THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Richard J. Camara,

 Petitioner

 v. Docket No. CR-15-460

 Dated: September 16, 2016

State Board of Retirement,

 Respondent

**Appearance for Petitioner:**

*Pro Se*

16 Winchester Street

Boston, MA 02116

**Appearance for Respondent:**

Melinda E. Troy, Esquire

State Board of Retirement

One Winter Street, 8th FL

Boston, MA 02108

**Administrative Magistrate:**

Judithann Burke

**Summary of Decision**

The Petitioner has not met his burden of proving that he is entitled to be classified in Group 2 in accordance with M.G.L. c. 32, § 3(2)(g), as the evidence does not reflect that his regular and major duties as Program Monitor/Program Coordinator III in the Department of Developmental Services include the direct care, custody, instruction or other supervision of persons who are mentally ill or mentally defective.

**DECISION**

Pursuant to M.G.L. c. 32, § 16(4), the Petitioner, Richard J. Camara, is appealing from the July 31, 2015 decision of the Respondent, State Board of Retirement (“SBR”), classifying his present position as Program Coordinator III in the Department of Developmental Services in Group 1, per M.G.L. c. 32, § 3(2)(g), for retirement purposes. (Exhibit 1.) The appeal was timely filed on August 7, 2015. (Exhibit 2.) The Petitioner elected to submit documents and forgo an evidentiary hearing, pursuant to 801 CMR 1.01 (10)(c). (Exhibit 12.) The Petitioner’s final submission was received on April 27, 2016. (Exhibit 24.) The SBR’s final submission was received on May 2, 2016, thereby closing the record. (Attachment B.) The SBR had submitted an earlier Pre-hearing Memorandum and Exhibit List on February 22, 2016. (Attachment A.)

 The following is the list of exhibits that encompasses the documentary evidence in this case. Exhibits 1-11 were proffered by the SBR. Exhibits 12-23 were proffered by the Petitioner.

**Exhibit No. Document Description**

1. July 31, 2015 SBR letter denying Petitioner’s request for Group 2 classification
2. August 4, 2015 letter of appeal
3. May 1, 2015 SBR letter approving Petitioner’s request to pro-rate Group 2 classification and Petitioner’s “Group Classification Questionnaire” dated April 13, 2015.
4. Petitioner’s estimate to participate in the Employee Retirement Incentive Program (ERIP) dated May 29, 2015
5. Materials concerning Petitioner’s request to classify his position relating to his application to participate in the ERIP, including SBR letter of June 11, 2015 classifying Petitioner’s current position in Group 1, Petitioner’s “Group Classification Questionnaire” dated May 18, 2015, Petitioner’s narrative, undated, Form 30 of October 1, 1996 and Employee Performance Review Form (EPRS) dated May 29, 2015
6. Petitioner’s June 12, 2015 application to retire pursuant to Ch. 19 of the Acts of 2015, the ERIP
7. June 23, 2015 e-mail to Petitioner from SBR including estimates to retire June 30, 2017 and June 30, 2018
8. June 24, 2015 SBR letter to Petitioner classifying his position in Group 1
9. June 25, 2015 letter from Petitioner to SBR withdrawing his application to participate in the ERIP
10. June 26, 2015 SBR letters to DDS and Petitioner notifying agency and Petitioner that it received his withdrawal of ERIP application
11. Materials regarding Petitioner’s request for Group 2 classification, including Petitioner’s “Group Classification Questionnaire” dated July 8, 2015, Petitioner’s narrative (undated), Form 30 dated June 1, 2015 and EPRS dated May 29, 2015
12. November 18, 2015 letter from Petitioner to Chief Magistrate McGrath, received on December 21, 2015
13. Narrative format Form 30 (undated) for Program Monitor/Program Coordinator 3, Central Middlesex area (2 pages)
14. DPA-Form 30-State DDS Program Monitor (2 pages)
15. Page 15 of Benefit Guide for the Massachusetts State Employees’ Retirement System
16. Petitioner’s CM Coordinator Desktop Client List (2 pages)
17. Info pertaining to October 14, 2015 meeting of Northeast Regional Rainbow Welcome Support Group (2 pages)
18. September 4, 2015 e-mail from Petitioner to DDS staff regarding September 9, 2015 Diversity/Inclusion Meeting
19. October 16, 2015 letter to Chief Magistrate McGrath from DDS Northeast Regional Director Amanda Chalmers regarding Petitioner’s duties (2 pages)
20. CMAO Family Citizen Monitoring Residential Services Tool, Items A-F (6 pages)
21. May 29, 2015 EPRS of Petitioner (FY 2015) (3 pages)
22. March 16, 2016 letter from Petitioner to Chief Magistrate McGrath (2 pages)
23. April 14, 2016 letter from Petitioner to Magistrate Burke, received on April 27, 2016 including DDS Responsible User List (2 pages)

 **FINDINGS OF FACT**

Based on the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Richard J. Camara, born in 1956, is employed as a Program Monitor/Program Coordinator III at the Department of Developmental Services (DDS). (Exhibits 1, 8, 9, 11, 12, 19, and 21-23.)
2. The Petitioner began working for the Commonwealth in or around 1981 when the agency was called the Department of Mental Retardation. The agency changed its name to DDS in 2009. The Petitioner had some breaks in service over the years, however, he continues to work at DDS presently. (Exhibits 6 and 8.)
3. On or about April 13, 2015, the Petitioner completed a “Group Classification Questionnaire” and asked to pro-rate his group classification for retirement purposes. (Exhibit 3.)
4. In a letter dated May 1, 2015, the SBR notified the Petitioner that it had approved his request for Group 2 classification related to his position as Day Care Developmental Specialist for the periods from July 21, 1981 through August 24, 1985 and from March 16, 1986 through April 4, 1992. (*Id.*)
5. On May 29, 2015, the SBR estimated a benefit for the Petitioner pursuant to Ch. 19 of the Acts of 2015, the Early Retirement Incentive Plan (ERIP). (Exhibit 4.)
6. In June 2015, the Petitioner submitted an ERIP application and Group Classification Questionnaire for his position of Program Monitor/Program Coordinator III, the position he assumed on August 17, 1997. (Exhibits 5 and 6.)
7. In a letter dated June 24, 2015, the SBR informed the Petitioner that it was classifying his position in Group 1 for retirement purposes. (Exhibit 8.)
8. In a letter dated June 25, 2015, the Petitioner withdrew his ERIP application and the SBR so notified DDS. (Exhibits 9 and 10.)
9. In a submission dated July 8, 2015, the Petitioner completed a “Group Classification Questionnaire” and requested that his position be classified in Group 2 for retirement purposes. (Exhibit 11.)
10. The SBR denied the Petitioner’s request to be classified in Group 2 on July 31, 2015. (Exhibit 1.)
11. The Petitioner filed a timely appeal on August 7, 2015. (Exhibit 2.)
12. In the Petitioner’s role as Program Coordinator III in DDS, he works at the Central Middlesex Area Office. He supervises three (3) individuals with developmental disabilities at the office with their duties as a receptionist. He trains them, as well as other individuals with developmental disabilities, on how to perform various office management jobs at a DDS Area Office. He also conducts any state mandated trainings in a revised format which the DDS clients are able to comprehend. The three (3) individuals the Petitioner supports and supervises are required to spend a total of four (4) hours a day at the office from Monday through Friday. The Petitioner has asserted that these individuals spend a total of seven (7) hours per day in the Central Middlesex Regional Office during the Monday through Friday work week. They are taught receptionist skills, how to pace their work load, various skill building activities relating to the computer, postage, fax machine, and copier, and appropriate telephone skills. The Petitioner supports and trains them on filing various documents in individual records, the maintaining of and entering of data in computer programs and tracking of Plan Action Forms. (Exhibits 5 and 12.)
13. The Petitioner also conducts trainings and supports self-advocates (all DDS clients) to promote skill-building and independence in their lives on a regional level. He has conducted trainings in building friendships and connections within the local communities, human sexuality and how to go about finding a job. He has also conducted a support group for Lesbian, Gay, Transgendered and Bisexual clients in order for them to understand their human rights. (*Id.* and Exhibit 19.)
14. The Petitioner often visits day programs where DDS individuals work to support their efforts and desires for community employment. He also visits residences often to insure that the homes are clean, supportive and are of good quality. These visits are always conducted when all individuals are at home to observe the interactions between staff and residents who live within the residence. (*Id.*)
15. As he is also the Area Office Risk Manager, the Petitioner also facilitates monthly meetings regarding high profile DSS clients who have risk concerns. He has a caseload of approximately thirty (30) individual cases he presents to the Area Office Management Team to discuss and review. He also meets with the risk individual self-advocates as needed to review and monitor their risk issues. (*Id.* and Exhibit 19.)
16. The Petitioner conducts and reviews all Administrative Reviews on Complaint Cases called into the Disabled Person’s Protection Commission. For Administrative Review cases, it may involve him meeting with an individual with a developmental disability to insure that his/her needs are being met and to insure that he/she is in a safe environment within the home or day care program. (*Id.* and Exhibits 11, 13 and 19.)
17. The DPA-Form 30-State for the position title Program Coordinator III prepared on June 1, 2015 sets forth in the General Statement of Duties and Responsibilities that the Program Monitor oversees all aspects of the Investigation process, maintains oversight of the Survey and Certification process, tracks compliance issues as related to Survey and Certification, Evacuation and Safety Plans. The individual also meets regularly with all Service Providers to insure Quality Services are offered to all DDS individuals. He also monitors Behavior Plans, Human Rights related to complaints and issues, restraints and incidents entered into the database. He works in conjunction the Advisory Board Members (some of whom are DDS self-advocates), develops Education forums and trainings for service providers, self-advocates and families on an as needed basis and monitors and facilitates all Risk Consults within the area office. The last line of the General Statement indicates that the Petitioner supervises, trains and supports 3 Self-Advocates as Receptionist in the office area from 10:00 AM to 2:00 PM. (Exhibits 11 and 19.)
18. The Form 30 also reflects that the Program Monitor/Program Coordinator III oversees the investigation process for the Area, in coordination with the area Director, oversees protective services, notifications, and disposition letters. In conjunction with the Complaint Resolution Team, he develops Action and Follow-up Plans as they relate to completed investigations, maintains independent tracking systems to monitor all investigations and complaints, and works with the service providers regarding follow-through and prevention. He maintains regular contact with the Disabled Person Protection Commission, Senior Investigators and Regional contacts. The program Monitor/Program Coordinator III also maintains oversight of Survey and Certification processes for the providers by attending feedback sessions, reviewing surveys and integrating survey information into area planning. He meets with all service providers during the year to discuss performance with various quality service enhancements, as it relates to area office functions. (Exhibits 14 and 18.)

 **CONCLUSION**

 After a careful review of all of the testimony and documents, I have concluded that the Petitioner is not entitled to prevail in this appeal. He has not met his burden of proving that his “regular and major duties” required him to have the direct “care, custody, instruction or other supervision of persons who are mentally ill or mentally defective…” as required in order to be classified in G.L. c. 32, § 3(2)(g), Group 2, notwithstanding his valuable past clinical experience. The Petitioner’s primary responsibilities as Program Monitor/Program Coordinator III include working collaboratively with service providers and various committees (some, but not all of which are comprised of any specific number of self- advocates) in order to insure quality vocational and social services and safety to all clients. He regularly interacts with all of the professionals involved in the treatment plans of individual self-advocates. He developes and organizes groups and trainings for both service providers and self-advocates alike.

The breakdown of his time spent with the population in any of these organized groups has not been proffered as evidence in this case. The Petitioner coordinates all of the programs, as his job title and Form 30 suggest. Ergo, while the Petitioner may have frequent face to face contact and some direct care and instruction responsibilities with self-advocates both within his Area Office and within the region, he has not presented specific evidence that he spends more than fifty per cent (50%) of his time providing direct care, custody, instruction or other supervision to these self-advocates.

 It must also be noted here that, while he claims that the three (3) receptionists in the Area Office are present for seven (7) hours a day, Director, Ms. Chalmers. Rather, the Form 30 suggests that he is responsible for the supervision of these self-advocates between the hours of 10:00 AM and 2:00 PM. The evidence proffered by the Petitioner, along with the DDS and state documents, does not support the notion that the Petitioner actually spends four (4) hours per day with these three (3) self-advocates every day of the week, given the number of duties he is responsible to perform throughout the entire region, and, the amount of time that he is required to develop educational programs and support groups and attend meetings with service providers. The administration of these latter activities is time-consuming.

 Accordingly, even accepting that all of the job duties proffered by the Petitioner in his myriad letters and in the letter of his supporter, Ms. Chalmers, are true and accurate, the Petitioner’s *regular and major duties* were not exclusively centered on direct self-advocate care or instruction or group counseling. Based upon the paucity of evidence concerning the actual daily breakdown of his average work day or week, it has not been proven that the Petitioner spent more than 51% of his time performing direct care duties. She offered no evidence as to how much actual time he spent providing instruction to any self-advocates on an exclusive, one-on-one basis.

The Form 30 and the EPRS documents stress the administrative and supervisory nature of the Petitioner’s position. Cf. *Deborah Wark v. State Board of Retirement,* CR-12-108 (Contributory Retirement Appeal Board Decision October 11, 2013, reversing Division of Administrative Law Appeals Decision of November 9, 2012.)

Regular and major duties must comprise at least 51% of one’s duties. Here, the Petitioner has not proven that more than half of his duties involve the direct care, custody, intstruction or other supervision of persons who are mentally defective. *Joan McCalla v. State Board of Retirement,* CR-07-1040 (Division of Administrative Law Appeals, March 11, 2011.)

Based on the foregoing, the decision of the SBR denying the Petitioner’s request to be classified in Group 2 is affirmed.

So ordered.

Division of Administrative Law Appeals,

BY:

Judithann Burke

Administrative Magistrate

Dated: September 16, 2016