

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Lori Spencer,**  
Petitioner,

No. CR-23-0305

Dated: February 16, 2024

v.

**Massachusetts Teachers' Retirement  
System,**  
Respondent.

**Appearance for Petitioner:**  
Lori Spencer (pro se)

**Appearance for Respondent:**  
Salvatore Coco, Esq.

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

The respondent retirement board properly denied a teacher's application to purchase retirement credit for a period of work at a nonprofit organization.

**DECISION**

Petitioner Lori Spencer appeals from a decision of the Massachusetts Teachers' Retirement System denying her application to purchase credit for a period of pre-membership service. The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-5.

**Findings of Fact**

I find the following facts.

1. From 1993 until 1996, Ms. Spencer worked as a counselor at a residential treatment facility in Westford. The facility was known as the Gateways Diversion Program. It was affiliated with a nonprofit organization called the Psychological Center, which is the entity

that paid Ms. Spencer's wages. The Psychological Center received funding from the Department of Mental Health and was categorized by the Commonwealth as a vendor. (Exhibits 1, 2, 4, 5.)

2. Ms. Spencer is now a teacher and an MTRS member. In March 2023, she applied to purchase retirement credit for her pre-membership service during 1993-1996. MTRS denied the application, and Ms. Spencer timely appealed. (Exhibits 3, 4.)

### Analysis

Creditable service is among the variables that determine a public employee's retirement benefits. Ordinarily, individuals are credited with the service that they performed as employees of governmental units while maintaining membership in public retirement systems. *See* G.L. c. 32, § 4(1)(a).

Specific provisions permit employees to purchase credit for service that they performed before establishing membership. The parties apparently agree that the provision implicated here is G.L. c. 32, § 3(5). *See also Santos v. MTRS*, No. CR-04-70, at \*2 (CRAB Mar. 6, 2006). The first and fifth clauses of that provision authorize certain purchases by employees who previously worked for a "governmental unit other than that by which [they are] presently employed."

Ms. Spencer does not dispute that, during the period for which she seeks credit, her employer was a nonprofit organization.<sup>1</sup> Her only argument is that the employer was "state funded." But when the Legislature wishes to make entitlements available to employees of stated-funded institutions, it knows how to say so. *See* G.L. c. 32, § 4(1)(p) (discussing purchases by teachers at schools where student tuition "was financed in part or in full by the

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<sup>1</sup> For example, she does not contend that a state agency supervised or otherwise controlled her work. *Cf. Marley v. MTRS*, No. CR-20-103, at \*4-5 (CRAB Dec. 20, 2023); *Crowley v. Contributory Ret. Appeal Bd.*, 73 Mass. App. Ct. 1103 (2008) (unpublished memorandum opinion).

Commonwealth”). Here the applicable statute demands more, namely an employer who *was* the Commonwealth or one of its subdivisions. G.L. c. 32, § 3(5). A nonprofit organization does not satisfy that requirement even when it receives state funding. *See Gregory v. MTRS*, No. CR-19-590, 2023 WL 4637166, at \*5 (DALA July 14, 2023). *See also Lydon v. Contributory Ret. Appeal Bd.*, 101 Mass. App. Ct. 365 (2022) (the prior governmental unit under § 3(5) must be associated with a chapter 32 retirement system). Accordingly, MTRS was correct to deny Ms. Spencer’s purchase request.

**Conclusion and Order**

AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate