COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Ofelia Solem,
Petitioner

v. Docket Nos. CR-21-0061

State Board of Retirement,
Respondent

Appearance for Petitioner:

Ofelia Solem, *pro se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston MA 02108

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The petitioner appeals the State Board of Retirement's decision to deny Group 2 classification for her case manager and infection preventionist positions at Lemuel Shattuck Hospital. The decision is affirmed. The petitioner's regular and major job duties as an infection preventionist did not require her to engage in the direct care of patients. Whether her duties as a case manager entailed Group 2 qualifying activities is a closer call. Nevertheless, the petitioner has not met her burden of establishing that (a) most of her working time was occupied with such activities; or (b) a majority of her patients were "mentally ill" within the meaning of the statute.

DECISION

The petitioner, Ofelia Solem, was a case manager and the infection preventionist for Lemuel Shattuck Hospital ("the Shattuck"). She appeals the decision of the State

Board of Retirement ("the Board") denying her request that these positions be classified to Group 2.

I held an in-person hearing on July 6, 2023. Ms. Solem was the sole witness. The hearing was recorded. I admitted Petitioner's Exhibits 1-3 and Respondent's Exhibits 1-7 into evidence. The parties submitted post-hearing memoranda, whereupon the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Solem entered state service on December 12, 2005. On March 23, 2014, she began working at the Shattuck until her retirement on February 2, 2020. (Respondent's Exhibit 1).
2. From March 23, 2014 to September 26, 2015, she worked as a case manager. From September 26, 2015 until her retirement on February 2, 2020, Ms. Solem was the Shattuck's infection preventionist. (Respondent's Exhibit 1).
3. The Form 30 for the case manager position, dated May 21, 2013, provides the following general statement of duties and responsibilities:

> Responsible for case management program functions, which include Utilization Review, Performance Improvement, Risk Assessment, Infection Surveillance and the coordination of discharge planning activities. Responsible for reviewing admissions and continued stays to assure appropriate utilization of health care resources and the patient's proper placement along the continuum of care.

(Respondent's Exhibit 4).

4. Ms. Solem's job duties as a case manager may be summarized as follows:

- Meeting one-on-one with newly admitted patients to discuss their treatment plan, discharge plan, and insurance;
- Meeting one-on-one with patients throughout their stay to discuss their treatment, their discharge plans, post-discharge appointments, and referrals for services (such as home care and intravenous services), devices, and equipment;
- Arranging for referrals for patients for services, devices, and equipment;
- Meeting with the treatment team to discuss the patients' treatment;
- Meeting with patients, family members, the treatment team, and social workers to discuss treatment and discharge planning;
- Performing daily review of bed boards (which provide information on patients) and updating them as needed; and
- Following up with laboratories on patients' blood cultures and other lab work.

(Petitioner's Exhibit 1; Testimony).

5. The Shattuck is operated by the Massachusetts Department of Public Health and includes units operated by the Department of Mental Health and the Massachusetts Department of Correction. (Testimony).
6. As a case manager, Ms. Solem was assigned to particular units. She cannot recall which units. (Testimony).
7. Reasonable inferences from her testimony include the following: that (1) many of Ms. Solem's case management patients were persons without housing; (2) many had substance abuse problems; and (3) many of the patients who struggled with substance abuse had developed infections that arose because of their drug use. (Testimony).
8. Individuals who are unhoused or who struggle with addiction may find it difficult to successfully complete post-discharge care plans. In some cases,

patients engage in behaviors that behaviors may complicate decisions concerning what post-discharge care can or should be provided. For example, post-discharge care involving an intravenous line may pose risks where the patient uses intravenous drugs. Ms. Solem's discharge planning efforts had to take these and other complications into account. Because discharge planning was important and challenging, Ms. Solem would work with patients on discharge planning when they were first admitted and would continue to discuss these plans during their stay at the Shattuck. (Testimony).

9. Ms. Solem worked with patients to ensure that they were "on board" (Ms. Solem's phrase) with their treatment and discharge plans. Some of her efforts involved educating patients (about risks and complications that could arise from drug use during treatment, for example). Some of her efforts involved eliciting information about the patients' goals and preferences (a preference for home care on discharge as opposed to a facility, for example). (Testimony).

10. The Form 30 for the infection preventionist position provides the following general statement of duties and responsibilities:

> Oversees and implements Hospital-wide Infection Control Program including surveillance reporting of communicable diseases, education of hospital personnel in Infection Control Theory and Isolation Techniques and Practices. Responsible for Environmental Rounds participation to ensure efficient high quality care delivery and compliance with HCFA, JCAHO and other pertinent regulations.[1]

[1] "HCFA" stands for Health Care Financing Administration, a federal agency that provides oversight of Medicare and the federal portion of Medicaid. It was renamed in 2001 as the Centers for Medicare and Medicaid Services. "JCAHO" stands for Joint Commission on Accreditation of Healthcare Organization, a nonprofit organization that accredits healthcare organizations and programs in the United States.

(Respondent's Exhibit 2; Petitioner's Exhibit 3).

11. Ms. Solem's job duties as an infection preventionist may be summarized as follows:

    - Conducting daily rounds to ensure that patients were put on the correct infection precautions, the environment remains clean, and the staff is practicing good infection prevention habits for all units of the hospital;
    - Educating staff on proper infection control procedures, including hand hygiene, environmental cleaning, and how to correctly wear personal protection equipment; and
    - Monitoring the infection status of patients and responding to any concerns from patients, staff, and hospital administration about infection control.

    (Petitioner's Exhibit 1; Testimony).

12. As the Shattuck's sole infection preventionist, Ms. Solem was not limited to a single unit or type of patient. Her responsibilities encompassed the entire hospital. (Testimony).

13. On October 8, 2020, Ms. Solem submitted group classification questionnaires for her infection preventionist and case manager positions and requested that they be classified to Group 2. Ms. Solem requested proration. (Respondent's Exhibit 1).

14. In a letter dated December 28, 2020, the Board informed Ms. Solem that it had denied her request to classify her positions to Group 2. (Respondent's Exhibit 6).[2]

[2] The official titles are "RN IV/Case Manager" and "RN V/Infection Preventionist." The Board's denial letter references a "RN V/Infection Preventionist/Case Manager" position. (Exhibit 6). I interpret the Board's letter as denying Ms. Solem's request to prorate both her RV IV/Case Manager and RN V/Infection Preventionist positions to Group 2.

15. In a letter dated January 12, 2021, Ms. Solem timely appealed to this Division. (Respondent's Exhibit 7).

CONCLUSION AND ORDER

Ms. Solem appeals the Board's December 28, 2020 decision denying her Group 2 classification request. For the reasons that follow, the Board's decision is affirmed.

The retirement benefits of a Massachusetts public employee are shaped in part by the employee's classification into one of four "groups." G.L. c. 32, § 3(2)(g). For purposes of this decision, the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." *Id.* Group 2 includes employees "whose regular and major duties require them to have the care, custody, instruction or other supervision of . . . persons who are mentally ill."

Group 2 classification is "properly based on the sole consideration of [the member's] duties." *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 494 (1975). It is Ms. Solem's burden to establish that her regular and major job duties, meaning at least 51% of her duties as an infection preventionist and case manager positions, were spent providing "care, instruction, or other supervision of . . . persons who are mentally ill." Moreover, this care, instruction, and other supervision must not have been merely incidental or in the context of some greater administrative function. *Williams v. State Bd. of Ret.*, CR-12-229, at *6 (DALA April 28, 2017) (citing *Tabroff v. Contributory Ret. Appeal Bd.*, 69 Mass. App. Ct. 131, 135 (2007)).

To constitute care for the purpose of Group 2 classification, the provision of care must be direct. *Hong v. State Bd. of Ret.*, CR-17-843, 2022 WL 16921455, at *3 (DALA

May 6, 2022). "[D]irect care typically involves a face-to-face or 'hands on' component." *Hayter v. State Bd. of Ret.*, CR-21-0052, 2024 WL 3101690, at *8 (DALA June 14, 2024).

With these standards in mind, I consider first Ms. Solem's infection preventionist position. Ms. Solem may have had some hands-on or face-to-face interactions with patients as an infection preventionist, but the record does not suggest that such direct interaction was anything other than incidental or occasional. Accordingly, Ms. Solem's duties as the Shattuck's infection preventionist, although critically important, did not involve direct care for purposes of Group 2. *Compare Thetonia v. State Bd. of Ret.*, CR-95-940, at *5 (DALA December 17, 1996) (*aff'd* CRAB April 23, 1997) (denying Group 2 classification to infection control nurse whose duties were found to center on "the containment and prevention of the spread of infection" rather than providing care to a Group 2 population) *with Williams*, *supra*, at *2 (infection preventionist position that involved personally meeting with and evaluating patients presenting with a communicable disease, in addition to other hands-on medical care, granted Group 2 classification) *and Giard v. State Bd. of Ret.*, CR-08-347, at *3 (DALA June 8, 2012) (infectious disease case manager with duties involving direct administration of medical treatment to inmates granted Group 2 classification).

Whether Ms. Solem's regular and major duties as a case manager involved Group 2 qualifying responsibilities poses a closer question. Unlike her infection preventionist responsibilities, several of her case manager duties --- namely, her patient meetings to discuss discharge plans and treatment --- required her to interact directly with patients. And these interactions required her to "shoulder a measure of responsibility" for the

needs of her patients. *Hong*, *supra*, at *3 (quotation and alteration marks omitted). Specifically, she was tasked with aligning the medical needs of her patients with the practical realities of difficult situations and/or behaviors that could make the provision of medical care challenging. Nevertheless, insofar as these patient meetings concerned discharge planning or assessing their care needs, much of the decisional law suggests that such activities fall short of Group 2 care because they constitute facilitating or assessing the care needed rather than the direct provision of care itself. *See Potter v. State Bd. of Ret.*, CR-19-0519, at *9 (DALA Dec. 16, 2022) (concluding that member's responsibilities relating to ensuring patients had access to medicine and insurance upon discharge was facilitating or planning for future care rather than the direct provision of care); *Frazer v. State Bd. of Ret.*, CR-18-0318, at *7 (DALA Nov. 19, 2021) (collecting cases indicating that the assessment of care needs does not, itself, constitute the provision of care for purposes of grounding a Group 2 classification); *but see Ryan v. State Bd. of Ret.*, CR-22-0038, at *8 (DALA Aug. 16, 2024) ("[I]t would be a serious mistake to ossify a presumption that the work of 'assessing' qualifying populations does not belong in group 2.").

I need not resolve whether Ms. Solem's patient meetings constituted "care" for purposes of the statute, however, because there are two dispositive obstacles to classifying her case manager position to Group 2.

First, it is not clear from the record how much time Ms. Solem spent engaging in substantive patient meetings as compared to other responsibilities, such as reaching out to providers, vendors, and others to locate and/or arrange for post-discharge placements, services, and myriad other vital needs. Those duties, as far as this record indicates, do

not involve patient contact and thus cannot ground a Group 2 classification. I cannot reliably ascertain from the record whether such non-patient communications and dealings were time-consuming or limited in comparison with the time engaged in patient communications. Thus, even if Ms. Solem's discharge planning and treatment communications were Group 2 eligible responsibilities, she has not met her burden of showing that they occupied more than half of her workday.

Second, Ms. Solem has not met her burden of proving that she performed these duties for individuals who were "mentally ill" within the meaning of the statute. To meet this burden, Ms. Solem would have to establish that more than half of her patients either (a) had a primary diagnosis of mental illness; or (b) irrespective of the primary diagnosis, mental illness is what truly drove most of her patients' care. *Popp v. State Bd. of Ret.*, CR-17-848, at *5 (CRAB Nov. 16, 2023). As a case manager, Ms. Solem was assigned to specific units, but Ms. Solem does not recall --- and the record does not indicate --- which units those were.

Many, perhaps most, of Ms. Solem's patients experienced substance abuse issues. Decisions from this Division have recognized that "substance use disorders severe enough to create dangers to the patient and to others, and to warrant hospitalization of the patients under restrictive conditions" are mental illnesses for purposes of Group 2 classification. *Hanson v. State Bd. of Ret.*, CR-22-0268, at 4 n. 3 (DALA Sept. 27, 2024) (citing *Greenwood v. State Bd. of Ret.*, CR-22-66, 2024 WL 3326226, at *7 (DALA June 7, 2024); *Johnson v. State Bd. of Ret.*, CR-18-586, 2022 WL 16921457, at *3-4 (DALA Apr. 8, 2022)). The requisite "danger" is "imminent and serious harm" to the patient or others. *Johnson*, *supra*, at *4 (citing *In the Matter of a Minor*, 484 Mass. 295, 310

(2020)). The "restrictive conditions" include locked wards and involuntary commitments. *Id.* (citing *Nowill v. State Bd. of Ret.*, CR-08-558, at *8-9 (CRAB July 10, 2012)).

In this case, however, and without intending to minimize the seriousness of their conditions or the challenges of Ms. Solem's responsibilities, the record does not establish that a majority of Ms. Solem's patients have substance abuse disorders so severe that they are subject to restrictive conditions (like a locked unit) or that they pose a risk of imminent danger to themselves or others. Accordingly, under this record, I am unable to conclude that most of Ms. Solem's patients were "mentally ill" for purposes of classifying her case management position to Group 2.

Ms. Solem provided important and vital services to the Shattuck's patients and to this Commonwealth. Nevertheless, for the foregoing reasons, the Board's decision declining to classify her positions to Group 2 is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: September 27, 2024