

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jenny Donovan (Decedent) became a member of CalPERS on September 18, 1994, through her employment with the Department of Parks and Recreation as a Superintendent I.

When Decedent applied for retirement on October 30, 2015, she named her registered domestic partner Donna Donovan (Respondent Donovan) as her Option 2W beneficiary to receive a lifetime monthly allowance. A Judgment of Dissolution, dated December 22, 2017, terminated the legal union of Decedent and Respondent Donovan.

On March 6, 2018, Decedent married Melissa Thompson (Respondent Thompson). A little over eight months later, Decedent contacted CalPERS to request information to change her beneficiary. CalPERS mailed her the publication "Changing Your Beneficiary or Monthly Benefit After Retirement" (PUB 98) and a "Modification of Option and/or Life Option Beneficiary Estimate Request Form" (MOLOB). The MOLOB is a request for an estimate of the retirement benefit amounts a retiree may receive should she wish to name a new beneficiary. Designation of a new beneficiary to receive benefits after retirement can only occur with a qualifying event (such as marriage or dissolution of marriage).

On December 11, 2018, CalPERS confirmed that Decedent's lump sum beneficiary designation form had been accepted for the retired death benefit (\$2,000) with Respondent Thompson as the beneficiary. Respondent Thompson was also designated as Decedent's Option 1 beneficiary.

Also, on December 11, 2018 and on December 17, 2018, Decedent contacted CalPERS for assistance in filing her MOLOB estimate. She was advised to submit her dissolution documents for processing.

Subsequently, CalPERS informed Decedent that if she wanted to remove Respondent Donovan as her Option 2W beneficiary, she would need to submit her request in writing and include a complete copy of the judgment of dissolution awarding Decedent 100% interest in her CalPERS retirement account.

On January 3, 2019, Decedent submitted a letter, dissolution documents and a MOLOB request stating that she would like to remove Respondent Donovan as her beneficiary and that the "only beneficiary she should have on file at this time should be [Respondent] Thompson." The dissolution documents she submitted indicated that there was no property to be divided.

In a phone call on January 30, 2019, CalPERS explained to Decedent that although the judgment in her dissolution was uncontested the judgment did not specifically award

Decedent 100% of her CalPERS retirement. Decedent was advised to either have Respondent Donovan sign a community property release form or return to court to obtain an amended judgment that awarded Decedent the total interest in her CalPERS retirement account.

Decedent never returned a signed copy of a community property release form or an amended judgment that awarded her the total interest in her CalPERS account. CalPERS had no further communications with Decedent.

Decedent became very ill. On her death bed on May 20, 2020, Decedent signed a notarized document titled "CalPERS Lifetime Benefit Change," in which she named Respondent Thompson as her domestic partner in marriage and sole beneficiary of her CalPERS lifetime monthly benefit allowance. Decedent intended to remove her previous beneficiary Respondent Donovan due to divorce, and name her new wife and domestic partner, Respondent Thompson, to receive all of her assets in her estate upon her death.

On May 21, 2020, Decedent passed away. At the time of her death, Respondent Donovan was the Option 2W beneficiary and Respondent Thompson was the Option 1 beneficiary.

CalPERS sent a letter dated June 4, 2020, to Respondent Thompson, including an Application for Retired Member/Payee Survivor Benefits form. Respondent Thompson completed and submitted the Application on June 8, 2020, together with a Death Certificate, a copy of Decedent's living trust designating Respondent Thompson as her beneficiary including the "PERS Retirement Account" and supporting documents.

On June 8, 2020, CalPERS informed Respondent Thompson that she did not qualify for the lifetime monthly benefit allowance because she was not married to Decedent for at least one year prior to Decedent's retirement date. One week later, Respondent Thompson submitted a request for an exception and reconsideration regarding the lifetime option beneficiary and Survivor Continuance monthly allowance.

On July 28, 2020, CalPERS sent Respondent Thompson a determination letter informing her that she was not eligible for a monthly allowance from CalPERS pursuant to Government Code sections 21462 and 21454. CalPERS explained that Decedent had only designated Respondent Thompson as beneficiary for a lump sum benefit. The letter further explained that Decedent had been fully informed on the process to change the beneficiary of her CalPERS benefits, including the beneficiary entitled to receive the lifetime monthly allowance. CalPERS had also reviewed Decedent's trust, but there was no provision in the law that allowed the trust to be used as a designation for payment of an ongoing CalPERS lifetime monthly allowance. The letter provided appeal rights.

On October 10, 2020, CalPERS informed Respondent Thompson's attorney that even though the dissolution was uncontested, and the judgment states there were no assets to divide, that was not the case. Decedent was not specifically awarded the full interest

in her CalPERS retirement account. Since the superior court was not aware of the account, Decedent's CalPERS retirement account could not have been addressed in the dissolution. A modification or change to beneficiary is only allowed if the superior court grants 100% interest to the retired member, and that did not occur here (Government Code sections 21454 and 21462).

On February 4, 2021, Respondent Thompson appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on November 15 and 19, 2021. Both Respondent Thompson and Respondent Donovan were represented by counsel at the hearing.

At the hearing CalPERS presented evidence that 100% interest in CalPERS retirement is required to ensure that a member is allowed to make a change of beneficiary due to community property laws. When conditions change to allow a member to make a new beneficiary designation for Option 2W, a recalculation is required because the amount of the member's monthly check will change. In calculating the retirement benefit, the proposed beneficiary's date of birth and actuarial tables are considered. In general, retirement benefits decrease the younger the beneficiary is.

Respondent Thompson testified at the hearing regarding Decedent's intent to provide for Respondent Thompson and to leave her all of Decedent's assets. Decedent had cut all ties with Respondent Donovan, and their relationship was "tumultuous." Because of this, Respondent Thompson testified that Decedent tried to implement changes to her CalPERS retirement without contacting Respondent Donovan. The two ways CalPERS requires changes to be made required Decedent to contact Respondent Donovan, which she did not want to do.

Respondent Donovan testified that she was married to Decedent for approximately seven years. She has remarried and does not look to Decedent for any financial support. Decedent's CalPERS retirement was not discussed during the dissolution proceedings.

After considering all the evidence introduced, as well as arguments by the parties. The ALJ denied Respondent Thompson's appeal. In the Proposed Decision, the ALJ concludes that CalPERS properly denied Respondent Thompson the Option 2W lifetime monthly benefit because Decedent never completed the process to either obtain a judgment awarding her 100% interest of her retirement account in the dissolution, or have Respondent sign a release form. While the ALJ found Decedent's intent to provide for Respondent Thompson compelling, it does not overcome the applicable statutes. Moreover, the ALJ found that CalPERS properly denied Respondent Thompson the lifetime survivor continuance benefit because they were not married one year prior to Decedent's retirement date. In sum, while the ALJ found Respondent Thompson's position unfortunate, the applicable statutes dictate that CalPERS determine her not eligible for an Option 2W benefit and a lifetime monthly survivor continuance benefit.

Because Respondent Thompson contended that Decedent made clear statements of her intent to remove Respondent Donovan as her beneficiary, and made some efforts to change her beneficiary, the ALJ reviewed the case under the doctrine of estoppel. The ALJ found that Decedent intended Respondent Thompson to receive the benefits. However, Decedent's intent cannot supplant her failings in complying as instructed by CalPERS. To do so would contravene statutory limitations on a divorced member's rights to change beneficiaries from a former spouse to a subsequent spouse.

For all the above reasons, the ALJ denied Respondent Thompsons appeal. Staff argues that the Proposed Decision be adopted by the Board.

February 15, 2022

John Shipley
Senior Attorney