

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Darlene Pina,
Petitioner

v.

Docket No. CR-21-0387

State Board of Retirement,
Respondent

Appearance for Petitioner:

Darlene Pina
25 Canterbury Street
New Bedford, MA 02746

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street
Boston, MA 02108

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

A case manager for a public education collaborative, which offered services to adults with developmental disabilities, deserved Group 2 classification, because she spent more than 50% of her time in her last year of work caring for adults with developmental disabilities.

DECISION

The petitioner, Darlene Pina, appeals the denial by the State Board of Retirement of her application for Group 2 classification. I held a hearing on September 12, 2023 by Webex, which I recorded. Mrs. Pina represented herself and was the only witness. I admitted five exhibits at the

hearing. After the hearing, I admitted as Exhibit 6 material that SBR provided about the Southeastern Massachusetts Educational Collaborative.

I began drafting the decision, had some unanswered questions, and held a second hearing on February 6, 2024.

SBR submitted a post-hearing brief after the first hearing. Mrs. Pina gave her closing argument orally at the end of the first hearing.

Findings of Fact

1. The Southeastern Massachusetts Educational Collaborative (SMEC) is a public education collaborative and an extension of nine public school systems. (Ex. 5)

2. SMEC offers services to students with special needs who are 4 to 21 years old, and adults with developmental disabilities. (Ex. 5)

3. “SAIL,” which stands for “Supporting Adults for Inclusive Living,” is a component of SMEC. (Ex. 2, testimony)

4. SAIL supports people who are 22 years old and older who have mental illness or developmental disabilities. (Ex. 2)

5. In May 2005, Mrs. Pina began working for SMEC and SAIL as a direct care staff member. (Ex. 2)

6. After a year, Mrs. Pina became a case manager, which was her position through June 30, 2021, when she stopped working at SMEC. (Ex. 2)

7. The job description for a case manager has various parts, including a Statement of Duties, a list of Essential Duties, and Ability(ies). (Ex. 3)

8. The Statement of Duties included this excerpt:

Provide case management services to SMEC consumers who are receiving

residential, employment, or community support services.¹ The individual serving as case manager needs to develop an exceptional knowledge of DDS-funded service delivery for adults with developmental disabilities.²

(Ex. 2)

9. A list of Essential Duties, whose introduction states that it is not “all-inclusive,”

follows:

1. Maintain an assigned caseload and ensure all consumer records are accurate and up-to-date.³
2. Provide intake and assessment services to new customers.⁴ Arrange for all required documentation to set up and ongoing maintenance of consumer files.⁵
3. In the absence of supervisory staff, assists in supervision of all consumers[,] including assisting with interpersonal issues should they arise.⁶
4. Maintains a culturally diverse, purposeful, respectful, and stimulating environment that is organized and positive in nature and geared toward consumer interests.
5. Meet with customers on an ongoing basis to discuss and determine appropriate ISP goals.⁷
6. In collaboration with the SAIL team and outside providers[,] such as DDS, prepares for, attends, and fully participates in the development of Individual Service Plans (ISPs).⁸

¹ This statement is somewhat circular – case managers provide case management services – and therefore not helpful in determining whether Mrs. Pina cared for, had custody of, instructed, or otherwise supervised developmentally disabled people. But the juxtaposition of case management services at the beginning of the sentence with other people’s “support services” at the end of the sentence indicates that case managers, while performing this duty, do not care for, have custody of, instruct, or otherwise supervise developmentally disabled people.

² This sounds like an administrative duty, not one of caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

³ This is an administrative duty.

⁴ SMEC called program participants both “customers” (Ex.3) and “consumers.” (Ex. 3, testimony)

⁵ Both duties sound administrative.

⁶ This is caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

⁷ This is caring for, instructing, or otherwise supervising developmentally disabled people.

⁸ This is an administrative duty.

7. Work closely with the appropriate supervisors as needed to ensure implementation of the ISP.⁹
8. Advise, support, and consult with consumers to facilitate the achieving of personal goals identified in the ISP.¹⁰ Advocate for consumers as needed.¹¹ Assist consumers with self-advocacy.¹²
9. Act as a liaison among consumers, their families, staff, DDS Service Coordinators and other service providers[,] including health care providers and counselors.¹³
10. Facilitate consumer inclusion in the community[,] including housing, education, volunteer opportunities, and vacation trips.¹⁴
11. Provide support and/or transportation to community resources or scheduled medical appointments when needed.¹⁵
12. Ensure consumers have access to any appropriate governmental funding sources for which they have potential eligibility.¹⁶
13. Attend Human Rights Committee meetings and periodically conduct a Human Rights review with consumers.¹⁷
14. Complete all expected paperwork in a high quality manner within mandated/required timelines.¹⁸
15. Shows respect and compassion for all members of the program[,] including consumers, families, staff, and other community members.
16. Participates in all required Collaborative in-services[,] as well as those recommended by supervisors.¹⁹
17. Communicate all significant occurrences to the appropriate supervisor in a respectful and timely manner.²⁰

⁹ This is an administrative duty.

¹⁰ This is caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

¹¹ This is an administrative duty.

¹² This is caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

¹³ This is an administrative duty.

¹⁴ It is unclear whether facilitating entails an administrative duty or caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

¹⁵ This is caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

¹⁶ This is an administrative duty.

¹⁷ This is an administrative duty.

¹⁸ This is an administrative duty.

¹⁹ The record does not reveal what in-services are.

²⁰ This is an administrative duty.

18. Maintains an open, honest, and respectful relationship with parents and others involved with the consumer's success.²¹
19. Maintains professional boundaries with parents and consumers.²²
20. Expected to read and adhere to all Employee Handbook policies.²³

(Ex. 3)

10. In the job description, the Abilities part listed the "ability to anticipate the needs of consumers...and provide information and assistance to consumers." (Ex. 3)²⁴

11. The list of duties was accurate. Mrs. Pina performed those duties and additional ones.

(Testimony)

12. Mrs. Pina was a case manager for customers in SMEC's day program. (Testimony)

13. The customers were developmentally disabled, but not mentally ill. They had special needs. (Testimony)

14. During the last 12 months of her employment, Mrs. Pina had 46 customers in her caseload. (Testimony)

15. During the COVID-10 pandemic, Mrs. Pina worked remotely for a number of months. (Testimony)

16. By July 2020 (a year before she retired), Mrs. Pina had returned to in-person work, eight hours per day, at SMEC. (Testimony)

17. In January 2021, Mr. Pina began working four hours per day due to a partial layoff. (Testimony)

²¹ This is not caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

²² This is not caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

²³ This is an administrative duty.

²⁴ Assisting consumers is caring for, having custody of, instructing, or otherwise supervising developmentally disabled people.

18. Mrs. Pina continued to work four hours per day at SMEC until she retired on June 30, 2021. (Testimony)

July 2020 through January 2021

19. From July 2020 through January 2021, in a typical week, Mrs. Pina spent two or three days in the day room, the location of the day program, filling in for other staff members. She assisted the day program by getting customers set up and started, and then instructing them, in various activities, such as art and music. (Testimony)

20. On days that she filled in in the day room, Mrs. Pina was there approximately five hours of her eight-hour day. (Testimony)

21. On days that she did not fill in in the day room, Mrs. Pina was on the telephone with some of her 46 customers, especially the ones who did not attend the day program, approximately half of them. She asked how they were doing, such as the state of their mental health, and if they needed anything, such as food in their apartments. (Testimony)

22. Telephone calls to customers took approximately five hours per day. (Testimony)

23. Mrs. Pina also met in her office at SMEC with customers, to ask the same questions. (Testimony)

24. Mrs. Pina sometimes went to the day room to ask customers these questions. (Testimony)

25. Telephone calls to customers' parents took approximately one hour per day.²⁵ (Testimony)

26. About once a month, Mrs. Pina accompanied a customer to a medical appointment, which could take up to two hours, depending on the distance. (Testimony)

²⁵ This did not constitute caring for developmentally disabled persons.

27. Mrs. Pina sometimes sat with a customer and service coordinator from the Department of Developmental Services (DDS) to set goals and monitor assessments under an individual service plan (ISP). Some of this work was administrative. (Testimony)

January 2021 through June 2021

28. From January 2021 through June 2021, Mrs. Pina met with customers in person in her office or on the telephone for approximately half of her four-hour day. She asked how they were and if they needed anything. (Testimony)

29. On a typical day in this period, she spent one to one-and-a-half hours on paperwork. (Testimony)

30. When she was needed, she continued to fill in in the day program. (Testimony)

Application

31. On June 10, 2021 Mrs. Pina applied for Group 2 classification for her work at SMEC. (Ex. 1)

32. On October 4, 2021, SBR denied Mrs. Pina's application. (Ex. 4)

33. On October 8, 2021, Mrs. Pina timely appealed. (Ex. 5)

Discussion

For retirement purposes, Commonwealth employees fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Group 2 is the group for various employees, including those “whose regular and major duties require them to have the care, custody, instruction or other supervision of...persons who are mentally ill or mentally defective.” G.L. c. 32, § 3(2)(g).

“Mentally defective” is the outdated term that formerly described people with developmental disabilities. *Anne Koch v. State Board Of Retirement*, CR-09-449 *2 (CRAB 2014).

For an employee to have contact and interactions with people does not in and of itself constitute having care, custody, instruction, or supervision of them. *See, e.g., Florence Grace v. State Board of Retirement*, CR-01-712 (DALA 2002); *Desautel v. State Board of Retirement*, CR-18-0080 (CRAB 2023).

An employee's group generally depends on his or her duties when he or she retires. *Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488, 494 (1976). *See also* G.L. c. 32, § 3(2)(g)(an employee “must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding ...retirement”).

“A key factor in assessing a member's ‘regular and major’ duties is the member's job title and description.” *Peter Forbes v. State Board of Retirement*, CR-13-146 (CRAB 2020). *See Maddocks*, 369 Mass. at 495 (title and description of duties can be used to determine group classification). A job description can

serve as helpful evidence of actual duties but are not dispositive factors. [Footnote omitted.] ...[I]individuals who serve in a supervisory capacity but are required to provide direct care on a regular basis for more than half of their working hours are eligible for Group 2 classification even though their job also involved supervision and administration.[Footnote omitted.]

Desautel v. State Board of Retirement, CR-18-0080 (CRAB 2023) (footnote omitted).

Mrs. Pina’s job description contains many administrative duties but also duties that support her eligibility for Group 2, such as the “ability to anticipate the needs of consumers...and provide information and assistance to consumers.” (Ex. 3) She provided care, instructed, and supervised persons with developmental disabilities for more than half of her time in the last year of her work at SMEC, when considering both her full-time and part-time work. On the occasions when she took customers to medical appointments, she also had custody of them. Mrs. Pina did

not have custody of or supervise her customers by telephone. However, she did provide care by telephone (as well as in person).

Mrs. Pina is entitled to Group 2 classification.

Conclusion and Order

The denial by the State Board of Retirement of Mrs. Pina's application for Group 2 classification is reversed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: March 1, 2024