ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Lisa Frederiksen (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated September 7, 2018. For reasons discussed below, CalPERS staff argues the Board deny the Petition and uphold its decision.

Respondent argues that she was unaware that her mother had CalPERS benefits, and was consequently unaware that actions needed to be taken to replace the Option 2 beneficiary. However, the evidence submitted at hearing showed that Respondent contacted CalPERS about specific benefits, and that CalPERS provided Respondent with information about her deceased mother’s benefits.

The records submitted at hearing show that, in 2014, CalPERS provided Respondent with detailed information about her mother’s CalPERS benefits by telephone. The telephone conversation included an explanation about the availability of a pop-up increase. A pop-up increase refers to the increase in a member’s benefits after an Option 2 beneficiary dies. CalPERS also provided Respondent with a copy of PUB-98, which contains information, forms, and instructions for designating a replacement Option 2 beneficiary. CalPERS has no record of receiving a returned or undeliverable PUB-98, or other correspondence, from Respondent or Respondent’s mother.

Respondent submitted documents to change her mother’s Option 2 beneficiary on July 5, 2016, and argues in her Petition that the forms she submitted may have been available on the CalPERS website in 2016. However, the form submitted by Respondent to change the Option 2 beneficiary was NOT available in 2016; the form submitted by Respondent ceased to be available in or after August 2014. CalPERS staff testified to these facts at hearing.

Naming Respondent the Option 2 beneficiary here would grant her a right not available to other members. It is undisputed that the change in Option 2 beneficiary form was not submitted until July 5, 2016, more than four years after the original Option 2 beneficiary’s death. Since request to change the Option 2 beneficiary was submitted more than 12 months following the death of the beneficiary, Government Code section 21462 expressly states that the change in beneficiary cannot be effective for at least “12 months after the date it is filed with the board.” Section 21462 also requires the member and new beneficiary be alive on the effective date of election.
Here, the effective date of election was August 1, 2017. Since, the member passed away on July 5, 2016, prior to the effective date of election, the change in the Option 2 beneficiary was invalid under section 21462. Granting Respondent’s appeal would grant her a right unavailable to other members by allowing her to circumvent section 21462.

Respondent also never had the authority to gift herself her mother’s Option 2 benefit. Respondent argues that CalPERS’ mistake precluded her from fixing errors, and that the “Springing Power of Attorney” gave Respondent the power to gift her mother’s property to herself. The ALJ was correct in her determination that the trust documents expressly precluded Respondent from gifting herself the Option 2 benefit.

Finally, Respondent argues that the Option 2 benefit, the monthly survivor continuance, and the Death Benefit are all the same benefit. Respondent is mistaken and conflates three separate and distinct benefits. Section 21493 applies to the one-time lump sum Death Benefit, and Section 21630 covers the survivor continuance; neither benefit is at issue here. The Option 2 settlement is at issue, which mandates a selection “in a writing filed by the member with the board.” (§ 21462(d).) No selection was filed in compliance with section 21462 following the Option 2 beneficiary’s death.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 15, 2018, meeting was well reasoned and based on the credible evidence presented at hearing.

December 19, 2018

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