ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Mauricio Cardenas (Decedent) was a state miscellaneous member employed by the Department of Fish and Wildlife. On May 12, 2011, Decedent signed an application for service retirement, electing the Option 1 monthly allowance. Decedent designated his son Respondent Paul Cardenas (Respondent Paul) as his sole beneficiary for the Option 1 Balance and the lump-sum Retired Death Benefit. The application contained a notice which stated: "You may change the beneficiary(ies) at any time. This designation automatically revokes when there is a change to your marital status, domestic partnership status or when there is a birth or adoption of a child."

Decedent died on December 21, 2014. CalPERS never received any new beneficiary designation form prior to his death.

At issue are the following death benefits: (1) Option 1 Balance of $34,485.79; (2) pro-rata Option 1 Benefit of $2,434; and (3) lump sum Retirement Death Benefit of $2,000.

Decedent was survived by two sons: Respondent Paul and Respondent Samuel Cardenas (Respondent Samuel). Respondent Samuel is Decedent's child from his marriage to his former wife Kimberly Cardenas (Respondent Kimberly.) At the time of Decedent's death, Respondent Samuel was a minor child under the age of 18, and Respondent Paul was an adult over the age of 18.

On January 17, 2015, Respondent Kimberly filed an application for retired member/ payee survivor benefits, seeking benefits on behalf of Respondent Samuel. Decedent owed Respondent Kimberly $78,572 in child support arrears for the period January 2002 to April 2015.

After review of Respondent Kimberly's application, CalPERS determined the death benefits must be paid in accordance with Decedent's written beneficiary designation. CalPERS determined that Respondent Paul was entitled to the death benefits, but Respondent Samuel was eligible to receive a monthly post–retirement survivor's allowance of approximately $917.07/month.

On May 29, 2015 and June 24, 2015, Respondent Kimberly appealed CalPERS' determination and requested a hearing.

A hearing on the matter was held on August, 2, 2016. Post-hearing briefs were submitted, and the matter closed on August 26, 2016. The issue was whether CalPERS was correct in its determination that Respondent Paul is the eligible beneficiary to receive the Option 1 and lump-sum death benefits.

Respondent Kimberly and Samuel were represented by counsel. Respondent Paul represented himself.

At hearing, Respondents Kimberly and Samuel argued that Government Code section 21490(b)(2) should be construed liberally to include the "general rights" of a child and that in this case Respondent Samuel should receive the death benefits due to the past due child support arrears. They claimed that Respondent Samuel holds such rights, because he was Decedent's minor child at the time of his beneficiary designation.

The Administrative Law Judge (ALJ) found that Decedent executed a valid Beneficiary Designation on May 12, 2011, which named Respondent Paul as his sole beneficiary. The ALJ found Respondent Kimberly and Respondent Samuel's interpretation of Government Code section 21490 would deprive CalPERS members of the ability to designate anyone other than his or her minor child as a beneficiary. Any beneficiary designation that excludes the minor child would be void because it would be in derogation of the child's rights. Such a result would conflict with the Public Employees' Retirement Law statutes that direct CalPERS to pay death benefits to the member's designated beneficiary as the first in order of priority, regardless of the existence of any minor children. Only in the absence of a beneficiary designation would the child of a deceased member be entitled to any benefits, simply by virtue of their status as the decedent's child (Gov. Code §21493). Consequently, the statutes must be read as conferring upon a member the ability to designate anyone he chooses as a beneficiary, even if the designation excludes the member's minor child.

Respondents Kimberly and Samuel also argued that Government Code section 21490(b)(2) recognizes rights that exist by virtue of other court orders – in this case the Family Court Orders in the parties' divorce. The ALJ found this argument unconvincing. To interpret Government Code section 21490(b)(2) that way, would be contrary to case law. The sole reference to Decedent's retirement plan was contained in Section IX of the Marital Settlement Agreement (MSA). There, both Decedent and Respondent Kimberly agreed to maintain their retirement plans separately as their sole exclusive property. The ALJ found no intent in the MSA to award Respondent Samuel any right to enforce child support arrears in Decedent's retirement plan. Thus, the MSA cannot be modified to create an interest after Decedent's death.

The ALJ found that the most reasonable construction of Government Code section 21490(b)(2) is that it prevents a member from designating a beneficiary in derogation of the rights of a minor child, only to the extent that the child is a statutory beneficiary under the PERL.

The ALJ added that it is "regrettable" that this construction of Government Code section 21490(b)(2) results in child support obligations going unpaid. However, the PERL and case law preclude any other interpretation. The ALJ found that Decedent's beneficiary designation naming Respondent Paul was valid, and should be upheld.

The ALJ concluded that Respondent Kimberly and Samuel's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondents Kimberly and Samuel may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 16, 2016

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