

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

On October 21, 2006, Juliana Wiard (Decedent) became a member of CalPERS by virtue of her employment with the California Department of Corrections and Rehabilitation. As a Correctional Sergeant, Decedent was a state safety member of CalPERS. On June 18, 2017, Decedent passed away as an active member, at the age of 32. Decedent's father, Thomas Wiard, had passed away in 1991. Decedent was not married and did not have any children. Decedent was survived by her mother, Respondent Gloria Wiard (Respondent Wiard), and her grandmother, Respondent Gloria Villalobos Alvarado (Respondent Alvarado).

As a CalPERS member, Decedent was entitled to certain death benefits (Basic Death Benefits). The Decedent's Basic Death Benefits are governed by the Public Employees' Retirement Law (PERL), set forth in Government Code section 20000 et seq. At the time of her death, however, Decedent had not submitted to CalPERS a pre-retirement beneficiary designation form (Beneficiary Designation Form) which allows members to designate their CalPERS benefits to one or more beneficiaries.

On September 26, 2017, Respondent Alvarado submitted to CalPERS an Application for Survivor Benefits, Statement of Citizenship/Federal Tax Withholding Election, and Tax Withholding Election for Survivor Benefits Including IRA Rollover (Application for Survivor Benefits), dated September 21, 2017. In section five of her Application for Survivor Benefits, Respondent Alvarado indicated that Decedent did not leave a will.

In a letter dated October 19, 2017, CalPERS notified Respondent Alvarado that a valid beneficent designation was not in effect at the time of Decedent's death. Therefore, Decedent's Basic Death Benefits will be payable to the statutory beneficiaries. The October 19, 2017 letter indicated that, under Government Code section 21493, "[t]he order of the statutory beneficiaries is as follows: (1) spouse or registered domestic partner; or if none, (2) natural or adopted children; or if none, (3) parents; or if none, (4) brothers and sisters; or if none, (5) estate, if probated."

On January 10, 2018, Respondent Wiard submitted to CalPERS an Application for Survivor Benefits, dated January 9, 2018.

On February 23, 2018, Respondent Alvarado sent a letter to CalPERS, requesting Decedent's lump-sum death benefits to be paid to Respondent Alvarado rather than Respondent Wiard. Respondent Alvarado stated in this letter that Decedent was not raised by Respondent Wiard and that Respondent Alvarado had been appointed as Decedent's legal guardian on or about January 9, 2002. Respondent Alvarado also attached to this letter a copy of a report from the Superior Court of California, dated January 14, 2002, which indicated that Respondent Alvarado was granted legal guardianship of Decedent. However, according to the same report, respondent Alvarado did not adopt Decedent.

In a letter dated April 26, 2018, CalPERS notified Respondent Alvarado of its determination that, due to the lack of a Beneficiary Designation Form on file, Decedent's lump sum Basic Death Benefit of \$147,583.56 was payable to Respondent Wiard, Decedent's mother and closest surviving next-of-kin, in accordance with Government Code section 21493.

Respondent Alvarado appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 17, 2019. Respondent Alvarado represented herself at the hearing. Respondent Wiard did not appear at the hearing.

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

CalPERS staff testified at the hearing in support of CalPERS' determination. Staff explained CalPERS' process for determining the appropriate beneficiary. Absent a valid beneficiary designation under Government Code section 21490, CalPERS is required to award the Basic Death Benefit in the order detailed in Government Code section 21493. Here, Staff was required to award the Basic Death Benefit to Respondent Wiard.

Staff also explained that it received and reviewed additional documentation submitted on behalf of Respondent Alvarado. On May 25, 2018, CalPERS received a faxed copy of a Judges' Retirement System Survivor and Beneficiary Information form (Judges' Designation Form), which was purportedly signed by Decedent. This Judges' Designation Form supposedly designated Respondent Alvarado as the beneficiary of any death benefits. However, Decedent was never a member of the Judges' Retirement System. As described above, Decedent was not employed as a judge but as a Correctional Sergeant with the California Department of Corrections and Rehabilitation. Due to its dubious genesis and complete inapplicability to Decedent's retirement plan, CalPERS was unable to accept the Judges' Designation Form.

On June 15, 2018, CalPERS received a faxed copy of a typewritten document titled "My Last Will and Testament" (Will), dated May 10, 2017. A signature, purporting to be that of Decedent, appears at the end of the Will. There are no witness signatures on the Will. Staff explained that CalPERS was unable to ascertain the validity of the Will because it lacked witness signatures. In addition, the Will did not specifically disinherit Respondent Wiard, nor did it specifically mention CalPERS death benefits. Staff explained that in the absence of a valid will or beneficiary designation, the benefits must be paid to Respondent Wiard under Government Code section 21493.

Decedent's former supervisor testified on behalf of Respondent Alvarado at the hearing. The former supervisor indicated that Decedent, to whom he was a father figure, would not have wanted the Basic Death Benefit to go to her mother, Respondent Wiard. Instead, the former supervisor indicated that Decedent would have wanted the Basic Death Benefit to be awarded to Respondent Alvarado. The former supervisor had the

closest relationship with Decedent at the time of her death, yet he did not testify about the Will or the Judges' Designation Form.

A close personal friend of Decedent also testified that Decedent would have wanted Respondent Alvarado to receive the Basic Death Benefit. In addition, the close personal friend recognized the signature on the Will as Decedent's, but he had no knowledge of the Will prior to the hearing.

Decedent's Aunt (Aunt) testified in support of Respondent Alvarado. Aunt also alleged that Decedent would have wanted Respondent Alvarado to be awarded the Basic Death Benefit. Regarding the Will and the Judge's Designation Form, Aunt claimed that she found these documents several months after Decedent's death. Prior to finding the Will and Judges' Designation Form, Aunt had no knowledge of those documents, and conceded that she did not witness Decedent's purported signature on the Will.

Respondent Alvarado did not testify at the hearing and did not submit documentary evidence in addition to the documents submitted by CalPERS.

After considering all of the evidence, as well as arguments by the parties, the ALJ denied Respondent Alvarado's appeal. The ALJ reviewed the Judges' Designation Form and Will with skepticism due to the timing of the documents, the indication on the Application for Survivor Benefits that there was no will, and also due to each witnesses' lack of knowledge of the Will. Further, the Will did not specifically disinherit Respondent Wiard, and did not specifically mention CalPERS benefits. The ALJ concluded that the Will submitted by Respondent Alvarado did not qualify as a writing filed with the board for the purposes of designating a beneficiary under Government Code section 20490.

In the Proposed Decision, the ALJ concludes that Respondent Wiard, Decedent's sole surviving parent, is entitled to the Basic Death Benefit.

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

September 18, 2019

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