

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Patricia Quinn,
Petitioner

v.

Docket No. CR-21-0098

Date: Dec. 15, 2023

**Massachusetts Teachers’
Retirement System,**
Respondent

Appearance for Petitioner:

Kathryn Waters, Esq.
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Braintree, MA 02184

Appearance for Respondent:

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MTRS
500 Rutherford Avenue, Suite 210
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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

MTRS properly calculated the Petitioner’s creditable service. 807 CMR 3.04 requires MTRS to pro-rate the Petitioner’s part-time service rendered after 1990 when she worked part-time and full-time. Petitioner’s service does not fall under MTRS’s “Kindergarten exception” because Petitioner, a speech language pathologist, may have worked with some Kindergarten aged children, but she was not a Kindergarten teacher.

DECISION

Petitioner Patricia Quinn appealed timely under G.L. c. 32, § 16(4) the February 3, 2021 decision of Respondent Massachusetts Teachers' Retirement System (MTRS) to pro-rate her part-time teaching service between September 1, 2004 and June 30, 2010. On November 29, 2021, DALA ordered MTRS to provide a fuller explanation of how it calculated Ms. Quinn's creditable service and ordered Ms. Quinn to submit facts and argument to dispute MTRS's calculation. MTRS submitted its calculation on February 3, 2022. On May 11, 2022, Ms. Quinn moved for summary decision, attaching 4 proposed exhibits. On June 6, 2022, MTRS filed its opposition to Ms. Quinn's motion and a cross-motion for summary decision. I hereby enter the 4 proposed exhibits into evidence, noting MTRS's objection to Exhibit 3 (job description dated April 14, 2022). (Exs. 1-4.) Neither party submitted Ms. Quinn's appeal letter, so I have entered it as Exhibit 5.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. Patricia Quinn, a member of MTRS, worked as a speech language pathologist from September 18, 2000 through June 30, 2020, sometimes part-time and sometimes full-time. (Ex. 1.) This appeal is about how to credit her part-time work.
2. From September 18, 2000 through June 30, 2004, she worked full-time. From September 1, 2004 through June 30, 2007, she worked 60% part-time. From September 1, 2007 through June 30, 2010, she worked 80% part-time. Then she returned to full-time work from September 1, 2010 through June 30, 2020. (Ex. 1.)

3. Effective November 1990, MTRS adopted a creditable service regulation. Subsequent part-time membership service would no longer be uniformly credited as full-time service. Instead, if a part-time teacher became full-time, her part-time service would be pro-rated, and a full-time teacher who became part-time would have her part-time service pro-rated. However, a part-time teacher who remained part-time would not have her part-time service pro-rated and would receive a full year of creditable service for each part-time year. *See* 807 CMR 3.04.

4. On September 26, 2003, MTRS adopted a written creditable service policy that applied only to Kindergarten teachers and was at variance with the regulation. Under the policy, MTRS credits Kindergarten teachers who teach a half-day session with full credit if the half-day session was the only option for children in that district, even if the teacher switches to full-day Kindergarten later. This written policy memorialized MTRS's practice, which had been followed since 1992. *See Richard-Harrington v. MTRS*, CR-17-017, at *4 (DALA Aug. 9, 2022).

5. Later, MTRS retroactively amended its part-time Kindergarten policy to include pre-K teachers for the same period. *Id.*

6. In 2010, the Board amended its part-time service regulation to provide that all part-time service thenceforth would be pro-rated, regardless of whether the member had also worked full-time for any period. *Id.*

7. At all relevant times, Ms. Quinn held a license from the Department of Elementary and Secondary Education. Her field was listed as "Speech/Language/Hearing Disorder" and the "Category" was listed as "Academic." (Ex. 2.)

8. Ms. Quinn has provided a job description for a Speech Language Pathologist in her school district, dated April 14, 2022. This postdates her employment there. The description states that the candidate would travel among at least 3 different elementary schools. Nothing in the description limits the position to Kindergarten or Pre-K students. (Ex. 3.)

9. Ms. Quinn requested MTRS to award her full-time service credit for her periods of part-time service. MTRS denied her request, explaining that under MTRS's creditable service regulation, 807 CMR 3.04, she was entitled to only pro-rated credit because she switched from full-time to part-time and back again during her career. (Ex. 1.)

10. Ms. Quinn timely appealed MTRS's decision. (Ex. 5.)

CONCLUSION AND ORDER

MTRS's calculation of Ms. Quinn's creditable service is affirmed. Because Ms. Quinn switched back and forth between full- and part-time on several occasions, MTRS was required under its regulation to pro-rate her part-time service.

The analysis here is straightforward. A member's superannuation retirement allowance is determined, in part, by her years of creditable service. *See* G.L. c. 32, § 5(2)(a). G.L. c. 32, § 4(2)(b) charges retirement boards with determining how much creditable service will be awarded for part-time work. MTRS regulations in effect during the relevant period provide that members who worked part-time and then worked full-time would "receive credit for their part-time service on a pro-rated basis." 807 CMR 3.04(2). Under MTRS regulations, Ms. Quinn properly received pro-rated credit for her part-time service.

Ms. Quinn points out correctly, however, that MTRS has adopted a written policy that is an exception to the pro-rating regulation, but that policy applies only to Kindergarten and Pre-K teachers. The MTRS “Kindergarten Policy” protected the group of Kindergarten and Pre-K teachers whose half-day programs switched to full-day programs. Under the policy, Kindergarten teachers received full credit for half-day teaching if the half-day session had been the only option available in that district at that time. This policy does Petitioner no good, though, because she was not a Kindergarten or Pre-K teacher. She asserts that she worked with Kindergarten and Pre-K age children throughout her career, but she was not a Kindergarten teacher and she has presented no evidence that she was certified as a Kindergarten teacher.

I have had occasion to address this issue before in *Garreffi v. MTRS*, CR-18-0257 (DALA Apr. 5, 2019). There, Ms. Garreffi sought full service credit for her part-time service as a speech language pathologist. She worked with pre-K and Kindergarten aged children along with other children in the same school building. I held that Ms. Garreffi was not entitled to the benefit of the Kindergarten policy exception because she was not a “Kindergarten teacher.” Rather, she was a speech language pathologist who served some Kindergarten and pre-K students. Ms. Quinn’s situation is not materially different; she also worked as a speech language pathologist, traveling to several schools in her district. Assuming that some of her students were in Kindergarten and pre-K, she would still not be eligible for the Kindergarten exception because she was never a Kindergarten teacher.

To the extent that Ms. Quinn seeks an equitable remedy, DALA does not have equitable powers. *Bristol County Retirement Bd. v. CRAB*, 65 Mass. App. Ct. 443

(2006); *Hardoon v. State Bd. Of Retirement*, CR-13-71 at *5-7 (DALA Nov. 8, 2019), *aff'd* (CRAB Oct. 5, 2023).

For the above-stated reasons, Petitioner is not entitled to full service credit for her part-time service, and consequently MTRS's calculation of Petitioner's creditable service is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Dec. 15, 2023