

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

PHYLLIS PRICE

Petitioner-Appellant

v.

BOSTON RETIREMENT SYSTEM,

Respondent-Appellee.

CR-23-0029

DECISION

Petitioner Phyllis Price appeals from an August 25, 2023 Order of an administrative magistrate of the Division of Administrative Law Appeals (“DALA”) conditionally dismissing her petition to join the Boston Retirement System’s (“BRS”) Teachers’ Alternative Retirement Program, generally referred to as TARP. Because of the substantial number of appeals received by DALA requesting to join either TARP, or Retirement*Plus* (an analogous program operated by the Massachusetts Teachers’ Retirement System), the magistrate supported each dispositive order with a consolidated memorandum issued August 7, 2023 (hereinafter “the August 7th Memo”) analyzing the legal history and outlining the eligibility requirements for the respective programs.¹

On August 29, 2023, the Contributory Retirement Appeal Board (“CRAB”) received a timely postmarked objection to the magistrate’s decision from Ms. Price. In the following weeks, we received nearly daily objections contesting the August 7th Memo. BRS filed a motion to consolidate these matters and requested CRAB issue a scheduling order for briefing. CRAB allowed the motion to consolidate and ordered each Petitioner to file their

¹ See *Memorandum and Order on Late Elections by 2001 Teachers*, DALA Order (Aug. 7, 2024), <https://www.mass.gov/doc/enrollment-in-retirement-plus-8723/download>.

exhibits and memorandum by October 18, 2023. BRS submitted its consolidated response memorandum on November 14, 2023, closing the briefing period.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the DALA Conditional Dismissal and DALA's August 7th Memo by reference. We affirm the DALA Decision for the reasons set forth in its Final Order. We agree with the magistrate that Ms. Price is not eligible to join TARP. While we understand the frustration and disappointment held by Petitioners like Ms. Price, CRAB does not have authority to grant an equitable remedy when the law explicitly reads otherwise.

Discussion. This matter involves G.L. c. 32, § 5(4)(i) which established “an alternative superannuation retirement benefit program for members of the teachers’ retirement system and teachers who are members of the Boston retirement system.” Principally, this program requires teachers to contribute to their respective retirement system at a higher rate but allows them “to retire at maximum benefit several years earlier.”² In order to join this program, active members of BRS were required to submit an affirmative enrollment application “on or after January 1, 2001 and before July 1, 2001.” *Id.*

Ms. Price, a nurse with Boston Public Schools, was a member of BRS between January 1, 2001 and July 1, 2001. Because she was a nurse, she was excluded from participation in TARP. Ms. Price appeals to CRAB seeking an opportunity to participate in TARP because she was misled to believe from the BRS that anyone on a leave of absence during the first half of 2001 would be allowed to participate in TARP. Specifically, she objects to the magistrate’s holding that “a teacher who missed the July 1, 2001 deadline cannot join the benefits program at a later date.” *Order of Conditional Dismissal*, Price v. BRS, CR-23-0029 (DALA Aug. 25, 2023). Ms. Price does not cite to any statutory provision or existing case law in her filings to CRAB that allowed nurses to participate in the program; but avers we should rule in her favor on the grounds that BRS failed in its obligation to allow her such benefit, thereby depriving her the right to retire earlier. In other words, Ms. Price seeks an equitable remedy—relief we may not provide.

² H.B. 5250, Communication from the Governor Regarding House Bill No. 5116, “An Act Improving Teacher Recruitment, Retention and Retirement”.
<http://archives.lib.state.ma.us/handle/2452/707865>.

Even if nurses were allowed to participate in TARP (which we do not believe the statutory language provides), Ms. Price did not file an election form prior to the statutory deadline. CRAB has consistently held that the original July 1, 2001 deadline cannot be extended “[b]ecause the [retirement statute] defines and limits the benefits to which [members] are entitled, those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by [a board] or any of its employees.” *Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). CRAB must strictly apply this precedence, even when a Petitioner alleges not to have been notified of a retirement benefit. “No statute, however, creates this duty or mandates that failure to provide such notice would result in the individual being allowed to [access the benefit he seeks].” *Leveque v. Essex Cty. Ret. Bd.*, CR-95-571 (CRAB Oct. 7, 1996); *accord Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621 (CRAB Dec. 19, 2014).

Unfortunately, we must apply the law as written,³ even where the result may appear harsh.⁴ CRAB is tasked only with interpreting and applying the statutory provisions it is charged with administering. *Haverhill Retirement Syst. v. CRAB*, 82 Mass. App. Ct. 129, 131 (2012); *Arlington Retirement Bd. v. CRAB*, 75 Mass. App. Ct. 437, 441 (2009). The authority to make changes to the retirement law rests with the Legislature. While we commend Ms. Price for her years of service and sympathize with her circumstances, DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the

³ Courts “‘are construed to follow’ the plain language of a statute when its ‘language is plain and unambiguous,’ and its application would not lead to an ‘absurd result,’ or contravene the Legislature’s clear intent.” *Commissioner of Rev. v. Cargill, Inc.*, 429 Mass. 79, 82 (1999), quoting *White v. Boston*, 428 Mass. 250, 253 (1998).

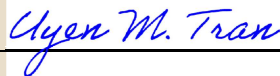
⁴ See also *Pearlmutter v. TRB*, No. CR-01-1044 (CRAB Nov. 6, 2003)(application denied where teacher completed the application form, timely submitted it to the payroll department for signature which was returned to the teacher, but teacher could not recall whether she filed it with the retirement board); *Lamour v. TRB*, No. CR-01-1004 (CRAB Nov. 6, 2003) (application denied where teacher completed the application form, timely submitted it to the payroll department for signature which was returned to the teacher by interoffice mail at the end of the school year, and teacher subsequently filed the election form with the retirement board upon her return to school in the Fall); *Hale (Robinson) v. TRB*, No. CR-01-861 (CRAB Jan. 31, 2003)(application denied for teacher caring for a seriously ill father who filed the election form after the statutory deadline); *Boland v. TRB*, CR-01-823 (CRAB July 31, 2002)(application denied for teacher caring for daughter undergoing a course of chemotherapy who filed election form ten days late).

retirement law. *See Early v. State Board of Retirement*, 420 Mass. 836 (1995) (DALA 1992) (*aff'd* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff'd* CRAB 1993).

Ms. Price is not eligible to participate in TARP. The filing date for election to participate in the TARP is statutory. Neither DALA, nor CRAB, can act contrary to the specific mandates of G.L. c. 32, § 5(4)(i). The decision of the DALA magistrate is affirmed. *Affirm.*

SO ORDERED.

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