COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Susan Rusch**,

Petitioner

v. Docket No. CR-14-174

**Massachusetts Teachers’ Retirement System**,

Respondent

**Appearance for Petitioner**:

Daniel Fogarty, Esq.

Sandulli Grace

44 School Street

Boston, MA 02108

**Appearance for Respondent**:

James O’Leary, Esq.

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue

Charlestown, MA 02129-1628

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

The petitioner was a teacher out of state, received employer contributions to her retirement fund, and once she had moved to Massachusetts and joined MTRS, applied to buy her out-of-state teaching service. The denial of her application is affirmed.

**DECISION**

 The petitioner, Susan Rusch, appeals the denial by the Massachusetts Teachers’ Retirement System (MTRS) of her application to buy her out-of-state teaching service.

 I held a hearing on April 26, 2018, which I recorded digitally. Ms. Rusch testified, and called no other witness. I accepted into evidence 18 exhibits. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. From September 1997 until June 2002, Ms. Rusch was a full-time reading specialist for Madison County Public Schools, Virginia. (Stipulation.)

 2. From September 1, 2002 until August 31, 2003, Ms. Rush was a reading teacher for Albemarle County Public Schools, Virginia. (Ex. 4, p. 2.)

 3. While working in Virginia, Ms. Rusch was a member of the Virginia Retirement System (VRS). (Ex. 4.)

 4. As a member of the VRS, Ms. Rusch was required to contribute 5% of her salary to VRS. (Ex. 15, p. 12.)

 5. Under Virginia law, an employer, such as a school district, could pay the employee’s contribution to VRS on behalf of an employee. (Ex. 18.)

 6. Both Madison County and Albemarle County Public Schools paid Ms. Rusch’s 5% employee contribution. (Ex. 4, p. 9.)[[1]](#footnote-1)

 7. Ms. Rusch, who had previously lived and worked in Massachusetts, returned to Massachusetts and became an MTRS member in 2003. (Stipulation.)

 8. On June 20, 2012, Ms. Rusch, applied to purchase service for her work as a teacher in Virginia. (Ex. 4.)

 9. On April 3, 2014, MTRS denied Ms. Rusch’s application. The denial letter referred to “Type of Service – Out-of-State Public School” and “Period(s) of Service – Virginia 9/97 to 6/03.” Under “Reason(s) ineligible,” it wrote:

M.G.L. c. 32 § 3(4) requires that no credit shall be allowed and no payment shall be accepted for any service for which the member is entitled to receive a retirement allowance from any other state. According to documentation received, you are eligible to receive a retirement benefit from the other state board on the above service.

(Ex. 9.)

 10. On April 9, 2014, Ms. Rusch timely appealed. (Exs. 10, 11.)

 11. On February 18, 2016, VRS rolled over $15,074 from Ms. Rusch’s account into a Charles Schwab & Co. account. (Ex. 17). (Ms. Rusch implies but has not stated or proved the following: the rollover was for her entire VRS account and her VRS account is closed.)

**Discussion**

 Under some circumstances, members of MTRS may purchase their out-of-state teaching service and credit it to their MTRS retirement benefits. The relevant exception is when “the member shall be entitled to receive a retirement allowance from any other state.” G.L. c. 32, § 3(4). A regulation, defines “retirement allowance” as

any out of state governmental defined benefit plan, or defined contribution plan offered in *lieu* of a defined benefit plan or as the sole retirement plan but not as a supplemental plan, in which a member is eligible to receive, or has received, a benefit based in whole or in part upon employer contributions.

807 CMR 19.04(2).

 When Ms. Rusch applied to purchase her out-of-state teaching service, she was eligible to receive a benefit. By the time of the hearing, Ms. Rusch had received a benefit – a refund – from a retirement account from another state for teaching there. And Ms. Rusch definitely received a benefit based on an employer contribution – 5% of her salary. The following are *not* exceptions to 807 CMR 19.04(2):

🞄 If an out-of-state employer contributed to an employee’s retirement account, but the employee was legally and ultimately responsible forthat share.

 🞄 If an out-of-state employer contributed to an employee’s retirement account as a recruitment tool or to increase teachers’ compensation.

🞄 If an MTRS member has cashed out of an out-of-state retirement account and is no longer eligible to receive retirement benefits from that state in the future.

 Ms. Rusch does not prevail. This case is governed by the following: G.L. c. 32, § 3(4); 807 CMR 19.04(2); *Nancy Sullivan v. Teachers’ Retirement System*, CR-07-639 (DALA 2012, CRAB 2012); *Edwar**d Costa, II v. Massachusetts Teachers’ Retirement System*, CR-12-655 (DALA 2015, CRAB 2016); and *Jane Rose Gregoire v. Massachusetts Teachers’ Retirement System*, CR.16-449 (DALA 2018).

 I have read and reread Ms. Rusch’s post-hearing brief, its two arguments, including its second argument with two sub-arguments, a and b, one of which has three sub-sub-arguments, i, ii, and iii. I do not fully understand her arguments. *See* *Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003)(“The art of advocacy is not one of mystery.”). I’m tempted to quote *Sullivan* and *Costa* at length, but I’m not sure that doing so would respond to Ms. Rusch’s arguments and therefore might constitute Ms. Rusch and me talking past each other.

 As best as I can tell, Ms. Rusch has four arguments, despite the multiple sub-arguments and sub-sub-arguments in outline format. One, the exception in G.L. c. 32, § 3(4) and 807 CMR 19.04(2) does not govern her retirement plan at VRS. However, it does govern, as I stated above.

 Two, Ms. Rusch seems to argue that because she has received a refund of her VRS account, the exception no longer applies. However, the regulation applies to a member who “is eligible to receive, or has received, a benefit based in whole or in part upon employer contributions.” She “has received” such a benefit, 807 CMR 19.04(2), as I stated above.

 Three, MTRS has misapplied the regulation. I simply don’t understand her argument.

 Four, MTRS did not have the authority to issue the regulation. However, it did have the authority. *Costa*, CR-12-655 \*7-8.

**Conclusion and Order**

 MTRS’s denial of Ms. Rusch’s application to buy her out-of-state teaching service is affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: September 7, 2018

1. Why the two counties’ public schools did so is not in evidence, despite Ms. Rusch’s argument. (Pet. Br. 10.) [↑](#footnote-ref-1)