

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Michael Spellman,**  
Petitioner

v.

Docket No. CR-22-0401

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Michael Spellman  
P.O. Box 709  
North Falmouth, MA 02556

**Appearance for Respondent:**

Jennifer Hunt, Esq.  
State Board of Retirement  
One Winter Street  
Boston, MA 02108-4747

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

The majority of people whom the petitioner may have cared for, had custody of, instructed, or otherwise supervised were not parolees. Thus, he is not eligible for Group 2 classification. Denial of his application for Group 2 classification is affirmed.

**DECISION**

The petitioner, Michael Spellman, appealed the denial by the State Board of Retirement (SBR) of his application for Group 2 classification.

I held a hearing on October 15, 2024 by Webex, which I recorded. Mr. Spellman

represented himself, testified, and called no other witness. I admitted three exhibits. After the hearing, I admitted two more exhibits: Mr. Spellman's appeal letter as Exhibit 4; and charts from the Office of Community Corrections Utilization Statistical Annual Reports, as Exhibit 5. See <https://www.mass.gov/lists/office-of-community-corrections-utilization-statistical-reports>. (I had asked Mr. Spellman to submit information about the number of parolees in the community corrections program.)

Both parties submitted post-hearing briefs in January 2025.

### **Findings of Fact**

1. The Office of Community Corrections (OCC) is in the Office of the Commissioner of Probation. OCC's "purpose is to establish a continuum of pretrial services programs and community corrections programs and services statewide." G.L. 211F, §2(a).

2. From April 9, 2001 to May 28, 2022, Mr. Spellman was an Assistant Court Services Coordinator. (Ex. 2)

3. In that role, Mr. Spellman drove community corrections participants in a van to various worksites. There, the participants provided community service to government entities and nonprofits. Among other things, participants removed trash from the sides of highways, stocked food in food pantries, and landscaped. Mr. Spellman supervised them for roughly half of the day. (Testimony)

5. Mr. Spellman generally transported 14 people in a van and supervised them at worksites. On any given day, Mr. Spellman transported and supervised one or two parolees. (Testimony)

6. In Fiscal Year 2022 (July 1, 2021 to June 30, 2022), the last year that Mr. Spellman worked in community corrections programs, 78% of the participants in OCC programs were

probationers, 1% were supervised by sheriff's offices, 10% were not under the supervision of any agency but were undergoing what OCC called re-entry, and 11% were parolees.<sup>1</sup> The participants did not include prisoners. (Ex. 5)

7. On May 18, 2022, Mr. Spellman applied for Group 2 classification. He did not seek pro-rated service and submitted only one application. (Ex. 2)

8. On July 28, 2022, SBR voted to deny Mr. Spellman's application and on July 29, 2022, SBR so notified Mr. Spellman. (Ex. 3)

9. On August 12, 2022, Mr. Spellman timely appealed.

### **Discussion**

For retirement purposes, Commonwealth employees fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Group 2 is the group for various employees, including those "whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners" or "parolees." G.L. c. 32, § 3(2)(g).

The "regular and major duties" requirement in G.L. c. 32, § 3(2)(g) means that a retirement system member must spend more than half of their time engaged in those duties. *Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016).

An employee's group generally depends on his or her duties when he or she retires. *Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488, 494 (1976). See also G.L. c. 32, § 3(2)(g) (an employee "must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding ...retirement").

In cases involving a mixed patient population, some of whom fall within a Group 2 category and others who do not, prior decisions have generally required proof

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<sup>1</sup> The percentage of parolees is the significant figure.

that the majority of the patients receiving the employee's care are within an eligible category. *See, e.g., Troilo v. State Bd. of Retirement*, CR-19-0513, at \*6 (DALA May 20, 2022) (employee failed to prove that majority of patients were mentally ill); *Michaud v. State Bd. of Retirement*, CR-11-424, at \*9 (DALA Aug. 25, 2017) (Group 2 eligibility established by showing that majority of employee's patients were mentally ill or mentally defective); *Jump v. State Bd. of Retirement*, CR-09-452 & CR-09-565, at \*11 (DALA July 11, 2014) (employee failed to prove that majority of patients were mentally ill); *D'Urso v. State Bd. of Retirement*, CR-08-167, at \*8 (DALA Feb. 10, 2012) (employee failed to prove that majority of patients were prisoners or mentally ill).

*Debra Antonelli v. State Board of Retirement*, CR-20-0341 (DALA 2024).

The 1% of OCC program participants who were supervised by sheriff's offices in Mr. Spellman's last year of employment were probably prisoners, given the broad definition of prisoners. *Irene Daley-Horgan v. State Board of Retirement*, CR-22-0227 (DALA 2024). However, Mr. Spellman did not provide evidence or argue that he cared for, had custody of, instructed, or otherwise supervised prisoners.

If only 11% of community corrections participants were parolees in Mr. Spellman's last year as an Assistant Court Services Coordinator, and if he supervised only one or two parolees on a given day, the majority of people whom Mr. Spellman may have cared for, had custody of, instructed, or otherwise supervised were not among a Group 2 population. Furthermore, Mr. Spellman did not testify that he spent more than 50% of his time working with parolees.

Mr. Spellman did not prove by a preponderance of the evidence that he is eligible for Group 2 classification.

### **Conclusion and Order**

The State Board of Retirement's denial of the petitioner's application for Group 2 classification is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: February 7, 2025