

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

John Raymond,

Petitioner,

v.

Docket Nos. CR-12-49 & CR-12-62

Massachusetts Teachers' Retirement System,

Date: February 9, 2024

Respondent.

Appearance for Petitioner:

John Raymond, *pro se*

Appearance for Respondent:

Salvatore Coco, Esq.¹

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner is not eligible to purchase service credit for his prior work for Seaside Education Associates under G. L. c. 32, § 4(1)(p) because he was not “engaged in teaching pupils,” and his service is not eligible for credit under G. L. c. 32, § 3(5) because he did not work for a “governmental unit.”

¹ Attorney James Salvie represented the respondent in this matter from its inception through the time of the evidentiary hearing and the parties' submission of post-hearing briefs. He has since retired.

DECISION

The petitioner, John Raymond, timely appeals two decisions of the Massachusetts Teachers' Retirement System (MTRS) in which it denied his applications to purchase service credit for his prior work at Seaside Education Associates, Inc. (Seaside). An evidentiary hearing was held at the Division of Administrative Appeals (DALA) on October 27, 2015, then-located in Boston. Mr. Raymond and his wife, Antoinette Raymond, were the only testifying witnesses.² The hearing was recorded, and a copy of the recording was provided to the parties.

The magistrate who presided at the hearing left DALA at the beginning of last year to pursue another opportunity, and this matter was subsequently reassigned to me.³ After receiving a status report on the case from MTRS's counsel, as requested, I notified the parties on May 24, 2023, that I would issue a ruling based on the current evidentiary record, including the recorded testimony from the October 2015 hearing, absent a written objection from one of the parties. Neither party filed an objection.

The parties submitted proposed exhibits at the hearing, which were marked as Exhibits 1-20. The hearing magistrate did not exclude any of the parties' proposed exhibits, and those documents are therefore admitted into evidence.⁴ The exhibits included only one of the two MTRS decisions at issue, i.e., the denial of Mr. Raymond's application to purchase creditable

² I acknowledge that Mr. Raymond also had intended to call the former Executive Director of Seaside, James McCormick, to testify on his behalf at the hearing, but reported that Mr. McCormick unfortunately passed away earlier that year.

³ The petitioner requested and was granted several extensions for filing post-hearing briefs and, accordingly, DALA received the respondent's brief on March 21, 2016, and the petitioner's brief on May 16, 2016. It is unclear what caused the subsequent delay in resolving these appeals.

⁴ There were two documents marked as Exhibit 13: (1) an e-mail message from Antoinette Raymond to Senator Richard Moore dated January 10, 2012; and (2) a letter from James McCormick "to whom it may concern" dated October 7, 2014. For distinction, I refer to the e-mail message as Exhibit 13A and to Mr. McCormick's letter as Exhibit 13B.

service under G. L. c. 32, § 4(1)(p). I have therefore marked, as Exhibit 21, MTRS’s decision denying Mr. Raymond’s application for service credit under G. L. c. 32, § 3(5), which Mr. Raymond had attached to his appeal letter in case number CR-12-49.⁵

FINDINGS OF FACT

Based on the record evidence, I make the following findings of fact:

1. Mr. Raymond worked for Seaside—a private, nonprofit corporation—from July 1, 1982, through June 30, 1986. From July 1, 1982, through June 30, 1985, his position was ISP Trainer, and from July 1, 1985, through June 30, 1986, it was Quality Reviewer. (Exhibits 9, 10, 11, 17; see Seaside’s Articles of Organization, filed with the Secretary of the Commonwealth and available at <https://bit.ly/3Su1fHX>.)

2. As an ISP Trainer, Mr. Raymond held workshops at group homes for the developmentally disabled in central and western Massachusetts to train the staff on life skills management, behavioral management, and communication techniques. He also helped write and implement Individual Service Plans (ISPs). (Testimony; Exhibits 9, 13B.)

3. The group home staff that Mr. Raymond trained included college students, some of whom earned course credit from Lesley College for their work. (Testimony.)

4. As a Quality Reviewer, Mr. Raymond performed court-mandated reviews of services provided to young adults with special needs to ensure compliance with federal standards. (Exhibit 9.)

⁵ The hearing magistrate referenced only docket number CR-12-62 during her opening remarks at the hearing, but DALA’s notice for that hearing included the docket numbers in both of Mr. Raymond’s appeals (i.e., CR-12-49 and CR-12-62) and it appears that all parties understood that the hearing covered both of these closely-related appeals. I noted the same in my May 24, 2023, correspondence to the parties, and neither party suggested a more limited scope in response. Accordingly, this decision addresses both of Mr. Raymond’s pending appeals.

5. From September 1986 until his retirement in 2012, Mr. Raymond was employed by Uxbridge Public Schools as a sixth-grade teacher at Whitin Middle School. (Exhibits 13A, 16.)

6. On November 4, 2011, Mr. Raymond applied to purchase creditable service for his work at Seaside as “other Massachusetts public service.” (Exhibit 11.)

7. On December 8, 2011, Mr. Raymond applied to purchase creditable service for his work at Seaside as “nonpublic school teaching service in a Massachusetts publicly-funded school.” (Exhibit 9.)

