ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

James P. McCarthy (Decedent) was employed as a Peace Officer by Riverside County. By virtue of his employment, Decedent was a local safety member of CalPERS.

On April 1, 2017, Decedent passed away as an active member of CalPERS. At the time of his death, Decedent was not survived by a spouse or any children, but was survived by his parents: Respondent Kenneth I. McCarthy (Respondent McCarthy) and Respondent Mary K. Watson (Respondent Watson).

At the time of his death, Decedent had not submitted to CalPERS a pre-retirement beneficiary designation form (Beneficiary Designation Form). This form allows CalPERS members to designate their CalPERS benefits to one or more beneficiaries.

CalPERS contacted Riverside County, as well as Decedent’s union, to determine whether he had submitted a Beneficiary Designation Form, or an equivalent writing, to his employer or union. Riverside County informed CalPERS neither the employer nor the union possessed a Beneficiary Designation Form or equivalent writing.

On April 21, 2017, Respondent Watson signed an Application For Active-Member/Non-Member Survivor Benefits form and submitted it to CalPERS. Respondent Watson also submitted a Tax Withholding Election for Survivor Benefits Including IRA Rollover Form and requested that Decedent’s CalPERS survivor benefits be rolled into her IRA account.

On August 28, 2017, CalPERS sent Respondent Watson and Respondent McCarthy separate letters requesting that they submit documents necessary to determine eligibility for payment of CalPERS survivor benefits and to allow CalPERS to process any claim for said benefits.

On January 27, 2018, after receiving no response from Respondent Watson and/or Respondent McCarthy, CalPERS sent another letter requesting that they submit documents necessary to determine eligibility for payment of CalPERS survivor benefits and to allow CalPERS to process any claim for those benefits.

On February 20, 2018, Respondent Watson responded to CalPERS’ letters requesting information and documents. Respondent Watson did not provide CalPERS with a Beneficiary Designation Form or similar writing, but did provide CalPERS with a birth certificate showing Respondent Watson was Decedent’s mother and Respondent McCarthy was Decedent’s father. In addition, Respondent Watson provided CalPERS with an Order Determining Entitlement to Estate Distribution from the Riverside County Superior Court (Probate Court Order). The Probate Court Order indicated that the Decedent passed away without a will, and that Respondent McCarthy, Decedent’s
biological father, should not inherit from or through Decedent’s estate on the basis of a parent-child relationship. Respondent Watson formally requested that CalPERS pay 100% of Decedent’s survivor benefits to her in a single IRA rollover payment.

Under Government Code section 21490, subdivision (a), a member may “designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.”1 If a member has designated a beneficiary under Section 21490, the basic death benefit and the limited death benefit shall be paid to that designated beneficiary. (See Section 21531.) If a member had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order: (1) The decedent’s spouse. (2) The decedent’s natural or adopted children…. (3) The decedent’s parents. (4) The decedent’s brothers and sisters. (See Section 21493(a)).” If a deceased person had no effective beneficiary designation and there are no survivors in the groups listed in Section 21493(a), CalPERS survivor benefits shall be paid to the estate of the Decedent. (See Section 21493(b))

CalPERS determined that no written beneficiary designation was in effect at the time of Decedent’s death. CalPERS also determined that Decedent was not survived by a spouse or natural and/or adopted children. However, Decedent was survived by his parents: Respondent McCarthy and Respondent Watson. CalPERS determined that CalPERS benefits are not an asset of Decedent’s estate, and for this reason the Probate Court Order does not control the distribution of Decedent’s CalPERS benefits. For these reasons, CalPERS informed Respondent Watson that Decedent’s CalPERS benefits would be equally divided between her and Respondent McCarthy pursuant to Section 21493(a)(3).

Respondent Watson appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on January 17, 2019. Respondent Watson was represented by counsel at the hearing. Respondent McCarthy represented himself and appeared by telephone at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent McCarthy and the need to support his case with witnesses and documents. CalPERS provided Respondent McCarthy with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent McCarthy’s questions and clarified how to obtain further information on the process.

CalPERS staff testified at the hearing that, as of the date of the hearing, CalPERS has not been presented with a Beneficiary Designation Form, or similar writing, through which Decedent designated one or more beneficiaries to receive his CalPERS benefits. CalPERS staff also testified that CalPERS has not been presented any writing that addresses the Decedent’s intent with respect to designation of his CalPERS’ benefits.

1 All statutory references are to the Government Code unless otherwise noted.
CalPERS staff testified that, because CalPERS benefits are not considered part of a member’s estate, the Order issued by the Riverside County Superior Court does not control who is a beneficiary for purposes of receiving CalPERS survivor benefits. CalPERS argued that CalPERS’ Board of Administration (Board) is vested with the exclusive power to determine who is a beneficiary for purposes of receiving CalPERS benefits. Consequently, CalPERS argued that the benefits at-issue are not within the jurisdiction of the probate court because the benefits are a statutory entitlement created by the Public Employees’ Retirement Law (PERL), and not a property interest which passes as part of Decedent’s estate. For this reason, CalPERS argued that CalPERS’ Board, and not the probate court, must determine who is a beneficiary of Decedent’s death benefit. In this matter, because the Decedent was survived by his mother and his father, CalPERS argued it is legally required to distribute Decedent’s CalPERS benefits in equal shares to Respondent Watson and Respondent McCarthy.

Respondent Watson testified on her own behalf. Respondent Watson testified that Respondent McCarthy failed to carry out his fiscal and fatherly responsibilities to Decedent. For this reason, after Decedent passed away, Respondent Watson requested an order from the Riverside County Superior Court finding that Respondent McCarthy should not receive anything from Decedent’s estate. Respondent Watson’s appeal letter acknowledged that Respondent McCarthy was Decedent’s biological father, and that CalPERS survivor benefits are not an asset of the probate court. However, Respondent Watson argued that the Order from the probate court finding that Respondent McCarthy was to have “predeceased” Decedent for purposes of his estate should also prevent him from receiving any of Decedent’s CalPERS benefits.

Respondent McCarthy testified on his own behalf at the hearing. Respondent McCarthy asserted that he is the Decedent’s biological father, and disputed that he abdicated his financial and parental responsibilities to Decedent. Respondent McCarthy argued that, as Decedent’s father, he is entitled to 50 percent of his CalPERS benefits pursuant to Section 21493(a)(3).

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent Watson’s appeal. The ALJ found that Respondent Watson has the burden of proof to establish that she is entitled to received 100 percent of Decedent’s CalPERS survivor benefits. The ALJ found that Respondent Watson failed to provide persuasive factual and/or legal authority to support her argument that the Probate Court Order severed Respondent McCarthy’s parental relationship with Decedent with respect to the CalPERS benefits.

The ALJ found that CalPERS’ Board is vested with the right to determine who qualifies as beneficiary entitled to receive benefits upon the death of a member. The ALJ found that at the time of Decedent’s death, Respondent McCarthy was his father. The ALJ also found that CalPERS survivor benefits are not an asset of Decedent’s estate, and for this reason, CalPERS survivor benefits are not subject to the Probate Court Order.
In the Proposed Decision, the ALJ concluded that because the Decedent did not execute a writing of his intent to designate a beneficiary to receive his CalPERS benefits, CalPERS correctly determined that Government Code section 21493 mandates that CalPERS pay Decedent’s survivor benefits to Respondent Watson and Respondent McCarthy in equal shares.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” In order to avoid ambiguity, staff recommends that “Country of Riverside” be changed to “County of Riverside” on page two, paragraph five.

For all the above reasons, staff argues that the Proposed Decision be adopted as modified by the Board.

April 17, 2019

JOHN SHIPLEY
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