

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Brenda Newman,
Petitioner,

Docket No.: CR-24-0310

v.

State Board of Retirement,
Respondent.

ORDER OF DISMISSAL

Petitioner, Brenda Newman, appeals from the denial of Respondent, State Board of Retirement, of her request to purchase service for the period of August 21, 2003 to December 20, 2008. The Board denied the request on the ground that Petitioner was billed for service on April 10, 2018 and did not, within 180 days, either purchase this service or enter into an installment agreement to purchase it. M.G.L. c. 32 sec. 4(1)(s).

Accordingly, on December 9, 2024 Administrative Magistrate Timothy Pomarole ordered Petitioner to provide sufficient evidence that (a) within 180 days of receiving notice from the Board concerning her contract service purchase, she either purchased the service or entered into an installation agreement to do so; or (b) she is entitled to complete the purchase, notwithstanding not acting within the 180-day period.

Petitioner furnished a response to that order, stating the following:

As I previously explained in my application for this additional time, I only recently received information from the Retirement Board that allowed me to explicate the basis for this request and any delay should not be deemed this applicant's failure to proceed apace. Rather, [it] was due to the need to await approvals and authorizations as well as assistance from Theresa McGoldrick to help move along the process.

On July 1, 2025 Administrative Magistrate Pomarole issued a Further Order to Show Cause on the ground that he did not fully understand her response or how it addressed the questions recited in the original Order to Show Cause.

Pursuant to the Further Order to Show Cause, Petitioner was to explain in writing, on or by August 15, 2025, the following, that: (a) within 180 days of receiving notice from the Board concerning her contract service purchase, she either purchased the service or entered into an installation agreement to do so; or (b) she is entitled to complete the purchase, notwithstanding not acting within the 180-day time period. If she failed to furnish some basis for concluding that her service could be purchased, her appeal would be dismissed for failure to state a claim on which relief may be granted. Petitioner has not provided any further response.

DISCUSSION

A. Applicable Legal Standard

An appeal is properly dismissed if it “fail[s]...to state a claim upon which relief can be granted.” 801 CMR 1.01 (7)(g)(3). This principle is borrowed from the judicial courts, which have clarified that they “look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief.” *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). See *Gill v. Armstrong*, 102 Mass. App. Ct. 733, 735 (2023). For the reasons discussed below, I conclude that Petitioner does not state a claim upon which relief can be granted, and her appeal therefore is dismissed.

B. Petitioner Must Purchase Service or Enter Into Installment Agreement Within 180 Days After Date of the Notice

M.G.L. c. 32 sec. 4(1)(s) sets forth the following requirement:

Members in service of the state requirement system who make application for . . . creditable service shall, subject to the rules and regulations of the state board of retirement, be notified by the state board of retirement of their eligibility for creditable service and, if they are eligible, shall also be notified by the state board of retirement that they have the following options: (1) to purchase the service in a lump sum within 180 days after the date of the notice; or (2) to enter into an installment agreement within 180 days after the date of the notice to pay for the service.

M.G.L. c. 32 sec. 4(1)(s).

As stated in 941 CMR 2.09: Contract Service as Creditable Service,

If the 180-day period expires without action by a member, the contract service shall no longer be eligible for service.

941 CMR 2.09(5)(b).

Here, Respondent sent notice to Petitioner on April 10, 2018 of her eligibility for creditable service and of her option (1) to purchase the service in a lump sum within 180 days after the date of the notice; or (2) to enter into an installment agreement within 180 days after the date of the notice to pay for the service. Petitioner failed to purchase the service or enter into an installment agreement by the 180-day deadline of October 7, 2018. Therefore, she is precluded from purchasing the service. 941 CMR 2.09 (5)(b).

Petitioner states that she was unable to comply with the 180-day deadline because she had “only recently received information from the Retirement Board” and she had to “await approvals and authorizations as well as assistance.” It is not clear what information she needed or what approval or authorization was required before she could purchase the service. Regardless, no authority exists for the Division of Administrative Law Appeals to deviate from the deadline clearly set forth in G.L. c. 32 sec. 4(1)(s) and mandated by 941 CMR 2.09(5)(b). Arguments based upon equitable considerations are unavailing. *See Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006).

For the reasons stated above, Petitioner is ineligible to purchase her credit for the period of August 21, 2003 to December 20, 2008 as creditable service. This appeal is **dismissed** for failure to state a claim on which relief may be granted.

Dated: January 2, 2026

/s/ Karen T. Guthrie
Karen T. Guthrie
Administrative Magistrate
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