the notice to pay for the service.

(Emphasis added.)

The analysis here is straightforward. After Mr. Narcizo applied to purchase vocational experience service in 2012, MTRS approved the application and issued an invoice in 2016.<sup>1</sup> It is undisputed that Mr. Narcizo did not pay the lump sum or request a payment plan within 180 days of MTRS's invoice. Therefore, under G.L. c. 32, § 4(1)(h $\frac{1}{2}$ ), Mr. Narcizo is not entitled to purchase his vocational experience service at the 2016 invoice price.

Mr. Narcizo makes two arguments. First, he asserts that he did not make the purchase within the 180-day window because he had unexpected financial issues. Unfortunately for Mr. Narcizo, § 4(1)(h $\frac{1}{2}$ ) makes no provision for dealing with his situation. Moreover, DALA does not have the authority to employ an equitable remedy that contradicts a statute. *Bristol County Retirement Bd. v. Contributory Retirement Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006). *Cf. Keener v. Barnstable County Retirement Bd.*, CR-05-690 (DALA Sept. 19, 2006) (no exception to 180-day filing deadline for purchase of military service under Acts of 2002, c. 468 in the face of death of applicant's infant grandchild).

Second, Mr. Narcizo claims that MTRS miscalculated his invoice. His own calculation is a bit foggy. The statute provides that a member must pay 10% of his

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<sup>1</sup> There is no record evidence to explain why processing the application took 4 years. This delay meant that the amount of interest owed on the purchase increased significantly and contributed to the unaffordability of the purchase.

starting annual salary for each year. Mr. Narcizo's annual salary was \$34,617.00, and he seeks to purchase 3 years. Multiply 3 times 10% of \$34,617.00, or \$3,462.00, and you get \$10,386.00. Plus, he must pay buyback interest<sup>2</sup> on the \$10,386.00 from the invoice date "back to the years of service being purchased." 807 CMR 14.05. The Supreme Judicial Court has determined that § 4(1)(h $\frac{1}{2}$ ) is silent on the issue of when buyback interest accrues, and 807 CMR 14.05 is a reasonable interpretation of the statutory silence. *MTRS v. CRAB*, 466 Mass. 292, 294. In this case, going back to the years of service being purchased means paying annual interest from March 1, 1987 through August 31, 1989 and January 1, 1999 through June 30, 1999 up through 2016. That is variously from 17 years to 29 years of annual buyback interest at the buyback interest rate of 3.875%. This explains how a base contribution of \$10,386.00 ends up being invoiced at a lump sum payment of at least \$27,866.47 and that further interest charges make later lump sum payment options in the invoice even more than that.

Mr. Narcizo seems to understand the 3.875% buyback interest as a one-time charge against the base contribution of \$10,386.00.<sup>3</sup> This approach would result in a considerable windfall to the members who qualify for this kind of purchase because it flies in the face of the evident purpose of charging interest to members who purchase creditable service: to put the retirement system in the same financial condition it would have been in if the member had made retirement contributions when the service was

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<sup>2</sup> The retirement law defines buyback interest as "one-half of actuarial assumed interest," which is essentially defined as "a rate equal to a [retirement] system's actuarial assumed rate of return on investments, as determined . . . by [PERAC]." G.L. c. 32, § 1.

<sup>3</sup> Mr. Narcizo does not explain in any further detail how he concluded that the invoice was miscalculated. In a lengthy brief, he cites numerous cases where retirement boards made errors that must be corrected. However, Mr. Narcizo has not proven in this appeal that MTRS miscalculated his invoice.

performed, and the system had been able to invest those contributions over the following years. *See MTRS*, 466 Mass. at 300 (“We accept as reasonable MTRS’s view that the makeup payment [under § 4(1)(h½)] is designed to compensate MTRS for the return on investment that it could have earned had the member actually contributed to the retirement system during the years of creditable service being purchased.”). Mr. Narcizo makes no argument why the buyback interest rate is not an annual rate.

Because the Petitioner failed to pay for his vocational experience service in a lump sum or enter into an installment agreement within 180 days of the issuance of the MTRS invoice for the purchase, he is no longer entitled to purchase that service. Accordingly, MTRS’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

Dated: June 30, 2023