

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Victoria Stowell,
Petitioner,

No. CR-22-0065

Dated: February 2, 2024

v.

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

Appearance for Petitioner:
Victoria Stowell (pro se)

Appearance for Respondent:
Salvatore Coco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

A teacher was not entitled to purchase retirement credit for a period of service in a nonpublic school, because that period of service entitled her to an employer-funded retirement benefit, and the benefit had become available to her by the time of the purchase application.

DECISION

Petitioner Victoria Stowell 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 1-4 in MTRS's submission.

Findings of Fact

The following facts are not in dispute.

1. Ms. Stowell is a teacher. From 1989 until 1997, she taught at the Kennedy-Donovan Center School (Kennedy-Donovan). Kennedy-Donovan is a state-funded nonpublic school located in New Bedford. (Exhibit 3.)

2. Kennedy-Donovan made contributions on Ms. Stowell's behalf into a tax-sheltered annuity account under 26 U.S.C. § 403(b). Ms. Stowell became fully vested in her 403(b) account after one year of service. She withdrew her balance during 2004. (Exhibits 2-4.)

3. At some point, Ms. Stowell became a public-school teacher and an MTRS member. In 2013, she applied to purchase retirement credit for her pre-membership service with Kennedy-Donovan. MTRS denied the application after a lengthy delay, issuing a written decision in February 2022. Ms. Stowell timely appealed. She limited the scope of the appeal to her first year at Kennedy-Donovan, during which she was not yet vested. (Exhibit 1.)

Analysis

The retirement benefits of a Massachusetts public employee are determined in part by the duration of the employee's creditable service. G.L. c. 32, § 5(2). The general rule is that each individual receives credit for periods when he or she was an employee of a governmental unit and a member of a public retirement system. § 4(1)(a).

Scattered provisions permit employees to purchase credit for service that would not be creditable under the general rule. One such provision authorizes purchases by a member "who was previously engaged in teaching pupils in any non-public school in the commonwealth, if the tuition of all such pupils taught was financed in part or in full by the commonwealth." § 4(1)(p).

A proviso to § 4(1)(p) states that "no credit shall be allowed . . . for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source." *Id.* "The purpose of the limitation is to prevent double-dipping by receiving two employer-funded retirement benefits for the same work." *Richmond v. MTRS*, No. CR-16-102, at *7 (DALA Feb. 15, 2019).

For purposes of the proviso to § 4(1)(p), a 403(b) plan counts as a "retirement allowance." *Gadowaki v. MTRS*, No. CR-14-763, at *8 (DALA Mar. 8, 2019). *See Sullivan v.*

MTRS, No. CR-07-639, at *4 (CRAB Nov. 16, 2012) (discussing similar language in G.L. c. 32, § 3(4)). The proviso is triggered whenever the pertinent benefit was funded by “a source other than the applicant,” *Richmond, supra*, at *7, even if—as in the usual case—the employee contributed funds as well. *Sullivan, supra*, at *3.

Ms. Stowell’s single claim on appeal is that, during her first year at Kennedy-Donovan, she was not yet vested in her plan. Otherwise stated, during that first year, Ms. Stowell would not have been able to access her employer’s contributions into her account. *See* IRS, Vesting (May 5, 2023), <https://bit.ly/3vLhN6x>.¹

An employee who has *never* vested in his or her retirement plan is not “entitled to receive a retirement allowance” within the meaning of § 4(1)(p). *See Fitzgerald v. MTRS*, No. CR-15-607, at *3-5 (CRAB Feb. 21, 2020). But as the Appeals Court has written in a related context, the question is “whether or not one qualifies for benefits from another source at the time of [the] request to purchase credits.” *Dube v. Contributory Ret. Appeal Bd.*, 50 Mass. App. Ct. 21, 25 (2000). When the answer is yes, a credit purchase would generate the double-dipping problem that the proviso to § 4(1)(p) seeks to foil. *Richmond, supra*, at *7.

Ms. Stowell became “entitled to receive” the benefits of her 403(b) plan as soon as she completed her first year of work. That entitlement was long established by the time of her purchase application. MTRS therefore properly denied the application under § 4(1)(p).

Conclusion and Order

AFFIRMED.

¹ Ms. Stowell does not assert that Kennedy-Donovan made no contributions during her first year of employment. No evidence in the record so indicates either.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate