COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Christine Sprague**,

Petitioner

v. Docket No.CR-10-790

**State Board of Retirement**,

Respondent

**Appearance for Petitioner**:

Christine Sprague

8 Sonia Drive

Dover, N.H. 03820

**Appearance for Respondent**:

Candace L. Hodge, Esq.

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02108

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

Because the petitioner was a manager whose major duties did not require her to have the care, custody, instruction, or supervision of mentally ill patients, she is not entitled to Group 2 classification. The State Board of Retirement’s denial of her application for Group 2 classification is affirmed.

**DECISION**

 The petitioner, Christine Sprague, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

 I held a hearing on March 28, 2017, which I recorded digitally. Ms. Sprague represented herself, testified, and called no other witness. I accepted into evidence six exhibits for Ms. Sprague and five for the State Board of Retirement. SBR submitted a post-hearing brief. Ms. Sprague chose to argue orally at the end of the hearing, instead of submitting a brief.

**Findings of Fact**

 1. Ms. Sprague, who is a Licensed/Registered Dietician, rose to become a manager of Tewksbury Hospital. (Testimony.)

 2. Ms. Sprague retired from Tewksbury Hospital on January 7, 2011. (Resp. Ex. 2.)

 3. In Ms. Sprague’s last year of working at Tewksbury Hospital, it had 550 patients. Approximately 200 to 225 were chronically mentally ill. The remaining patients were medically-involved long-term care patients, about 60 to 70% of whom had mental health issues. (Testimony.)

 4. Ms. Sprague did not have a caseload of patients that she directly cared for. (Testimony.)

 5. Ms. Sprague covered for other direct care providers when they were absent.[[1]](#footnote-1) However, she did not directly put patients to bed or help them dress. If a patient’s nutrition needed to be assessed, that was an example of the duty that she covered for. (Testimony.)

 6 Ms. Sprague was involved in direct care issues.[[2]](#footnote-2) (Testimony.)

 7. Ms. Sprague spent time on ethics consultations, which entailed talking to patients if they were conscious, talking to patients’ families, and participating in decisions such as withdrawing feeding tubes. (Testimony.)[[3]](#footnote-3)

 8. Ms. Sprague held community meetings with patients, sometimes 25 patients at a time, to hear about their issues with food services. Much of her contact with patients was in community meetings. (Testimony.)[[4]](#footnote-4)

 9. Ms. Sprague also handled food issues at an individual level, working with patients, food services staff, or both. For example, she was called to the cafeteria to handle issues such as patients stealing chips, defecating there, or complaining about overcooked pizza. If a patient claimed to need a gluten-free diet, she was involved in evaluating whether the claim was valid. (Testimony.)[[5]](#footnote-5)

 10. On April 6, 2008, one year and eight months before she began her last year before retiring, Ms. Sprague signed a Management Questionnaire. She listed her title as Director of Support and Rehabilitation Services. (Resp. Ex. 4.)

 11. When asked on the Management Questionnaire to “[b]riefly summarize what you do,” Ms. Sprague answered with one-and-one-quarter single-spaced pages. She emphasized her supervisory duties, using the following words (and variations of them) and phrases to describe her job: plans (two times), organizes, directs (five times), supervises, manages (three times), evaluates (three times), monitors (five times), oversees, develops (three times), implements (four times), establishes (two times), and “provides leadership.” She described herself as “a member of the Senior Management Team.” (Resp. Ex. 4, p. 2.)

12. When asked on the Management Questionnaire to “[b]riefly summarize what you do,” Ms. Sprague did not describe any direct care of patients. She did mention “[c]ontinuous interaction with facility medical and nursing leaders” and *clinical departments’* “deliver[ing] direct patient services,” not Ms. Sprague’sdelivering direct services to patients. (Resp. Ex. 4, p. 2.)

 13. When asked on the Management Questionnaire, “What do you do?” Ms. Sprague described her supervisory duties and did not describe any direct care of patients, as follows:

1. Effectively manage, deliver and monitor direct patient clinical and non clinical services to meet the highest professional standards of care while demonstrating fiscal responsibility and appropriate utilization of resources. 40%

2. Provide leadership, direction and training to departments and programs to carry out high quality cost effective services that meet the needs of our complex patient population (both medical and psychiatric). Provide expertise, guidance and supervision for managers in clinical and operational functions. 20%

3. Participate in developing the hospital budget based on strategic plans, goals, objectives and historical data. Assess staffing and make adjustments based on patient acuity, census and available staff. Maintain operations within established budget while maintaining compliance with regulatory requirements. Develops and reviews Requests for Responses (DPHFS 300 is a $91,880,000 procurement) and contracts and procures various commodities and services for the division. 20%

4. Member of the Senior Management Team and key member of the Information Management, Pharmacy and Therapeutics, Ethics, Infection Control, Production Evaluation, Continuous Quality Improvement and Safety Committees. Use established hospital committees to address and act upon issues affecting patient care. 15%

5. Develops policies and procedures which reflect current accepted clinical standards of practice consistent with regulatory and agency requirements. Review and update policies annually. 5%

6. Other duties, as assigned.

(Resp. Ex. 4, p. 3.)

 14. When asked on the Management Questionnaire to “[d]escribe the most difficult or complex problems and the major challenges” in performing her job, Ms. Sprague emphasized her supervisory duties, writing in part:

Managing multiple comprehensive tasks....Managing multiple priorities....

Developing a Traumatic Brain Injury (TBI) Unit....

Complying with state procurement regulations and processes....

Providing clinical services for complex patients with serious co morbidities....[[6]](#footnote-6)

[M]anaging the change from state operated Food and Nutrition Services to

contracted services....

(Resp. Ex. 4, pp. 3-4.)

 15. When asked on the Management Questionnaire to “give examples of decisions you are expected to make,” Ms. Sprague discussed her supervisory decisions, not ones involving direct care of patients. She used these words to describe her decisions: develop (four times), design, assess, monitor, evaluate, and analyze. (Resp. Ex. 4, p. 5.)

 16. When asked on the Management Questionnaire to “describe the nature of your contacts with clients, patients, inmates, [and] residents,” Ms. Sprague first wrote a paragraph about Tewksbury Hospital and then that she “has daily oversight, supervision, monitoring and interaction with clinical and non clinical staff delivering direct services to these patients....” She continued that she “also interacts with patients, families, students[,] the CEO, COO, Senior Managers and hospital staff. (Resp. Ex. 4, pp. 7-8.)[[7]](#footnote-7)

 17. When asked on the Management Questionnaire to “[d]escribe the critical and typical knowledge, skills and abilities you believe are necessary to perform this job,” Ms. Sprague did not mention caring for or interacting with patients. (Resp. Ex. 4, p. 9.)

 18. Ms. Sprague stated on the Management Questionnaire that she supervised 121 employees who directly reported to her. (Resp. Ex. 4, pp. 5-6.)

 19. In a form that was due on September 30, 2009, one year and three months before she began her last year before retiring, Ms. Sprague’s managing supervisor wrote about her four Manager Objectives as follows:

 [1] Plans[,] organizes, directs, supervises, evaluates and effectively oversees Occupational Therapy, Physical Therapy, Speech/Language Pathology, Food and Nutrition Services, and Adaptive Equipment departments. Provides daily leadership and supervision …to ensure adherence to…standards and hospital policies and procedures in the delivery of direct services to patients. Ensure appropriate utilization of staff and equipment to ensure high quality, safe, patient centered, cost effective services are delivered to all patients….[[8]](#footnote-8)

40%

[2] Functions as contract manager…at Tewksbury Hospital (annual budget of $3,583,996). Provides oversight (fiscal and operational), direction and supervision of vendor staff to ensure utilization of resources and delivery of high quality, cost effective services to patients and staff….

30%

[3] Functions as project manager for the conversion of the hospital’s current food service production and delivery system….

20%

[4] ….Participates in implementation of Executive Order 509….[[9]](#footnote-9)

10%

(Resp. Ex. 5, pp. 1-3.)

 20. On October 7, 2010, Ms. Sprague signed a Group Classification Questionnaire. She wrote that her current job title was “Director of Rehabilitation & Support Services Program Manager VI.” (Resp. Ex. 3.)

 21. On the Group Classification Questionnaire, Ms. Sprague wrote:

I provide supervision & training to approx 110 direct care employees, providing care & treatment to medically & mentally ill patients who have behavioral issues & criminal backgrounds.[[10]](#footnote-10) I work the day shift, attend patient centered meetings & rounds, interview patients and families, investigate incidents and complaints, provide Ethics consultations, chart reviews, audits inspection of patient care areas, do meal rounds and interact with patients on a daily basis.

(Resp. Ex. 3.)

 22. On October 28, 2010, SBR voted to deny Ms. Sprague’s request for Group 2 classification. On November 1, 2010, it notified her of the denial. (Resp. Ex. 1.)

 23. On November 10, 2010, Ms. Sprague timely appealed. (Pet. Ex. 1.)

**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...persons who are mentally ill.” G.L. c. 32, § 3(2)(g). Having contact and interactions with mentally ill people does not constitute having care, custody, instruction, or supervision of them. *See Florence Grace v. State Board of Retirement*, CR-01-712 (DALA 2002). Supervising staff members who have care, custody, instruction, or supervision of mentally ill people does not in turn constitute having such care, custody, instruction, or supervision. *Id.*, *Janine Joseph v. State Board of Retirement*, CR-13-283 (DALA 2015). *See Susan Martin v. State Board of Retirement*, CR-09-1065 (DALA 2016).

 Ms. Sprague asks to be classified in Group 2 based on her 30-year career. Her request has two problems, however. One, 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](http://sll.gvpi.net/document.php?id=sjcapp: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”). Two, Ms. Sprague’s regular and major duties did not require her to have the care, custody, instruction, or other supervision of mentally ill people for 30 years. Since 2008, and probably earlier, Ms. Sprague did not have such care, custody, instruction, or supervision. The record does not reveal when Ms. Sprague’s regular and major duties last required her to have such care, custody, instruction, or supervision.

 The “regular and major duties” requirement in G.L. c. 32, § 3(2)(g) has come to mean that an employee must spend more than half of his or her time engaged in those duties.

*See Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016). The forms describing her duties do not indicate that Ms. Sprague spent 51% of her time having the care, custody, instruction, or supervision of patients. She testified that the forms describing her duties did not adequately reflect her actual duties. However:

 • She signed the Management Questionnaire in 2008 (Resp. Ex. 4), adopting it.

 • She had the opportunity, and used it, to comment throughout the 2009 form. (Resp. Ex. 5). She did not comment or add that she was responsible for direct care of patients.

 • She wrote and signed the Group Classification Questionnaire in 2010, which emphasized her management duties and did not state that she directly cared for patients. (Resp. Ex. 3.) She testified that the Group Classification Questionnaire was a “pretty accurate” reflection of her duties during her last year of work.

 • She testified initially that the percentage breakdown of her duties on her 2008 questionnaire “roughly” reflected her duties in her last year before retiring. (In 2008, managing clinical and non-clinical services were 40% of her duties; providing leadership, direction, and training to departments and programs, 20%; budgeting, 20%; serving on committees, 15%; and developing policies and procedures, 5%.)

 Ms. Sprague later backed away from that testimony and denied that the 2008 questionnaire accurately reflected her last-year duties. She also testified that in her last year before retiring, managing was 50% of her duties; budgeting, 20%; and serving on committees, about 10%, leaving unstated what accounted for the remaining 20%. She changed her testimony throughout the hearing, at another point testifying that in her last year, she spent 55% of her time managing and supervising, and 10 to 12% on budgeting, again leaving unstated what accounted for the remainder.

 At still another point, she testified that in her last year, she spent 30% of her time managing people, 10% or less evaluating staff members, approximately 10% on the budget, approximately 10% attending upper management meetings, 30 to 40% engaged in ethics consultations, 2% in providing trainings, and 1% in developing policies and procedures.

 When asked how much of her time in her last year she delivered direct care, she responded (and this is a paraphrase): I don’t know. 25%. It depends on what you call direct care. I was dealing with issues with food. Directly giving care, 20%.

 Her answer has a few problems. One, adding 20% or 25% to the previous percentages of duties exceeds 100%, and not slightly so, throwing into doubt her percentage estimates. (So does her original estimate that she spent 25% of her time in her last year before retiring holding community meetings about food. She later withdrew that estimate.) Two, this was Ms. Sprague’s case to make. *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986). If she is unclear on what constitutes direct care, then it is more difficult for her to make her case, and she was acknowledging the ambiguity of her own claim. Three, when combined with her testimony that she did not have a caseload, did not directly put patients to bed or dress them, and was involved in direct care *issues,* her questioning of what constitutes direct care makes me doubt that whatever she was doing for 20% or 25% of the time, if those estimates were accurate, it was not directly taking care of patients. And even if she were taking care of patients for 25% of the time, that percentage does not even approach 51%.

 Throughout the hearing, Ms. Sprague variously answered questions about the breakdown of her duties: “I guess I don’t know how to answer that,” “I don’t know how to answer these questions,” and “I don’t know how to identify each particular area.” I advised her at the hearing that her appeal was hers to prove. If she did not know the answer to basic questions, such as how much time she spent on various functions, then she is less likely to prevail.

 She cannot have it both ways: touting her management skills and responsibilities in forms to her employers, and touting her direct care of patients in her bid to be classified in Group 2. There is no evidence that Ms. Sprague’s duties changed radically in the few years from the time various forms described her duties to her last year before retirement.

Furthermore, there is no evidence that Ms. Sprague could have supervised well over 100 people and also directly cared for patients for over half of her time. She did not explain how she could have done both.

 Moreover, approximately 200 to 225 patients at Tewksbury Hospital in her last year before retiring were chronically mentally ill. Of the remaining patients, about 60 to 70%, that is 135 to 175 patients, had mental health issues. I do not know whether a patient having mental health issues is the same as a mentally ill patient. But considering that Ms. Sprague did not spend more than 51% of her time in her last year before retiring taking care of patients, she could not have been spending more than 51% of her time taking care of *mentally ill* patients.

**Conclusion and Order**

 Ms. Sprague was a manager whose major duties did not require her to have the care, custody, instruction, or supervision of mentally ill patients. Therefore, she is not entitled to Group 2 classification. The State Board of Retirement’s denial of her application for Group 2 classification is affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: June 16, 2017

1. Sprague did not specify whether she did so in her last year before retiring. [↑](#footnote-ref-1)
2. This does not mean that she actually provided direct care. [↑](#footnote-ref-2)
3. I conclude that this did not constitute having the care, custody, instruction, or supervision of mentally ill patients. [↑](#footnote-ref-3)
4. I conclude that this did not constitute having the care, custody, instruction, or supervision of mentally ill patients. [↑](#footnote-ref-4)
5. I conclude that this did not constitute having the care, custody, instruction, or supervision of mentally ill patients. [↑](#footnote-ref-5)
6. Ms. Sprague did not present providing clinical services as a personal one-on-one challenge but as an organizational challenge. [↑](#footnote-ref-6)
7. Ms. Sprague mentioned patients in an “also” statement, implying that most of her contact was with staff, whom she mentioned in the previous sentence. Additionally, patients were not the only people whom Ms. Sprague mentioned in her “also” statement. Patients were among families, students, top-level mangers – and still more staff. [↑](#footnote-ref-7)
8. The form did not say that Ms. Sprague herself delivered services to patients. [↑](#footnote-ref-8)
9. The form later described this executive order as requiring state agencies to follow nutrition standards when contracting to purchase food. (Resp. Ex. 5, p. 3.) [↑](#footnote-ref-9)
10. Ms. Sprague did not state that she provided “care & treatment to medically & mentally ill patients.” Rather, she stated that she supervised and trained employees who provided care and treatment. Even if Ms. Sprague meant that she was providing direct care and treatment, she did not emphasize it among her many other duties. [↑](#footnote-ref-10)