

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding Death  
Benefits Payable Upon the Death of Ronald B.  
Hughes, by:

SAMANTHA C. HENDRIX (HUGHES)  
and ANNE M. HUGHES,

Respondents,

and

TERESA VANDONGEN, KRISTIN J.  
VANDOGEN, and JOHN A.  
VANDONGEN (a minor),

Respondents.

Case No. 2014-1062

OAH No. 2014110859

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings,  
State of California, heard this matter in San Diego, California, on September 2, 2015.

Wesley E. Kennedy, Senior Staff Counsel, represented Petitioner, Anthony Suine,  
Chief, Benefit Services Division, California Public Employees' Retirement System  
(CalPERS), State of California.

Samantha C. Hendrix, Respondent, represented herself and Respondent Anne Hughes  
at the hearing.

Kristin Van Dongen, Respondent, represented herself, and Respondents Teresa Van  
Dongen and John Van Dongen.

The matter was submitted on September 2, 2015.

## ISSUES

Is there a correctable mistake of the benefit election of January 8, 2014, under Government Code section 20160?

Is the benefit election of January 8, 2014, barred under Government Code section 21492?

Do Respondents Anne Hughes and Samantha Hendrix have standing in this proceeding?

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. Ronald B. Hughes became a state miscellaneous member of CalPERS on July 2, 1984, through his employment with the Department of Developmental Services. He later became a state safety member through his employment with the Department of Corrections, until he retired on November 2, 2013. He died on January 17, 2014, at the age of 50.

Mr. Hughes was survived by two children, Respondents Samantha Hendrix and Anne Hughes; a fiancée, respondent Teresa Van Dongen, and her two children, Kristin J. Van Dongen and John Van Dongen.

2. In his Service Retirement Application dated August 30, 2013, Mr. Hughes elected Option 4 Multiple Lifetime Beneficiaries allowance and designated respondents Samantha Hendrix, Anne Hughes, Teresa Van Dongen, Kristin Van Dongen, and John Van Dongen. Mr. Hughes apportioned a death benefit allowance of \$5,800.00 in payments under Option 4 to these persons for the following amounts: Teresa Van Dongen \$3,000.00; Samantha Hendrix \$900; Ann Hughes \$900; Kristin Van Dongen \$500; and John Van Dongen \$500; a one-time prorated allowance of \$3,736.00 divided in equal amounts to each of the beneficiaries; and a lump sum \$2,000.00 Death Benefit payable to Anne Hughes in accordance with the online lump sum beneficiary designation Mr. Hughes filed on December 28, 2013. Mr. Hughes designated his retirement date as November 1, 2013.

3. Mr. Hughes acknowledged in the Service Retirement Application that if he wanted to change the elected option or beneficiary he must “notify CalPERS before the making of [his] first full monthly retirement allowance check.” CalPERS repeated this in a letter it sent to Mr. Hughes dated November 13, 2013. In this letter CalPERS advised Mr. Hughes as follows:

Changes to the benefit option election you make, beneficiary you designate, or the retirement date you request, cannot be made after your first full retirement check.<sup>1</sup>

4. In a letter dated November 21, 2013, CalPERS advised Mr. Hughes that it had received his Option 4-Multiple Lifetime Beneficiaries election and, with this election, he would receive a monthly retirement benefit of \$6,814.27 based on his November 1, 2013, retirement date. CalPERS also advised Mr. Hughes to review a document available online, "Changing Your Beneficiary or Monthly Benefit After Retirement."

5. In an Option Election/Life Option Beneficiary Change Form dated January 8, 2014, Mr. Hughes sought to change the death benefit allowance. He apportioned \$2,800.00 to these persons as follows: Teresa Van Dongen \$1,000.00; Anne Hughes \$900; Samantha C. (Hendrix) Hughes \$900. Mr. Hughes did not seek to change the death benefit allowance for Ms. Hughes or Ms. Hendrix. Mr. Hughes appeared to sign the form but his signature was not notarized or witnessed by a CalPERS employee.

6. On January 17, 2014, Mr. Hughes killed himself after he shot and severely wounded Teresa Van Dongen.

7. On February 18, 2014, Ms. Hughes signed an application for retired member survivor benefits and filed this document with CalPERS. Ms. Hendrix also signed an application for retired member benefits that CalPERS received on March 7, 2014.

8. At some point shortly after they filed their applications for survivor's benefits, Ms. Hendrix and Ms. Hughes asked CalPERS to accept their father's January 8, 2014, Option/Life Option Beneficiary Change Form. On August 4, 2014, Keith Riddle, Assistant Chief for CalPERS' Benefit Services Division, wrote to Ms. Hughes and Ms. Hendrix that CalPERS was not able to accept Mr. Hughes' January 8, 2014, Option/Life Option Beneficiary Change Form. Thus, CalPERS said it would not modify Mr. Van Dongen's death benefit allowance from \$3,000.00 to \$1,000.00 and remove Kristin and John Van Dongen as beneficiaries.

9. Mr. Riddle explained in this letter that under Government Code sections 21453 and 21492, a member's election of a retirement benefit option and designation of a beneficiary for a lifetime benefit option is irrevocable after the first retirement benefit payment. He noted, however, that by policy in place at that time, a member was allowed to submit a change to an Option Election or a Life Option Beneficiary designation if the request was made within 30 days of the issuance of the first retirement payment.<sup>2</sup> Mr. Hughes

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<sup>1</sup> "First full payment" appears to refer to "first payment on account," under Government Code section 21453 and 21492. Neither statute refers to "full payment."

<sup>2</sup> Effective August 21, 2014, pursuant to AB 2472, Government Code section 21453 was amended to allow for the election, revocation, or change of election change

received his first retirement payment on his retirement account in the amount of \$6,814.27 on December 2, 2013, for the November 2, 2013, through November 30, 2013, period. Mr. Hughes received his first regular retirement payment on January 1, 2014.

As an additional reason CalPERS could not accept Mr. Hugh's change form, Mr. Riddle noted that Mr. Hughes' signature was not notarized or witnessed by a CalPERS employee.

10. In his letter Mr. Riddle acknowledged that Mr. Hughes contacted CalPERS on December 2, 2013, and December 30, 2013, to inquire about changing his beneficiary designation. Per CalPERS' records of these contacts, on December 30, 2013, Mr. Hughes requested a change to the multiple lifetime beneficiaries option. Mr. Hughes said he wanted to remove Teresa Van Dongen, Kristin Van Dongen, and John Van Dongen as beneficiaries. He wanted to keep Ann Hughes and Samantha Hendrix as beneficiaries. The note documented that Mr. Hughes was "within 30 days of having received his reto [sic] 1 st Payment."

11. After Mr. Hughes contacted CalPERS on December 30, 2013, CalPERS sent Mr. Hughes the Option Election/Life Option Beneficiary Change Form, which he signed on January 8, 2014. Contrary to what he told CalPERS on December 30, 2013, Mr. Hughes did not remove Teresa Van Dongen as beneficiary. He reduced the death benefit allowance to \$1,000.00 from \$3,000.00; and he removed Kristin and John Van Dongen as beneficiaries. He did not change the death benefit allowance for Ms. Hendrix or Ms. Hughes, which was \$900 for each, and was the same amount he allocated in his August 30, 2013, retirement application.<sup>3</sup>

12. In a letter dated September 14, 2014, Ms. Hendrix disagreed with Mr. Riddle's analysis and requested this hearing on her behalf and on behalf of Ms. Hughes to contest the distribution of benefits payable to her father's fiancé and her children. She said she wanted to honor his intentions.

#### *Respondents Hendrix's and Hughes's Evidence*

13. Ann Hughes is Mr. Hughes' youngest daughter. She testified that she became close to her father during the last month of his life. He confided in her that his relationship with Teresa Van Dongen was deteriorating. He was separated from Ms. Van Dongen at the time and was living with his parents. She also said he was upset because of financial problems.

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within 30 calendar days after the making of the first payment on account of any retirement allowance. This change in law appeared to conform the law to CalPERS' informal 30 day policy, as recited by Mr. Riddle.

<sup>3</sup> It is noted that if Mr. Hughes's January 8, 2014, election was accepted, Mr. Hughes would have received greater monthly retirement benefits.

Her father told her that he intended to change his retirement beneficiary designations. Ms. Hughes did not witness her father sign the January 8, 2014, Option Election Form but the signature on the form appeared to be that of her father.

14. Samantha Hendrix also testified. Ms. Hendrix said that her father asked her for her address in a text message he sent on January 4, 2014, and called her on January 7, 2014, to get her social security number. She said her father was under a lot of stress because of long standing financial problems. At the same time, she said her father was concerned for the welfare of her son and her sister, both of whom have had medical problems. She said her father was helping her pay medical bills incurred as a result of her son's medical problems.

Ms. Hendrix acknowledged that if her father's January 8, 2014, election were accepted, neither she nor her sister would receive a greater allocation of his death benefits, \$900 monthly, the amount designated in his August 30, 2013, retirement application.

15. Respondents Hendrix and Hughes did not present evidence to suggest that their father was not capable of taking care of his own affairs in December 2013 and January 2014.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The person seeking the correction of an error or omission of any active or retired CalPERS member bears the burden of proof. (Gov. Code, § 20160, subd. (d).) In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

### *Applicable Rules Governing the Right of Applicants to Appeal Actions by the Executive Officer*

2. Under California Code of Regulations, title 2, section 551, any applicant dissatisfied with the action of the Executive Officer may appeal such action to the board. Under California Code of Regulations, title 2, section 555, the Executive Officer is authorized to act on any application for death benefits and allowances, and to fix and authorize the payment of any allowance or benefit to which such applicant may be entitled.

### *Applicable Statutes*

3. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) "final compensation" (Gov. Code, §§ 20037, 21350, 21352 and 21354; *City of Sacramento v. Public Employees Retirement System* (1991)

229 Cal.App.3d 1470, 1479.) Members are afforded an opportunity to elect retirement payment options and to make beneficiary designations.

4. Government Code section 21453 reads as follows:

An election, revocation, or change of election shall be made prior to the making of the first payment on account of any retirement allowance or, in the event of a change of retirement status after retirement, prior to the making of the first payment on account of any retirement allowance following the change in retirement status. "Change in retirement status" includes, but is not limited to, change from service to disability retirement, from disability retirement to service retirement, from nonindustrial disability retirement to industrial disability retirement, or from industrial to nonindustrial disability retirement.

For purposes of this section, payment shall be deemed to have been made on the date a warrant is mailed, or the date funds are electronically transferred to a bank, savings and loan association, or credit union account for deposit in the member's account.

This section shall not be construed to authorize a member to change his or her retirement status after the election, revocation, or change of election provided in this section.

Effective August 21, 2014, pursuant to Assembly Bill No. 2472, Government Code section 21453 was amended to allow for the election, revocation, or change of election change within 30 calendar days after the making of the first payment on account of any retirement allowance. (Assem. Bill No. 2472 (2013-2014 Reg. Sess.))

5. Government Code section 21492 states as follows:

The designation of a beneficiary under optional settlements 2 and 3, or if a benefit involving the life contingency of the beneficiary is provided under optional settlement 4, is irrevocable from the time of the first payment on account of any retirement allowance. Otherwise a designation of beneficiary under this system is revocable at the pleasure of the member who made it. A member's marriage, dissolution of marriage, annulment of his or her marriage, the birth of his or her child, or his or her adoption of a child shall constitute an automatic revocation of his or her previous revocable designation of beneficiary. A member's termination of employment and withdrawal of contributions shall constitute an automatic

revocation of the previous revocable designation of beneficiary. Subsequent reemployment or reinstatement from retirement to employment covered by this system shall not reinstate the previous designation of beneficiary.

Upon revocation of any beneficiary designation, a member may designate the same or another beneficiary by a writing filed with the board, except as otherwise provided in Section 21490.

6. Government Code section 20160 governs requests by CalPERS members or beneficiaries to correct an error. It provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the

error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

### *Evaluation and Disposition*

The first issue, as framed, is whether Ms. Hendrix and Ms. Hughes have standing to bring this appeal. The issue is more correctly framed as whether Ms. Hendrix and Ms. Hughes have presented an appeal that is justiciable. Justifiability is a doctrine related to the doctrine of standing and more applicable to the question of whether Respondents have presented a dispute that may be resolved in this proceeding. As the Supreme Court explained the doctrine of justifiability in *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170-171, "the controversy 'must be definite and concrete, touching the legal relations of parties having adverse legal interests. (Citation omitted.) It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical set of facts.'" (Citation omitted.)

Respondents' right to appeal is governed under California Code of Regulations (CCR), title 2, sections 551 and 555. Under these rules, an applicant may appeal the allocation of benefits to which they may be entitled. Respondents Hughes and Hendrix are not appealing the allocation of benefits that they may receive even if a correctable mistake were to be found. Ms. Hendrix and Hughes are not appealing CalPERS' action to distribute the survivor's benefits their father designated for them in his August 30, 2013, retirement application and in his January 14, 2014, election change form. Indeed, they are not disputing that CalPERS correctly distributed to them the designated allocations. Instead, they want to appeal CalPERS' distribution of death benefits to Teresa Van Dongen and her children according to the January 14, 2014, election form their father completed even though, if this were to happen, their allocations would not change. They wish to do this because they want to honor his intentions.<sup>4</sup>

Fundamentally, Respondents are not appealing on their own behalf; they are appealing on behalf of their late father, and they do not represent his estate. Respondents Hendrix and Hughes, therefore, have not presented an appeal that is justiciable in this forum under CCR sections 551 and 555 and, for this reason, their appeal must be denied.

But, even if this were not the case, Respondents' appeal must still be denied. Ms. Hendrix and Ms. Hughes did not meet their burden to have their late father's death benefit allocations corrected under Government Code section 20160. The evidence shows that CalPERS advised their father repeatedly that if he wished to modify his designations he needed to do so no later than 30 days after he received his first retirement payment or be barred from modifying his designations. Despite these advisements, he submitted a form to change his designations on January 14, 2014, more than 30 days after he received the first payment on his retirement account, and no evidence was offered to show that Mr. Hughes was not capable of handling his own affairs. Any mistake he may have made not modifying the allocations cannot, therefore, be deemed the result of a mistake or excusable neglect under Government Code section 20160, subdivision (a)(2).

#### ORDER

CalPERS' determination not to accept the January 8, 2014, Option Election/Life Option Beneficiary Change Form signed by Ronald B. Hughes is affirmed.

Dated: October 2, 2015



ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>4</sup> Ms. Hendrix and Ms. Hughes were not representing their father's estate at the hearing.