8. On January 24, 2012, MTRS notified Mr. Raymond that it denied his application to purchase creditable service for “other Massachusetts public service.” MTRS determined that his service at Seaside was ineligible for purchase under G. L. c. 32, § 3(5) because he was employed by “a private, non-profit organization, not a governmental unit.” (Exhibit 21.)

9. On a separate decision of the same date, MTRS denied Mr. Raymond’s application to purchase creditable service for “nonpublic school teaching service in a Massachusetts publicly-funded school” on the ground that he was not “engaged in teaching pupils” as required by G. L. c. 32, § 4(1)(p). (Exhibit 3.)

10. On January 31, 2012, Mr. Raymond timely appealed MTRS’s decision denying his application to purchase credit for his service at Seaside, under G. L. c. 32, § 3(5), as other Massachusetts public service. (Exhibit 1.)

11. On February 6, 2012, Mr. Raymond timely appealed MTRS’s decision denying his application to purchase credit for his service, under G. L. c. 32, § 4(1)(p), as nonpublic school teaching service in a Massachusetts publicly-funded school. (Exhibit 2.)

12.

DISCUSSION

I. Eligibility Under G. L. c. 32, § 3(5) – Prior Public Service

The petitioner’s first application sought to purchase creditable service under G. L. c. 32, § 3(5), which allows a member of the Massachusetts public retirement system to purchase credit for prior service as an employee of a “governmental unit other than that by which he is presently employed.” A “governmental unit” is defined as “the commonwealth or any political subdivision thereof.”⁶ G. L. c. 32, § 1. A private nonprofit or charitable organization is not a “governmental unit,” even if it is publicly funded under a state contract. *Gregory v. Massachusetts Teachers’ Retirement Sys.*, CR-19-0590 & CR-19-0591, at *9 (DALA July 14, 2023); *Gray v. Massachusetts Teachers’ Retirement Sys.*, CR-17-194, at *3 (DALA July 2, 2020).

The petitioner did not prove he was employed by a governmental unit, and his work for Seaside therefore does not qualify for service credit under G. L. c. 32, § 3(5). Rather, it appears that Seaside was a private, nonprofit organization that was state funded. It was not a political subdivision of the Commonwealth and, therefore, it was not a “governmental unit.” In consequence, the petitioner cannot purchase creditable service for his work at Seaside under G. L. c. 32, § 3(5).

II. Eligibility Under G. L. c. 32, § 4(1)(p)–Prior Teaching Service at a Nonpublic School

Under limited circumstances, members of the Massachusetts public retirement system may purchase creditable service for time previously spent teaching in a nonpublic school in

⁶ The complete definition of “governmental unit” is “the commonwealth or any political subdivision thereof, except that a teacher who is a member of, or eligible for membership in, the teachers’ retirement system shall, for the purpose of membership and the requirements in connection therewith, be deemed to be employed by the same governmental unit.” G. L. c. 32, § 1.

Massachusetts. G. L. c. 32, § 4(1)(p). The requirements for purchasing credit for nonpublic school teaching service under § 4(1)(p) are more stringent than those for earning creditable service as a public-school employee. *Provost v. Massachusetts Teachers' Retirement Sys.*, CR-11-483, at *1 (CRAB July 10, 2012). To be eligible, a member must show that he or she was “engaged in teaching pupils” in a “non-public school” in Massachusetts and that “the tuition of all such pupils taught was financed in part or in full by the commonwealth.” G. L. c. 32, § 4(1)(p).

The Contributory Retirement Appeal Board has narrowly construed the meaning of “engaged in teaching pupils” in a nonpublic school to be limited to “teaching of academic or vocational subjects, generally in the classroom and during the school day.” *Lukasik v. Massachusetts Teachers' Retirement Sys.*, CR-15-668, at *5 (CRAB Feb. 21, 2020). Occasional teaching is not enough to be considered “engaged in teaching pupils”; rather, teaching pupils must be among the primary duties of the prior position for which the applicant seeks service credit. See, e.g., *Stebbins v. Massachusetts Teachers' Retirement Sys.*, CR-13-234 (DALA Feb. 9, 2018; CRAB Feb. 21, 2020) (counselor at alternative school who provided behavioral intervention during class and occasionally took over class was not primarily engaged in teaching pupils); *Schnider v. Massachusetts Teachers' Retirement Sys.*, CR-14-772, at *5 (DALA June 21, 2019) (school director who sometimes taught was not “fundamentally” engaged in teaching pupils).

Mr. Raymond may have occasionally taught pupils during his time with Seaside, but this was not his primary duty. His primary duties were writing ISPs and training the staff at group homes that served young adults with developmental disabilities to implement the ISPs. He hosted workshops for the staff regarding behavior management and life skills training. He was

responsible for ensuring that the various group homes operated within federal standards for education. While these duties were admirable, and I have no doubt that Mr. Raymond worked very hard for the young adults he served, they do not fall under the ambit of “teaching pupils” for purposes of service credit eligibility under G. L. c. 32, § 4(1)(p). See *Fahey v. Boston Retirement Bd.*, CR-15-630, at *7 (DALA Nov. 2, 2016) (DALA is bound by CRAB precedent).

CONCLUSION AND ORDER

The petitioner is not eligible to purchase service credit for his prior employment at Seaside under either G. L. c. 32, § 3(5) or § 4(1)(p). MTRS’s decisions denying the petitioner’s applications to purchase creditable service are therefore affirmed.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate