



# Board of Administration Agenda Item 9s

May 18, 2016

**Item Name:** Proposed Decision – In the Matter of the Application for Death Benefits Payable on the Death of MARK A. SOTO by ANNETTE SOTO, Respondent, and MARINA SOTO HERNANDEZ, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

### **Parties' Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified.

Respondent Annette Soto (Respondent Soto) argues that the Board of Administration should adopt the Proposed Decision, as modified.

Respondent Marina Soto Hernandez (Respondent Hernandez) argues that the Board of Administration should decline to adopt the Proposed Decision

### **Strategic Plan**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

### **Procedural Summary**

Mark Soto (Decedent) was employed by the Department of Water Resources from July 1, 1992 through October 12, 2007. Decedent died on May 22, 2013. At the time of his death, Decedent did not have a beneficiary designation on file with CalPERS.

Respondent Soto was Decedent's spouse at the time of his death. Respondent Soto and Decedent had one adult son, Anthony. Respondent Soto and Decedent were legally separated on October 20, 2011. Pursuant to a marital separation agreement signed by Decedent and Respondent Soto, a Judgment of Legal Separation was filed with the Sacramento County Superior Court on October 20, 2011, by which both parties were awarded full interest in their own respective CalPERS benefits.

Respondent Hernandez is Decedent's mother.

CalPERS initially determined that Respondent Soto was the proper beneficiary and entitled to receive death benefits payable on Decedent's account. Respondent Hernandez responded to CalPERS' determination, indicating that the Decedent and Respondent Soto were legally

separated. CalPERS informed Respondent Hernandez that the separation did not terminate the marital relationship between Decedent and Respondent Soto, and that in the absence of a writing showing Decedent's intent to designate the CalPERS benefits to another person, Respondent Soto would be the highest-ranking statutory beneficiary. Respondent Hernandez then submitted a document to CalPERS purporting to show Decedent's intent to designate Respondent Hernandez and Decedent's son, Anthony Soto, as the beneficiaries of Decedent's CalPERS death benefits. On September 18, 2013, CalPERS notified Respondent Soto of its determination that she was not, in fact, the eligible beneficiary of the death benefits payable on Decedent's account. Respondent Soto appealed this determination, and the matter was heard by the Office of Administrative Hearings on November 16, 2015. A Proposed Decision was issued on March 7, 2016, granting Respondent Soto's appeal.

### **Alternatives**

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517(c)(2)(C), which authorizes the Board to "make technical or other minor changes to the proposed decision", hereby modifies the Proposed Decision, by replacing the date of "June 10, 2014" with "June 14, 2010" on page four, paragraphs eleven and thirteen, and hereby adopts as its own Decision the Proposed Decision dated March 7, 2016, concerning the appeal of Annette Soto; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. For use if the Board decides to the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated March 7, 2016, concerning the appeal of Annette Soto; RESOLVED FURTHER that this Board Decision shall be effective 30 days following the mailing of the Decision.

- C. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated March 7, 2016, concerning the appeal of Annette Soto, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

- D. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated March 7, 2016, concerning the appeal of Annette Soto, hereby rejects the Proposed Decision and refers

the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

E. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Annette Soto, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Annette Soto.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

- Attachment A: Proposed Decision
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support