

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Suzanne Belle Vlavianos was the mother of Respondent Anna Macanas (Respondent) and the spouse of Spiro Lucas Vlavianos. Mr. Vlavianos was a retired member of CalPERS. After Mr. Vlavianos' death, Ms. Vlavianos began receiving monthly survivor benefits from CalPERS, which continued until her death.

As a recipient of monthly survivor benefits, Ms. Vlavianos was permitted to designate a beneficiary of her "pro rata allowance payable following [her]death..." pursuant to Government Code section 21491.

On September 27, 2005, CalPERS received Decedent's Beneficiary Designation for Survivor Prorated Allowance form dated September 20, 2005, naming Pamela Craighead (daughter) as primary beneficiary and Anna Macanas (daughter) as secondary beneficiary.

On July 19, 2012, CalPERS received a Direct Deposit Authorization from Ms. Vlavianos for the deposit of Ms. Vlavianos's monthly allowance into a joint checking account, at Morgan Chase Bank (Chase), held by Ms. Vlavianos and Respondent Macanas. CalPERS has been depositing Ms. Vlavianos's monthly allowance into this account since 2012.

Ms. Vlavianos passed away on November 21, 2017. On December 1, 2017, CalPERS erroneously deposited \$3,844.53 in survivor benefits for November 2017, into Ms. Vlavianos's Joint Chase bank account.

Thereafter, on December 3, 2017, CalPERS sent letters to Chase Bank and Respondent Macanas, notifying them that Decedent's December 1, 2017 direct deposit retirement benefit of \$3,844.53 is not payable and should be returned to the retirement system.

Even though Ms. Vlavianos died during November, the entire amount was payable to CalPERS. The benefits paid for the time-period of November 1 through November 21, 2017 were considered the Prorated Allowance under Government Code section 21491. Pursuant to Government Code section 21491, CalPERS was to pay these benefits to the designated beneficiary on file who was Respondent's sister. The benefits for the time-period of November 22, 2017 through November 30, 2017 were not payable to Ms. Vlavianos as she died on November 21, 2017 and her retirement allowance ceased to be payable after her death. These benefits were to be returned to CalPERS.

On January 26, 2018, CalPERS received Chase Banks response, indicating they could not return the overpayment due to insufficient funds. CalPERS continued to request that Respondent return the funds to CalPERS as she was the joint account holder and not

entitled to the funds. Respondent Macanas refused to return the entire amount to CalPERS, claiming she used the funds for final expenses related to her mother's death.

On or about July 23, 2018, without having recouped the overpayment from Respondent, CalPERS released payment of the Prorated Allowance to Pamela Craighead, the beneficiary on file for the death benefits of Ms. Vlavianos.

Respondent 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 August 26, 2019. Respondent represented herself at the hearing.

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

Respondent testified on her own behalf. Respondent testified that she used the funds to pay for her mother's funeral expenses. She also argued that the funds belonged to her mother, as the funds were her mother's monthly allowance for the month of November. She argued that she should be able to keep the funds for the period of November 1 through November 21, 2017 as her mother was alive during the time period. She stated she would be willing to return the funds for the time period of November 22 through November 30, 2017 as her mother was no longer alive during that time period.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the Decedent's Beneficiary Designation for Survivor Prorated Allowance form which named Nancy Pamela Craighead was valid. The ALJ noted that Respondent testified that she believed the signature to be that of Ms. Vlavianos. Furthermore, there was no evidence demonstrating that Ms. Vlavianos was mentally incompetent when she signed the form.

In the Proposed Decision, the ALJ concludes that CalPERS "correctly determined that respondent was required to refund CalPERS the entire December 1, 2017 direct deposit payment of \$3,844.53." The ALJ held that the "entire amount was required to be returned to CalPERS, which was then tasked with distributing the correct pro rata allowance to the correct beneficiary(ies)."

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

November 20, 2019

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