

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Anna Macanas (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated September 6, 2019. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

A hearing on this case was held on August 26, 2019. Respondent was present at the hearing. The Proposed Decision was in favor of CalPERS. The Board voted to adopt the Proposed Decision on November 20, 2019. Respondent submitted this Petition for Reconsideration on November 27, 2019.

The hearing was concerning whether Respondent is the responsible party to repay CalPERS for the overpayment of \$3,844.53 that was deposited into Respondent's mother's bank account after her death.

Suzanne Belle Vlavianos, Respondent's mother, 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...". Ms. Vlavianos designated 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.

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. Pursuant to Government Code section 21491, CalPERS was to pay these benefits to the designated beneficiary on file, Pamela Craighead. 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, Chase Bank informed CalPERS that 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 refused to return the entire amount to CalPERS, claiming she used the funds for final expenses related to her mother's death.

At the hearing, 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 her reconsideration request, Respondent presents the same arguments that she previously presented during the hearing. Respondent argues that the money belonged to her mother and her mother was not informed that CalPERS would take it away. First, the amount paid to Ms. Vlavianos for the time-period of November 1 through November 21, 2017 does belong to Ms. Vlavianos, That amount is considered the Prorated Allowance and Ms. Vlavianos elected Pamela Craighead to receive that money. In compliance with the designation, Pamela Craighead is entitled to receive the Prorated Allowance. Second, Ms. Vlavianos was aware that the Prorated Allowance would be paid to Pamela Craighead, as Ms. Vlavianos designated Pamela Craighead as the beneficiary of the Prorated Allowance. Lastly, as to the remaining amount, for the time period of November 22, 2017 through November 30, 2017, this amount is not payable to Ms. Vlavianos as she died on November 21, 2017.

While Respondent argues that Ms. Vlavianos did not wish Pamela Craighead to be the beneficiary, Respondent failed to present any evidence supporting this argument.

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 20, 2019, meeting was well reasoned and based on the credible evidence presented at hearing.

December 18, 2019

PREET KAUR
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