

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DEBORA S. O'NEIL,	:	Docket No. CR-23-0154
<i>Petitioner</i>	:	
	:	
v.	:	Date: May 23, 2025
	:	
STATE BOARD OF RETIRMENT,	:	
<i>Respondent</i>	:	

Appearances:

For Petitioner: Debora S. O'Neil, pro se
For Respondent: Athila Soares-Nunes and Jennifer Hunt, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Debora O'Neil worked for the town of Scituate as an Outreach/Social Services Coordinator. She worked primarily with mentally ill and developmentally disabled individuals. She provided a wide range of hands-on assistance that amounted to "direct care" and did so over 50% of her time. She is thus entitled to Group 2 status.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the State Board of Retirement's ("Board") decision that she is not eligible for Group 2 status. I conducted a virtual hearing on March 19, 2025. The Petitioner was the only witness. I entered exhibits 1-4 into evidence. Both parties submitted post-hearing briefs by May 2, 2025.

FINDINGS OF FACT

1. The Petitioner is a licensed social worker. (Testimony).
2. She worked for the town of Scituate from 1997 until 2001 as an Outreach/Social Service

- Coordinator under the Director for the Council of Aging. (Exs. 1-2; testimony).
3. The Petitioner maintained a case load of 70-75 clients whose average age was 60-65. She received her client referrals from the police, firefighters, concerned neighbors, and other sources. (Testimony).
 4. About 75-80% of her clients had mental disabilities like dementia, schizophrenia, Alzheimer's, cerebral palsy, and other serious developmental and mental health issues. Some of the Petitioner's clients also had physical disabilities along with their mental disabilities. Few had only physical disabilities. (Testimony).
 5. The Petitioner worked with the most demanding clients who required the most intensive intervention. These clients were unable, or were becoming unable, to live independently at home. For example, many of the Petitioner's clients could no longer pay their own bills, remember to take their medications, or make it to medical appointments. Others could not prepare their own meals or would wander the streets at night. Her main task was to step in and deal with these deficiencies. (Testimony).
 6. Her duties included referring her clients to community resources, advocating on behalf of them for access to community resources, personally transporting clients to medical/social appointments, personally attending client medical appointments, advocating with client medical providers, helping clients pay bills and manage their finances, helping clients fill out applications for community services, monitoring the safety of her clients' living spaces, and ensuring clients took their medications. (Ex. 2; testimony).
 7. All the Petitioner's clients required personal check-ins. Some required them more often but, on average, she saw individual clients every 1-4 weeks. (Testimony).
 8. On any given week, she would have 15-25 in person, one-on-one, interactions with her

clients. These interactions would take place usually at the clients' homes or sometimes out in the community. She was in the field making these visits approximately seven out of eight hours a day. (Testimony).

9. The Petitioner rarely performed administrative duties—essentially because she had very little time to do anything other than care for her clients. (Testimony).
10. Beginning the second year of Petitioner's employment, and continuing through the end of her employment, the town received grant money to hire an individual ("the grant employee") to assist the Petitioner in these administrative duties. (Testimony).
11. The grant employee took care of a majority of the administrative duties and also worked with the less needy clients so the Petitioner could focus on the most difficult cases. (Testimony).
12. When the Petitioner left Scituate in 2001, she went to work for the Department of Developmental Services ("DDS") as a Service Coordinator. At DDS, the Petitioner serviced some of the same clients that she worked with while employed by Scituate. (Testimony).
13. On or about November 30, 2022, the Petitioner applied for group 2 classification for her time spent working for Scituate. (Ex.1).
14. On or about February 24, 2023, the Board issued a decision denying the Petitioner's application without elaboration. (Ex.3).

DISCUSSION

A member's retirement compensation is based, in part, on their group classification. Members are classified into four groups. G.L. c. 32, § 3(2)(g). Group 2 includes employees "whose regular and major duties require them to have the care, custody, instruction or other

supervision of . . . persons who are . . . mentally ill or [developmentally disabled.]”¹ G.L. c. 32, § 3(2)(g). “[A]n employee who spends more than half of his or her time ‘engaged in care, custody, instruction, or other supervision’ of a population included in Group 2 engages in these responsibilities as part of his or her ‘regular and major duties.’” *Desautel v. State Bd. of Ret.*, CR-18-0080, *3 (Contributory Ret. App. Bd. Aug. 2, 2023).

There are two issues to address in this case: did the Petitioner treat an enumerated population, e.g. mentally ill or developmentally disabled individuals and, if she did, did her regular and major duties involve caring for them?

The Petitioner worked with both mentally ill and developmentally disabled individuals.

The Petitioner worked almost exclusively with clients who would be considered either “mentally ill” or “developmentally disabled” as those terms are understood in the group 2 context.

First, the Petitioner’s work at DDS, following her time at Scituate, literally involved treating some of the same clients she worked with in Scituate. Persons in the care of DDS are considered developmentally disabled for purposes of group 2 classification. *Cassidy v. State Bd. of Ret.*, No. CR-21-0400, 2024 WL 1739372, at n.2 (Div. Admin. Law App. Apr. 12, 2024). Therefore, if the persons she worked with were eligible for, or receiving, DDS services, she worked with persons who were “developmentally disabled” in Scituate.

Second, apart from her developmentally disabled clients, the majority of the Petitioner’s other clients were “mentally ill,” as that term is used in § 3(2)(g). Whether someone is

¹ The statute uses the term “mentally defective.” However, “[t]he term ‘mentally defective’ is obviously and badly archaic. . . . Over the years, administrative case law has come to interpret the ‘mentally defective’ category as covering individuals with developmental disabilities.” *Burke v. State Bd. of Ret.*, CR-19-0394, 2023 WL 5528742 (Div. Admin. Law App. Aug. 18, 2023)

considered “mentally ill” is determined by determining their “primary diagnosis.” *Popp v. State Bd. of Ret.*, CR-17-848, 2023 WL 11806173 (Contributory Ret. App. Bd. Nov. 16, 2023).

“Diagnoses are ‘primary’ in the pertinent sense if they ‘truly drive the patients’ care’ or ‘govern the care a patient receives.’ Diagnoses are ‘secondary’ if they are ‘merely incidental or derivative.” *Zelten v. State Bd. of Ret.*, CR-22-0457, at *5, 2024 WL 664422 (Div. Admin. Law App. Feb. 9, 2024), *quoting Popp* at *6.

Here, the Petitioner’s clients carried a variety of diagnoses—Alzheimer’s, schizophrenia, dementia—all of which have previously formed the bases for a finding that the population treated was “mentally ill.” *See Popp, supra* (Alzheimer’s); *Greenwood v. State Bd. of Ret.*, No. CR-22-66, 2024 WL 3326226, (Div. Admin. Law App. June 7, 2024) (schizophrenia); *Pulik v. State Bd. of Ret.*, CR-10-605, 2012 WL 13406359, (Contributory Ret. App. Bd. July 10, 2012) (dementia); *Neergheen v. State Bd. of Ret.*, CR-07-0439, 2009 WL 5966870 (Div. Admin. Law App. July 24, 2009); (*aff’d by* Contributory Ret. App. Bd. Nov. 3, 2009) (dementia). Moreover, the care required for these clients was clearly driven by their conditions. In other words, the purpose of the Petitioner’s service was to remedy issues brought about by the clients’ mental/developmental conditions that left them unable to perform tasks of daily living. Indeed, she worked only with the most challenging clients, leaving the grant employee to work with other people whose conditions were not so debilitating.

While a fraction of the Petitioner’s clients had only physical disabilities, I find there were too few to make a difference. Rather, a large majority of the clients the Petitioner worked with qualified as developmentally disabled and/or mentally ill.

The Petitioner's regular and major duties involved providing direct care

That just leaves the question of whether the Petitioner provided care to these clients.²

“Care” in this context means providing “direct care.” *Desautel v. State Bd. of Ret.*, CR-18-0080, at *4 (Contributory Ret. App. Bd. Aug. 2, 2023); *Clement v. State Bd. of Ret.*, CR-15-299, at *6 (Div. Admin. Law App. Dec. 8, 2017). Direct care is not merely “performing some discrete service but taking on responsibility for some aspect of an individual’s well-being.” *Long v. State Bd. of Ret.*, CR-21-0287, at *4, 2023 WL 6900305 (Div. Admin. Law App. Oct. 13, 2023). It connotes “charge, oversight, watchful regard, and attention.” *Rebell v. Contributory Ret. App. Bd.*, 30 Mass. App. Ct. 1108, No. 89-P-1259, at *3-4 (March 20, 1991) (Memorandum of Decision and Order under former Appeals Court Rule 1:28). That said, care “does not include administrative or technical duties.” *Larose v. State Bd. of Ret.*, CR-20-357, at *2, 2023 WL 4548411, (Div. Admin. Law App. Jan. 27, 2023).

Prior DALA decisions provide that certain case management activities—such as helping a client gain access to services and benefits, ascertaining whether a client is benefitting from services, and advocating on a client’s behalf with service providers and public entities—may ground a Group 2 classification if these activities require meaningful interactions with clients. *O'Connor v. State Bd. of Ret.*, CR-11-698, 2019 WL 1336562 (Contributory Ret. App. Bd. May 20, 2019); *Burciaga v. State Bd. of Ret.*, CR-03-940, at *4-6 (Div. Admin. Law App. March 25, 2005); *Parmenter v. State Bd. of Ret.*, CR-04-341, at *8-11 (Div. Admin. Law App. Aug. 1, 2005); *Zilembo v. State Bd. of Ret.*, CR-02-907 (Div. Admin. Law App. Oct. 7, 2003). For example, in *Zilembo*, the member, a Case Manager/Human Services Coordinator, functioned “as an advocate and supporter for her clients in her work in securing needed health care, housing,

² The Petitioner does not argue she provided custody, instruction or other supervision.

and other community services.” *Zilembo, supra*, at *2. Her responsibilities included “coordinating the linkage of client services; monitoring the quality and quantity of services; advocating on behalf of the client; and identifying barriers and gaps in the service system to those responsible for service planning.” *Id.* at *4. Substantive client contacts were “needed and central to carrying out her case management responsibilities.” *Id.*; *see Burciaga, supra*, at *4 (observing that successful Group 2 claimant monitored the effectiveness and appropriateness of clients’ service plans “not from afar, but with a face-to-face relationship with her clients” and “worked closely with each client as a client advocate to ensure services needed were obtained”).

Almost all of the Petitioner’s time (and certainly way more than 50% of it) was spent performing a variety of direct care duties: she personally provided her clients with rides to and from medical/social appointments, advocated on their behalf to medical providers, assisted clients in completing their bills, filled out service applications on their behalf, ensured clients were following their personal treatment plans, and conducted random client check-in assessments. *See, e.g., Cassidy v. State Bd. of Ret.*, CR-21-0440, 2024 WL 1739372 (Div. Admin. Law App. Apr.12, 2024) (taking client to appointments direct care); *Pina v. State Bd. of Ret.*, CR-21-0387, 2024 WL 1048144 (Div. Admin. Law App. Mar. 1, 2024) (assisting with interpersonal issues direct care). The Petitioner engaged in one-on-one interactions with her clients daily. Most of her duties mirror the duties of other Group 2 claimants, such as the Petitioner in *Zilembo*, and even went beyond them. She was “not merely conferring a benefit or performing some discrete service, but taking on responsibility for some aspect of [the clients’] well-being.” *Long, supra*, at *5. She had “personal and direct” interactions with a Group 2 population, with “breadth and depth” of responsibility, and “watchfulness and attention.”

McKinney v. State Bd. of Ret., CR-17-230, CR-17-868, 2023 WL 6537982, at *19-20 (Div. Admin. Law App. Sept. 29, 2023).

The Board argues that the Petitioner's job was mostly administrative, relying heavily on Petitioner's job description to support these claims. However, while a job description is helpful evidence of actual duties, it is not dispositive. *Daley-Horgan v. State Bd. of Ret.*, CR-22-0227, at *6, 2024 WL 5107627 (Div. Admin. Law App. Dec. 6, 2024). The Petitioner's testimony demonstrates that her actual day-to-day duties plainly go beyond the duties contained within the job description. The Board also submits what the Petitioner did was not "direct care." Admittedly, not all service coordination or personal interaction with clients is within Group 2 care. For example, the duties of the grant position involved connecting less needy clients to community resources, administrative paperwork, and grant writing. But as noted, the substantial degree of the Petitioner's personal contact with clients, combined with the nature of assistance with tasks of daily living, leave no doubt that what she did constitutes "direct care."

CONCLUSION

The Petitioner has satisfied her burden of proof that she spent more than 50% of her time providing direct care to "mentally ill" and "developmentally disabled" individuals. The Board's decision is hereby **reversed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate