

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Dwight A. Evans (Respondent) is the child of decedent Melinda J. Evans (Decedent). Decedent became a local miscellaneous member of CalPERS through her employment with the County of Riverside.

On August 14, 2018, Decedent visited the San Bernardino Regional Office and submitted her signed Service Retirement Election Application (Application). In filing her Application, Decedent elected the Unmodified Allowance retirement payment option relating to the monthly benefit amount, which does not provide for continuing monthly lifetime benefits to a beneficiary or for a return of member contributions to a beneficiary upon a member's death. Decedent retired for service effective December 2, 2018, and her first monthly retirement check was issued on January 1, 2019.

By letter dated August 22, 2018, CalPERS acknowledged receipt of Decedent's Application and confirmed her selection of the Unmodified Allowance. By letter dated December 3, 2018, CalPERS informed Decedent that it had processed her Application based on her election to receive the Unmodified Allowance. Both letters also advised Decedent of the following: to review the information contained in the respective letters for accuracy and to notify CalPERS immediately if any information is incorrect; that the Unmodified Allowance "provides the highest monthly allowance paid for life. There is no continuing monthly benefit to a beneficiary and no return of unused member contributions upon [her] death;" and that if she wanted to change her retirement payment option she must make the request within 30 days of the issuance of her first retirement check or her selection becomes irrevocable.

Decedent passed away on November 29, 2019. The causes of death listed on her death certificate are hypertensive cardiovascular disease and obstructive sleep apnea.

Following Decedent's death, on April 25, 2020, Respondent submitted a claim to CalPERS disputing Decedent's election of the Unmodified Allowance. Respondent claimed that Decedent intended to elect the Option 1 Allowance and designate him as beneficiary for the return of contributions; but failed to do so as a result of her medical conditions.

CalPERS made inquiries to Respondent to obtain information to determine if Decedent made a correctable mistake in electing the Unmodified Allowance. After reviewing Decedent's file, the documents submitted by Respondent, and considering Government Code section 20160 and other applicable precedents, CalPERS determined that no correctable mistake had been made which would allow CalPERS to change Decedent's retirement payment option election from the Unmodified Allowance to Option 1.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on September 23, 2021. Respondent represented himself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS introduced the testimony of a CalPERS' representative and exhibits which laid out the facts and timeline of CalPERS' communications to Decedent regarding the Unmodified Allowance, her retirement benefits, and her deadline to change her option election.

Respondent testified on his own behalf. Respondent testified that he knew Decedent intended to leave him with "everything," including her CalPERS retirement funds. Respondent testified about and presented Decedent's un-probated last will and testament, excerpts of Decedent's medical records, email correspondence between Decedent and her human resources representative, and Decedent's property ownership documents. The medical documents and emails were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but is not sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proof to show that Decedent's retirement payment option election can be modified pursuant to Government Code section 20160, but Respondent did not meet his burden. First, Decedent signed the Application, selecting the Unmodified Allowance option. Second, CalPERS' letters to Decedent advised her that she elected the Unmodified Allowance, that this election provided no continuing monthly benefits to her survivors, and of her deadline to change this election. Third, Decedent never contacted CalPERS to make a change or ask about making a change to her benefits. Fourth, Decedent's will does not mention CalPERS or retirement funds. Fifth, Decedent was able to live on her own, drive a car, communicate effectively with medical professionals, and respond to CalPERS' letters when requested to do so. There was no incompetency determination, nor did Decedent's physicians express any concerns about her ability to live independently or manage her affairs. Finally, none of the evidence demonstrated that Decedent suspected she would pass away prior to receiving payment of all her contributions or that CalPERS' retention of some of her contributions was more important to her than receiving the maximum possible monthly payment during her lifetime.

In the Proposed Decision, the ALJ concluded that Respondent failed to prove that Decedent's election can be modified from the Unmodified Allowance to Option 1, pursuant to Government Code section 20160 or any other provision of the California Public Employees' Retirement Law (PERL).

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

January 18, 2022

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