ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Floristee Foster (Decedent) was employed by the California Department of Corrections and Rehabilitation (CDCR). By virtue of her employment, Decedent was a state safety member of CalPERS. On January 10, 2013, Decedent signed and submitted an application for service, pending disability retirement. Decedent elected Option 1 and identified her sons, Respondent Aaron Foster (Respondent Foster) and Respondent Quincy Davenport (Respondent Davenport) as her beneficiaries for purposes of receipt of any balance of her Option 1 contributions and Death Benefit upon her death.

On August 28, 2017, Decedent signed a Beneficiary Designation form, changing her designated beneficiary to her sister, Respondent Gloria O’Neal (Respondent O’Neal). On August 29, 2017, Decedent signed a Special Power of Attorney form, designating Respondent O’Neal as her attorney-in-fact. Decedent checked the boxes on the Special Power of Attorney form that authorized Respondent O’Neal to 1) select any payment option form available under the retirement plan, 2) designate or change her named beneficiary, and 3) designate herself as the named beneficiary. CalPERS received Decedent’s signed Beneficiary Designation form and the signed and witnessed Special Power of Attorney form on August 29, 2017.

On September 12, 2017, CalPERS sent Decedent a letter confirming that the Beneficiary Designation form had been received and that CalPERS had changed the named beneficiary for receipt of any Option 1 balance of contributions and the Death Benefit to be Respondent O’Neal.

Decedent died on September 15, 2017. At the time of her death, the Death Benefit amount was $2,000.00 and the Option 1 balance of contributions was $10,962.88.

CalPERS determined that Respondent O’Neal was Decedent’s named beneficiary and that the Death Benefit and Option 1 balance should be paid to her. Respondent Foster and Respondent Davenport appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on April 24, 2019. Respondent O’Neal, Respondent Foster, and Respondent Davenport represented themselves at the hearing.

Prior to the hearing, CalPERS explained the hearing process to all of the Respondents and the need to support their respective cases with witnesses and documents. CalPERS provided all Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered any questions communicated by any of the Respondents and clarified how to obtain further information regarding the appeal process and/or what to expect at the administrative appeal hearing.
Documentary evidence was received by the ALJ. This included a March 16, 2018, letter to Respondent Foster wherein CalPERS advised that he was required to provide a “written statement disputing the beneficiary designation on file” and “[a]ny supporting documentation.” In response, on March 22, 2018, Respondent Foster submitted a handwritten letter, claiming that Decedent had intended for all of her CalPERS benefits to go to Respondent Foster and Respondent Davenport. Respondent Foster attached a February 14, 2018, note from a Dr. Deepak Shrivastava, which stated that Decedent had received hospice services from July 25, 2017, until her death and that Decedent was “confused and intermittently unresponsive” during this time.

On June 2, 2018, CalPERS sent Respondent Foster a letter explaining that the note from Dr. Shrivastava, included with his March 22, 2018 letter, was not “sufficient to deem the designation on file as invalid.” Specifically, Respondent Foster was advised that CalPERS could not confirm, based on the note, that Decedent was “not able to competently sign a new beneficiary designation form on August 28, 2017.” CalPERS explained that the “physician must state whether or not [Decedent] was mentally competent to make a beneficiary designation at that time.”

On July 12, 2018, Respondent Foster sent CalPERS another note from Dr. Shrivastava, dated July 8, 2018. Dr. Shrivastava’s note again referred to Decedent receiving hospice services and added “[d]ue to episodes of confusion, and [Decedent] talking about activities that had not happened, on the date of August 28, 2017, I do not believe that [Decedent] was competent to sign a new beneficiary form.”

CalPERS determined that Respondent O’Neal was the proper beneficiary, consistent with the Beneficiary Designation and Special Power of Attorney forms signed by Decedent prior to her death. In the September 18, 2018, determination letter, CalPERS advised Respondent Foster that he had not submitted sufficient reliable documentation or evidence to demonstrate that Decedent was not mentally competent at the time that she signed the Beneficiary Designation and Special Power of Attorney forms.

In his appeal letter, dated October 18, 2018, Respondent Foster claimed that Respondent O’Neal had “manipulated” him and Respondent Davenport, that there was “no way” that Decedent had been in her “right faculties [of sound mind and body]” when she signed the Beneficiary Designation and Special Power of Attorney forms and that “foul play” had occurred.

At the hearing, Respondent Foster testified in an internally inconsistent and contradictory manner. First, he said that because his mother, Decedent, was in hospice care, he asked Respondent O’Neal, his aunt, to help him with managing his mother’s affairs as she approached her death. However, he then testified, contrary to the testimony of Respondent O’Neal, that on August 28, 2017, while he and Respondent O’Neal were both present with Decedent at the skilled nursing facility, there was no discussion regarding a change of Decedent’s named beneficiary for CalPERS benefits; that Decedent did not, in fact, sign the Beneficiary Designation form (although Respondent Foster had previously identified the signature on the form as being that of
his mother, Decedent); and that he was not aware, on that date or until sometime after his mother’s death, that she had changed her beneficiary to be Respondent O’Neal.

Additionally, Respondent Foster stated that he did not know Dr. Shrivastava, having only met him “a few times”, and that he did not know when it was – prior to August 28, 2017 – that Dr. Shrivastava had had an opportunity to observe and/or evaluate Decedent, nor the details regarding the nature and extent of any observations or evaluations of Decedent made by Dr. Shrivastava.

Respondent O’Neal is a CalPERS retiree, having served as a Parole Agent for CDCR for almost 30 years. She is a volunteer Chaplin at the University of California, Davis Medical Center. She testified that, in the final months of her sister’s life, she was with her on a daily basis. During that time, Respondent O’Neal stated that Decedent asked her to help her accomplish her final wishes, which included a funeral and being buried next to her mother. Decedent knew that she did not have any life insurance or other savings which could be used to pay for such funeral and burial expenses. Accordingly, Respondent O’Neal said that Decedent asked her to contact CalPERS in order to inquire about any benefits that might be available. Respondent O’Neal, a former CalPERS member, knew that Decedent would have to advise or inform CalPERS that she wanted Respondent O’Neal to act on her behalf. Respondent O’Neal contacted CalPERS and secured both the Beneficiary Designation and Special Power of Attorney forms.

Respondent O’Neal testified that, on August 28 and 29, 2017, when the Beneficiary Designation and Special Power of Attorney forms were signed, Decedent was mentally competent, fully aware of her condition, anticipating death and wanting to take whatever steps were necessary to accomplish her goal of having her funeral and burial paid for. Decedent knew that neither Respondent Foster nor Respondent Davenport had jobs or savings and told Respondent O’Neal that she did not trust that they would fulfill her wishes.

Respondent O’Neal said that she and Respondent Foster were present with Decedent on August 28, 2017. Decedent expressed her desire to change her beneficiary to Respondent O’Neal and to have Respondent O’Neal handle her affairs, including arranging and paying for her funeral and burial. Respondent O’Neal said that she stepped out of the room, so that Decedent and Respondent Foster could discuss her stated desires and intention to change her beneficiary privately. When she returned to the room, Respondent O’Neal said that Decedent signed the Beneficiary Designation form, in Respondent Foster’s presence, and that Respondent Foster – at that time – expressed his agreement with his mother’s wishes.

Respondent O’Neal described how she and her husband handled the arrangements for Decedent’s funeral and burial and borrowed money to pay for such. She said that she anticipated being reimbursed for the money she had borrowed and spent on Decedent’s funeral and burial from any money she received as Decedent’s designated beneficiary.
She said that, if there was any money left after being reimbursed, that she intended to give that money to Respondents Foster and Davenport.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied the appeal of Respondents Foster and Davenport. The ALJ found as follows:

When all of the evidence is considered, CalPERS correctly determined decedent’s Beneficiary Designation received by CalPERS on August 29, 2017, designating respondent O’Neal as the sole beneficiary is valid. CalPERS also correctly determined respondents Foster and Davenport are not entitled to the Death Benefit or Option1 balance of contributions payable by CalPERS.

…

There was no credible evidence submitted to conclude that the Beneficiary Designation CalPERS received on August 29, 2017, is invalid.

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

August 21, 2019

RORY J. COFFEY
Senior Attorney