ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

David Martin (Decedent) was employed by the California Highway Patrol as a Traffic Officer. Decedent retired for service on March 8, 1991, at which time he elected benefit Option 2, designating his then-wife, Patricia Martin, as his beneficiary of the monthly allowance and Lump Sum Death Benefit. Decedent and Patricia Martin were divorced on June 30, 1995. Decedent retained complete control of his CalPERS benefits as part of the dissolution of marriage.

Diane Martin (Respondent) and Decedent were married on October 7, 1995. By letter dated October 13, 1995, Decedent requested that Respondent and his step daughter be added to his health care plan. However, despite retaining control of his CalPERS retirement benefits after his divorce from Patricia Martin and his re-marriage to Respondent, Decedent did not contact CalPERS to make any changes to his designated beneficiary for monthly allowance payments and the Lump Sum Death Benefit.

Respondent was married to Decedent at the time of his death on April 11, 2013. Respondent submitted an application for Retired Member/Payee Survivor Benefits. After completing a thorough review of Decedent's file and CalPERS records, Staff denied Respondent's application because Decedent never changed his designated beneficiary from Patricia Martin to Respondent. Respondent appealed staff's determination.

A hearing was completed on July 8, 2015, regarding the issue of whether Respondent is eligible for the Option 2 monthly allowance. Prior to the hearing, Respondent was given procedural guidance about the hearing, and provided with the administrative process pamphlet. Respondent was present at the hearing and represented herself.

Government Code section 21462 provides that a member may elect to provide for a new option beneficiary, but such an election by the member requires a recalculation of options. In addition, there is a cost to the member to provide for a new option beneficiary, which is reflected as a permanent reduction of the member's monthly retirement allowance to pay for the new option benefit that the member may elect to provide. Pursuant to section 21462, the recalculation of options requires the member to submit an election within 12 months following marriage if the spouse is named as beneficiary.

At the hearing, Respondent argued that Decedent had intended to change his designated beneficiary to Respondent soon after their marriage in 1995. Respondent further argued that either CalPERS lost the paperwork to make the change or Decedent's failure to change his beneficiary was an error or omission resulting from mistake, surprise, inadvertence or excusable neglect, per Government Code section 20160. During her testimony, Respondent testified that she remembered discussing with Decedent changes to his retirement and health benefits in the fall of 1995. She indicated that Decedent understood that his pension would be reduced with the changes, but Respondent stated that since both she and Decedent were working at the time, a reduction of several hundred dollars in his retirement allowance would not be a problem.

The Administrative Law Judge (ALJ) found that the evidence presented by Respondent did not establish any error or mistake by CalPERS. Specifically, the ALJ indicated that there was no evidence establishing that Decedent contacted CalPERS to change his beneficiary, and therefore no reason to infer that CalPERS lost his paperwork or otherwise failed to carry out Decedent's wishes to change his beneficiary. The ALJ also found that Decedent acted upon his clearly expressed intention to provide health coverage for Respondent, but his expression of intent regarding his retirement benefits was less clear, and no evidence existed to suggest that Decedent took action to alter his designated beneficiary. Therefore, the ALJ ruled, one can only speculate about Decedent's state of mind regarding a change of beneficiary; and without clear evidence of his intent to make the change, Decedent's failure to do so cannot reasonably be characterized as an omission resulting from inadvertence or excusable neglect.

As a result, the ALJ concluded that Respondent failed to establish by a preponderance of the evidence that Decedent's failure to change his designated beneficiary to Respondent was an error or omission, per Government Code section 20160. Accordingly, the ALJ denied Respondent's appeal of CalPERS' determination that she is not eligible to receive the Option 2 monthly allowance.

The Proposed Decision is supported by the law and the facts. Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

September 17, 2015

Renée S

RENEE SALAZAR
Senior Staff Attorney