

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Patricia O’Leary,
Petitioner,

No. CR-25-0049

Dated: May 23, 2025

v.

**Massachusetts Teachers’ Retirement
System,**
Respondent.

ORDER GRANTING SUMMARY DECISION

This is an appeal from a decision of the Massachusetts Teachers’ Retirement System (MTRS) denying petitioner Patricia O’Leary’s request to participate in the benefits program known as Retirement Plus. *See* G.L. c. 32, § 5(4). MTRS moves for summary decision.

A prior order advised Ms. O’Leary that her failure to oppose MTRS’s motion may be construed as an agreement that the motion is meritorious. *Compare Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.*, 527 F. Supp. 2d 1355, 1371 (M.D. Fla. 2007), *with Jones v. Providence Pub. Sch.*, No. 23-1407, 2024 WL 1128034 (1st Cir. Mar. 11, 2024) (unpublished judgment). Ms. O’Leary has filed nothing further. It thus appears that no dispute remains live. *See* standard rule 7(g)(2)¹; *Fannie Mae v. Branch*, 494 Mass. 343, 347-48 (2024).

Regardless, MTRS’s motion is meritorious, even if the question is close. Summary decision is warranted where “there is no genuine issue of fact . . . and [the moving party] is entitled to prevail as a matter of law.” Standard rule 7(h). An issue of fact is “genuine” if the non-moving party possesses a “reasonable expectation” of prevailing on it. *See Goudreau v.*

¹ In accordance with G.L. c. 30A, § 9, the “standard rules” in this context are the provisions of 801 C.M.R. § 1.01.

Nikas, 98 Mass. App. Ct. 266, 269-70 (2020). *See also Caitlin v. Board of Reg. of Architects*, 414 Mass. 1 (1992).

The parties agree that Ms. O’Leary was a teacher and an MTRS member in 2001, when Retirement Plus came into effect. To join the program, Ms. O’Leary would have needed to furnish MTRS with an enrollment form by the middle of that year. *See* Acts 2000, c. 114, § 2; *Roussin v. Boston Ret. Syst.*, No. CR-23-28, 2024 WL 2956657, at *2 (Contributory Ret. App. Bd. June 3, 2024); *Fillmore v. Massachusetts Teachers’ Ret. Syst.*, No. CR-23-358, 2024 WL 277245 (Div. Admin. Law App. Jan. 5, 2024). The question here is whether she did so.

MTRS maintains that it received no enrollment form from Ms. O’Leary. The support for that assertion as presented in the motion revolves around an entry in an MTRS database. According to that entry, Ms. O’Leary is among the members who failed to respond to MTRS’s 2001-era mailings about Retirement Plus. Testimony reproduced by MTRS from another proceeding adds background about the process through which the database was compiled. *See Dwyer v. Massachusetts Teachers’ Ret. Syst.*, No. CR-23-0459, 2024 WL 4345195, at *3 (Div. Admin. Law App. Sept. 13, 2024).

This evidence is not overwhelming.² On the other hand, as the petitioner, Ms. O’Leary bears the burden of proof as to “all issues determining entitlement.” *Goldstein v. Massachusetts Teachers’ Ret. Syst.*, No. CR-03-176, at *4 (Contributory Ret. App. Bd. Feb. 4, 2005). Her support for her case consists of the following assertion: “I sent the postcard in. Apparently it was sent in late and I would like proof.” Ms. O’Leary’s request for contrary “proof” arguably implies incomplete confidence in the accuracy of her recollection. More importantly, Ms.

² MTRS’s memorandum and fifteen exhibits focus on showing that Ms. O’Leary received “notice” of Retirement Plus’s enactment, a point that she does not contest.

O’Leary’s unsworn statement is too “vague, non-specific and general” to produce a genuine issue of fact. *See Benson v. Massachusetts Gen. Hosp.*, 49 Mass. App. Ct. 530, 533 n.3 (2000). *See also Ng Bros. Const., Inc. v. Cranney*, 436 Mass. 638, 648 (2002). Ms. O’Leary does not identify any details of the sort that could allow a fact finder to conclude that she correctly describes the events of twenty-four years ago. If she were to reiterate her claim under oath, her testimony would remain too conclusory to overcome the presumption that a public agency’s records are “regular,” i.e., sound. *See City of Newburyport v. Thurlow*, 324 Mass. 40, 44 (1949); *Whelan v. Division of Med. Assistance*, 44 Mass. App. Ct. 663, 668 (1998).

In view of the foregoing, it is ORDERED that MTRS’s motion for summary decision is ALLOWED. Summary decision is hereby entered to the effect that MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate