

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Paula Sullivan,
Petitioner

v.

Docket No. CR-21-0200

Date: Feb. 9, 2024

**Massachusetts Teachers'
Retirement System,**
Respondent

Appearance for Petitioner:

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Massachusetts Teachers Association
2 Heritage Dr., 8th Floor
Quincy, MA 02171

Appearance for Respondent:

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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System improperly denied a speech and language pathologist's application to purchase creditable service for her employment at a nonpublic school. *See* G.L. c. 32, § 4(1)(p). Petitioner was allowed to purchase her first year of service, but MTRS denied the remaining five years because it concluded that Petitioner was covered by a retirement plan offered by the nonpublic school. The Board's decision is reversed because Petitioner did not receive retirement benefits under the plan.

DECISION

Pursuant to G.L. c. 32, § 16(4), Petitioner Paula Sullivan appealed Respondent Massachusetts Teachers' Retirement System's (MTRS) denial of her application to

purchase creditable service under G.L. c. 32, § 4(1)(p) for her employment with Cardinal Cushing Centers (CCC). MTRS determined that Ms. Sullivan was entitled to receive a retirement allowance from CCC after her first year of work there and was consequently ineligible to purchase her last five years.

Ms. Sullivan first applied to purchase the disputed service in 2016. She did not appeal the Board's decision. Ms. Sullivan reapplied in 2020, and MTRS declined to process the application because its 2016 decision had not been appealed. On April 21, 2021, Ms. Sullivan asked MTRS to process her 2020 application. MTRS did not reply to the request. On May 24, 2021, Ms. Sullivan appealed MTRS's inaction on her 2020 application.

On March 28, 2022, DALA ordered the parties to file a joint prehearing memorandum and proposed exhibits. On June 28, 2022, MTRS moved DALA to dismiss the instant appeal because Ms. Sullivan failed to appeal the 2016 decision. On July 22, 2022, Ms. Sullivan filed her opposition to the motion. On October 3, 2022, DALA denied MTRS's motion. After several extensions, the parties filed their joint prehearing memorandum and proposed exhibits on May 18, 2023.

I held a hearing on September 11, 2023, at DALA, 14 Summer Street, 4th Floor, Malden, MA 02148. I recorded the hearing digitally. The Petitioner's husband, Walter Sullivan, testified for Ms. Sullivan, and she also testified on her own behalf. MTRS did not call any witnesses. I admitted 19 jointly submitted exhibits into evidence, which I marked Exhibits 1 through 19. Ms. Sullivan filed a closing brief on November 6, 2023, and MTRS filed a closing brief on November 9, 2023.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. Paula Sullivan is a retired member of MTRS. (Paula Sullivan Test.; Exs. 1, 2.)

2. Ms. Sullivan received a Bachelor of Science Degree in Communication Disorders in 1987 and a Master’s Degree in Speech and Language Pathology in 1993. Ms. Sullivan received her certification in Speech and Language Hearing Disorders from the Department of Elementary and Secondary Education in 1994. (Paula Sullivan Test.)

3. Ms. Sullivan was employed by Duxbury Public Schools as a speech language pathologist from September 1, 1997, through October 2022. (Paula Sullivan Test.; Ex. 5.)

4. Before that, Ms. Sullivan was employed by CCC from July 1, 1987, until June 30, 1993. CCC is a nonpublic school that educates students with intellectual and learning disabilities. (Exs. 3, 5.)

5. CCC operated on a September through July schedule, and the school day was from 8:00 a.m. through 3:00 p.m. (Paula Sullivan Test.; Ex. 13.)

6. Ms. Sullivan taught students aged 9 to about 22 years of age in classes with 15-17 students in the academic building on the CCC campus. (Paula Sullivan Test.)

7. Ms. Sullivan taught students speech and language skills, including developing receptive and expressive language and articulation skills. (Paula Sullivan, Test.; Ex. 13.)

8. Ms. Sullivan developed curriculum-based instruction, prepared lesson plans, co-taught with staff in the classroom, followed her students' individualized education plans, and used planning time with peers to develop methodology and interventions for the classroom. (Exs. 5 and 13.)

9. Ms. Sullivan confirmed that all of the students she taught were from various school districts in Massachusetts. (Paula Sullivan Test.; Ex. 14.)

10. Ms. Sullivan's teaching responsibilities during her first year at CCC in 1987-1988 were the same as her duties during the subsequent years, 1988 through 1993. (Paula Sullivan Test.)

11. MTRS kept a record of a pension plan that it averred CCC had in effect from 1979 to 1996. (Ex. 8.)

12. According to the plan, employees would vest after 12 months of employment at CCC. (Ex. 8.)

13. Ms. Sullivan did not receive documentation from CCC regarding any pension plans and did not sign up for a retirement plan. (Paula Sullivan Test.)

14. Article XIII, Section 13.01 of the pension plan states that, although CCC intends to fund the pension plan, it is under no obligation to do so. (Ex. 8.)

15. Under the pension plan, Article IV, Section 4.04, describing the participation requirements, states the "Employer shall furnish to the Administrator a list showing all Participants during such Fiscal Year, the date of employment, the years in the Continuous Service of the Employer and the annual Compensation of each Participant, the date of termination for any terminated Employees, and the reason for such termination." (Ex. 8.)

16. Sentinel Benefits and Financial Group (“Sentinel Benefits”) was the Plan Administrator for CCC’s employee retirement benefit. Sentinel Benefits has no record of Ms. Sullivan in its database. (Exs. 9, 10, 11.)

17. Ms. Sullivan has not received any disbursement of retirement funds from Sentinel Benefits. (Paula Sullivan Test.)

18. On Ms. Sullivan’s W-2 for the year 1990, the box indicating participation in a pension plan is not checked. (Ex. 7a.)

19. On Ms. Sullivan’s W-2s for the years 1992 and 1993, the box indicating participation in a pension plan is checked. (Exs. 7b, 7c.)

20. Ms. Sullivan first applied to purchase her CCC service in 2012. Sigmund Kozaryn, CCC’s Vice President of Finance, certified on Part II of Ms. Sullivan’s 2012 application for creditable service that she did not receive any retirement benefit other than social security while she was employed at CCC. (Ex. 3.)

21. On June 9, 2016, MTRS approved Ms. Sullivan’s application to purchase creditable service for her work from July 1, 1987, through June 30, 1988. MTRS denied Ms. Sullivan’s application to purchase creditable service for her work at CCC for her work from July 1, 1988, through June 30, 1993. Ms. Sullivan did not appeal MTRS’s decision. (Exs. 4, 15.)

22. In 2020, Ms. Sullivan re-applied to purchase her 1988-1993 service. Gina Ross, CCC’s Chief Human Resources Officer, attested on Part II of Ms. Sullivan’s 2020 application for creditable service that Ms. Sullivan did not receive any retirement benefit while she was employed at CCC. This time, Ms. Sullivan presented additional evidence she had not been aware of when she first applied. (Ex. 5.)

23. On December 31, 2020, MTRS declined to process Ms. Sullivan's re-application on the ground that its 2016 denial had not been appealed. (Ex. 6.)

24. On April 21, 2021, Ms. Sullivan, through counsel, requested that MTRS process her 2020 application. (Ex. 1.)

25. MTRS did not act upon Ms. Sullivan's request within one month of it having been made. On May 31, 2021, Ms. Sullivan appealed from MTRS's failure to act on her request. (Ex. 2.)

CONCLUSION AND ORDER

Under the Massachusetts public employee retirement law, the amount of an employee's superannuation retirement allowance is based in part upon the months of "creditable service" a member has accrued. G.L. c. 32, § 5(2)(a). In some instances, teachers may purchase service credit for prior teaching service performed at a Massachusetts nonpublic school. G.L. c. 32, § 4(1)(p). Allowing teachers to purchase such service credit rewards teachers who make significant contributions to the Commonwealth by teaching its children in-state, albeit in nonpublic schools. *Rosing v. Teachers' Retirement Sys.*, 458 Mass. 283, 292-93 (2010).

Under § 4(1)(p), a teacher may purchase service only for periods when the teacher was "engaged in teaching pupils," meaning that the service must have entailed providing direct instruction to students, as opposed to providing clinical services. *See Siddle v. Mass. Teachers' Retirement Sys.*, CR-16-385 (CRAB Aug. 2, 2023); *Murray v. Mass. Teachers' Retirement Sys.*, CR-08-646, at *2-4 (CRAB June 26, 2014); *Taft v. Teacher's Retirement Sys.*, CR-02-657 (DALA June 4, 2004), *aff'd*, (CRAB Nov. 15, 2004), *aff'd*, Decision, No. 04-05441 (Mass. Superior Ct. Oct. 28, 2005); *Mosca v. Mass. Teachers'*

Retirement Sys., CR-15-477, at *10, *12 (DALA Mar. 22, 2019); *Farnsworth v. Mass. Teachers' Retirement Sys.*, CR-15-29, at *2, *8 (DALA June 23, 2017). MTRS does not argue that, because Ms. Sullivan functioned as a speech and language pathologist at CCC, she has failed to prove that she was “engaged in teaching pupils” during her six years there.¹ In fact, as MTRS has already allowed Ms. Sullivan to purchase her first year there, the parties implicitly agree that she was engaged in teaching pupils. MTRS similarly does not challenge the conclusion that the tuition of all the students she taught was funded at least in part by the Commonwealth. *See* § 4(1)(p).

MTRS denied Ms. Sullivan’s application as to her last five years at CCC because it concluded that she was entitled to a retirement benefit for her work, which it claims vested after her first year of employment. G.L. c. 32, § 4(1)(p) states that “no credit shall be allowed and no payment shall be accepted for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source.” This language “focuses not on whether persons seeking to purchase service have actually received a post-retirement benefit from prior private service, but merely [on] whether they were entitled to receive such a benefit.” *Siska v. Mass. Teachers' Retirement Sys.*, CR-13-443 et al., at *14 (DALA Sept. 21, 2018); *accord Goldberg v. Mass. Teachers' Retirement Sys.*, CR-15-7, at *9 (DALA Sept. 16, 2016). The purpose of the exception is to prevent “double-dipping” in the form of receiving two retirement benefits for the same

¹ In any event, MTRS makes no such argument in its prehearing memorandum or its closing brief. Perhaps because MTRS did not make an issue of it, this fact was not substantially developed by Ms. Sullivan. It is not a foregone conclusion, however, that all speech and language pathologists are “engaged in teaching pupils” for purposes of § 4(1)(p). *But see Hersh v. Teachers' Retirement Bd.*, CR-03-115 (DALA May 12, 2003) (speech and language pathologist not engaged in teaching pupils).

service. *Richmond v. Mass. Teachers' Retirement Sys.*, CR-16-102, at *7 (DALA Feb. 15, 2019) (citing *Siska*, CR-13-443 et al., at *14).

On appeal, members bear the burden of proving their eligibility to purchase service by a preponderance of the evidence. *See, e.g., Stebbins v. Mass. Teachers' Retirement Bd.*, CR-13-234, at *1 (DALA Feb. 9, 2018). Accordingly, in this appeal, Ms. Sullivan must prove by a preponderance of the evidence that she was not entitled to a retirement benefit for her work at CCC. She has done so.

Although the terms of the pension plan in MTRS's records provide that Ms. Sullivan would have been enrolled in the plan after working at CCC for 12 months, the only evidence that she was so enrolled was that the pension box (box 6) on her 1992 and 1993 W-2 forms was checked. On the other hand, her 1990 W-2 form does not have the pension box checked. She would have vested in the plan in 1988, so it would be reasonable to expect that the pension box would have been checked for the five years that she was eligible. However, this is not the case. Ms. Sullivan credibly testified to having no knowledge of this retirement benefit and stated that she never received the pension plan document.

The evidence supporting the conclusion that Ms. Sullivan was *not* entitled to a retirement benefit at CCC is more convincing. In Ms. Sullivan's 2012 and 2020 applications, the CCC payroll administrators reported that Ms. Sullivan was not a member of a retirement plan to which the school made employer contributions. Sigmund Kozaryn, CCC's Vice President of Finance, attested on Part II of Ms. Sullivan's 2012 application that she did not receive any retirement benefit other than social security. Gina Ross, CCC's Chief Human Resources Officer, similarly attested on Part II of Ms.

Sullivan's 2020 application that she did not receive any retirement benefit relating to her employment at the school. Furthermore, Ms. Sullivan indicated on both applications that she did not receive, and would not be eligible to receive, any retirement benefits from this service.

Additionally, the administrator of the pension plan, Sentinel Benefits, reported no record of Ms. Sullivan in their system. Under the Pension Plan, Article IV, Section 4.04, describing the participation requirements, states the "Employer shall furnish to the Administrator a list showing all Participants during such Fiscal Year, the date of employment, the years in the Continuous Service of the Employer and the annual Compensation of each Participant, the date of termination for any terminated Employees, and the reason for such termination." Sentinel would have had a record of Ms. Sullivan because a report of the plan's participants was required to be provided each year. Because the Plan Administrator did not have any record of Ms. Sullivan, it was not able to indicate whether Ms. Sullivan participated in the plan or was vested in it. *See Siddle v. MTRS*, CR-16-385, at 3, (CRAB August 2, 2023).

This is a close case, but I conclude that it is more probable than not that if Ms. Sullivan were entitled to any benefits under the Pension Plan, CCC would have had a record of her participation and vesting in the plan, Ms. Sullivan would have been entitled to those benefits, and the plan administrator, Sentinel Benefits, would have had a record of her participation. Although "inability to locate a record may not always show that no record exists," there is other supporting evidence, such as the 1990 W-2 and her employer's statements, that indicate she was not eligible for any retirement benefit. *Fitzgerald v. MTRS*, CR-15-607, at *18 (CRAB February 21, 2020). Thus, I find that

Ms. Sullivan has proven that she was not entitled to receive retirement benefits under the pension plan, the only plan in effect during Ms. Sullivan's service at CCC.

For the above-stated reasons, Ms. Sullivan is entitled to purchase all six years of her service at Cardinal Cushing Center, and MTRS's decision denying her application to do so is hereby reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Feb. 9, 2024