

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Pamela Putnam,
Petitioner,

Docket No.: CR-21-0136

v.

Date: August 8, 2025

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Joseph Fitzgibbons, Esq.

Appearance for Respondent:

Lori Krusell, Esq.

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF DECISION

The Petitioner, a retired school psychologist and member of the Massachusetts Teachers' Retirement System ("MTRS") sought to have certain payments she received while working certain days over the summer included as "regular compensation" for retirement purposes. Because the payments made to her were *per diem* amounts, the MTRS properly determined that the payments did not qualify as "regular compensation" for retirement purposes.

DECISION

This appeal concerns the determination by the Respondent, the Massachusetts Teachers' Retirement System ("MTRS"), that the Petitioner's, Pamela Putnam ("the Petitioner" or "Ms. Putnam"), payments for working additional days during the summers do not count as "regular compensation."

PROCEDURAL BACKGROUND

The Petitioner applied for superannuation retirement in 2021. After processing her application, the MTRS determined that some of her payments were ineligible to be counted as “regular compensation.” The Petitioner timely appealed to DALA. I scheduled a hearing on the merits on October 24, 2024. However, on that day, the parties agreed to forego a hearing and that I could decide the matter on the papers. 801 Code of Mass. Regs. § 1.01(10)(c). I now admit exhibits 1-11.¹

FINDINGS OF FACT

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties’ written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. The Petitioner was employed as a school psychologist for the Beverly public school system. (Exhibit 7.)
2. Her salary and other benefits were governed by a collective bargaining agreement (“CBA”). (Exhibit 4.)
3. According to the CBA, up until 2019, the school work year was 184 days. After 2019, it was 185 days. (Exhibit 4.)
4. One specific provision in the CBA is relevant to this appeal. It lists specific additional days school psychologists might be required to work in addition to the 184/185 days of the school year:

School Adjustment Counselors, Team Chairpersons, and Psychologists may be required to work up to ten (10) days beyond the regular member work year. Said days shall be the five (5) days immediately preceding and

¹ I overruled some objections by MTRS as to a few exhibits. I also left the record open for the parties to supplement some exhibits and the file reflects these post-hearing submissions.

the five (5) workdays immediately following the Unit A Member work year, unless otherwise mutually agreed upon by the Principal and the counselor or chairperson involved. Payments for said additional days shall be on a per diem basis, subject to the provisions of Appendix A.²

(Exhibit 4.)

5. Over the years, the Petitioner did work some of these additional days because she was paid for them: in 2020-2021, she was paid \$977.08; in 2019-2020 she was paid \$1,954.16; in 2018-2019 she was paid \$8,540.28; and in 2017-2018 she was paid \$2,372.30. (Exhibit 5.)

6. However, it is not clear how many additional days she in fact worked because the evidence does not break down the days she worked by year. I nevertheless infer she worked a different number of days each summer because the amounts she was paid varied widely, while the per diem rate did not vary significantly from year to year.

(Exhibit 4.)

7. In terms of how this provision was implemented, a Beverly public schools administrator, Ms. Welch, explained the process as follows:

So the way it works is the school psychologists are offered the opportunity to work additional days if the needs of the department can't be met within the 185 school days. The psychologists are not required to work extra days and they don't have to make up extra days. The extra days [are] assigned by me and the psychologists can accept the extra days or decline the extra days. There are no consequences if they choose not to work extra days.

(Exhibit 6.)

DISCUSSION

The issue is whether the payments the Petitioner received for her summer work hours is considered "regular compensation." Regular compensation is "compensation received

² Appendix A is her unit's salary schedule. (Exhibit 4.)

exclusively as wages by an employee for services performed in the course of employment for [her] employer.” G.L. c. 32, § 1. The statute further defines “[w]ages” as “the base salary or other base compensation of an employee paid to that employee for employment by an employer” not including “overtime, commissions, bonuses other than cost-of-living bonuses...lodging, [and] travel.” *Id.* In addition to “comport[ing] with the other requirements of § 1,” payments must be “‘recurrent,’ ‘regular,’ and ‘ordinary’” to be regular compensation. *See Bulger v. Contributory Ret. App. Bd.*, 447 Mass. 651, 658 (2006).

“Salary” means “a fixed annual or periodic amount of pay depending upon the period of employment rather than upon the number of days or hours worked within that period.” *Hallett v. Contributory Ret. App. Bd.*, 431 Mass. 66, 68-69, *citing Coco v. School Comm. of Boylston*, 392 Mass. 221, 224 (1984). Thus, “[h]ourly compensation paid on an irregular basis is more akin to overtime payments than to annual salary.” *Id.* at 70. The same is true for *per diem* payments. *Hughes v. Massachusetts Teachers' Ret. Sys.*, CR-08-531 (Div. of Admin. Law App. Sep. 30, 2011). That is because, in those situations, if an employee does not work those hours, they are not paid for those hours. *Id.*

This perfectly describes the Petitioner’s payments for her summer service. They were not part of her fixed salary. They were additional payments paid only if she worked additional days. They were paid on a *per diem* basis. Moreover, the number of hours she worked each summer varied. Thus, these payments were not part of her salary and were not regular.

The Petitioner argues that working these extra days was not optional because if asked to do it, the employee had to. However, this record does not support that claim. As noted, the psychologists were free to accept or decline these days as they saw fit. Even assuming the extra days were not optional, they still would not qualify as regular compensation. If the Petitioner had

to work when asked, that still does not change the fact that, when required to, she was paid on a *per diem* basis and worked irregular hours from year to year.

MTRS advances two more reasons why this time does not count as regular compensation. For teachers, regular compensation also “include[s] salary payable under the terms of an annual contract for additional services so long as: (a) the additional services are set forth in the annual contract; (b) the additional services are educational in nature; (c) the remuneration for these services is provided in the annual contract; [and] (d) the additional services are performed during the school year.” 807 Code of Mass. Regs. § 6.02(1). MTRS argues, and I agree, that the additional services here were not performed during the school year. The CBA specifically sets out that the days at issue here are “beyond the regular member work year.”

The MTRS also argues that the services here are not educational in nature. While the record is less than clear as to what these services actually were, they appear to have been an extension of what the Petitioner did during the school year. As Ms. Welch explained, these extra days were required when the “needs of the department can’t be met within the 185 school days.” That implies the work performed in the summer was the same work performed during the school year. But even giving the Petitioner the benefit of the doubt on this one point, she still cannot clear the other hurdles note above.

CONCLUSION AND ORDER

For these reasons, the MTRS's decision not counting the Petitioner's summer hours as regular compensation is **affirmed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate