

ATTACHMENT E

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal for the Return of Benefits Paid
Upon the Death of Suzanne B. Vlavianos by:**

ANNA SUZANNE MACANAS, Respondent

Agency Case No. 2018-1147

OAH Case No. 2019050178

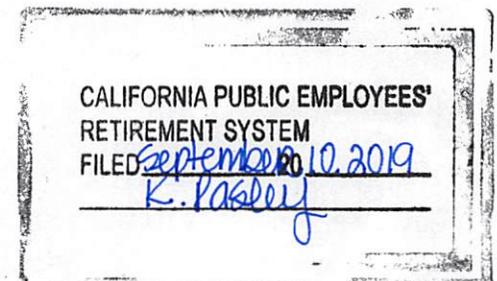
PROPOSED DECISION

This matter was heard before Administrative Law Judge Wim van Rooyen, Office of Administrative Hearings, State of California, on August 26, 2019, in Sacramento, California.

The California Public Employees' Retirement System (CalPERS) was represented by Preet Kaur, Senior Attorney.

Respondent Anna Suzanne Macanas appeared at hearing and represented herself.

Evidence was received, the record closed, and the case submitted for decision on August 26, 2019.



ISSUE

The issue on appeal is whether CalPERS is correct in its determination that respondent is the responsible party to repay CalPERS for an overpayment of \$3,844.53 that was deposited into the bank account of decedent, Suzanne Vlavianos, after her death.

FACTUAL FINDINGS

Jurisdiction

1. On September 18, 2018, Keith Riddle, Assistant Chief of CalPERS' Benefit Services Division (BSD), issued a decision that respondent is the responsible party to repay CalPERS for an overpayment of \$3,844.53 that was deposited into the bank account of decedent, Suzanne Vlavianos, after her death.

2. Respondent timely appealed that decision by a letter dated October 1, 2018. On October 16, 2018, CalPERS acknowledged receipt of the appeal.

3. On May 3, 2019, Anthony Suine, Chief of CalPERS' BSD, filed the Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

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CalPERS' Evidence

EVENTS GIVING RISE TO THE OVERPAYMENT

4. Spiro Lucas Vlavianos was a member of CalPERS. Suzanne Belle Vlavianos was the spouse of Mr. Vlavianos. Back in the 1980s, Ms. Vlavianos suffered a stroke, which rendered her non-ambulatory and unable to use her right arm. After Mr. Vlavianos' death, Ms. Vlavianos began receiving monthly survivor benefits from CalPERS.

5. On September 27, 2005, CalPERS received Ms. Vlavianos' Beneficiary Designation for Survivor's Prorated Allowance (Beneficiary Designation) dated September 20, 2005, naming her daughter, Pamela Annette Craighead,¹ as primary beneficiary, and respondent, her other daughter, as a secondary beneficiary.²

6. On July 19, 2012, CalPERS received a Direct Deposit Authorization (DDA) signed by Ms. Vlavianos on July 11, 2011. The DDA authorized payment of Ms. Vlavianos' monthly benefits into a joint checking account with J.P. Morgan Chase Bank (Chase) held by Ms. Vlavianos and respondent. Additionally, on August 27, 2013,

¹ At various times, Ms. Craighead also held the last names of Cox, Macanas, Shackelford, and Eggert. For convenience, all references in this decision are to the last name Craighead.

² On all forms signed by Ms. Vlavianos in this case, her signature, although legible, consistently appears to be scribbled in an uncertain manner. The signature is always different from the other handwriting on the forms, and it is obvious that a person(s) other than Ms. Vlavianos actually completed the forms.

CalPERS received a Special Power of Attorney form (SPOA) signed by Ms. Vlavianos on January 4, 2013, appointing respondent to make retirement decisions for Ms. Vlavianos related to her CalPERS benefits. That appointment included the authority to designate or change Ms. Vlavianos' beneficiaries, even if respondent were to designate herself as beneficiary.

7. On November 21, 2017, Ms. Vlavianos passed away, and respondent notified CalPERS of Ms. Vlavianos' death on December 1, 2017. Subsequently, on December 3, 2017, CalPERS sent letters to Chase and respondent indicating that the December 1, 2017 direct deposit of \$3,844.53 in survivor benefits for November 2017 into the Chase joint checking account was not payable and should be returned to CalPERS. On January 19, 2018, CalPERS also sent a letter to Ms. Craighead requesting return of the December 1, 2017 direct deposit.

8. On January 26, 2018, CalPERS received notification that Chase was unable to return the December 1, 2017 direct deposit of \$3,844.53 due to insufficient funds in the joint checking account. Thereafter, on January 29, 2018, CalPERS received written correspondence from Ms. Craighead indicating that respondent had held Ms. Vlavianos' power of attorney and would have conducted her financial affairs. Ms. Craighead also indicated that she knew nothing about the funds that were deposited into the joint checking account after Ms. Vlavianos' death.

9. In a letter dated July 13, 2018, CalPERS notified respondent that she was not the beneficiary of Ms. Vlavianos' death benefits. Around July 23, 2018, CalPERS released payment of death benefits in the amount of \$3,440.06 to Ms. Craighead as the designated beneficiary.

10. CalPERS has sent several letters to respondent in an attempt to recover the \$3,844.53 direct deposit from respondent. However, respondent has disputed both the validity of the Beneficiary Designation as well as CalPERS' calculation of the overpayment. Although CalPERS has collected approximately \$302 of the \$3,844.53 by virtue of an interception of respondent's state tax refund, respondent has not voluntarily paid any funds to CalPERS to date.

TESTIMONY BY REPRESENTATIVE FROM CALPERS' SURVIVOR BENEFITS DIVISION

11. Nhung Dao, an Associate Governmental Program Analyst with the Survivor Benefits Division of CalPERS, testified at hearing. Ms. Dao has held that position for seven years, which involves reviewing complex cases concerning death benefits payable and investigating disputes concerning such benefits. She was specifically assigned to review the case of Ms. Vlavianos' death benefits as well as issues regarding the overpayment.

12. Ms. Dao testified that CalPERS is governed by the California Public Employees' Retirement Law (PERL). Under PERL, when the spouse of a deceased member dies, the monthly allowance paid to the spouse as a survivor of the deceased member terminates immediately. As such, no survivor benefits are payable for the remaining days of the month following the spouse's death. However, the spouse can designate a beneficiary to receive a pro rata allowance payable for the days of that last month on which the spouse was still alive.

Ms. Dao explained that in this case, because Ms. Vlavianos passed away on November 21, 2017, no survivor benefits were payable for November 22 through 30 of 2017. However, because Ms. Vlavianos was still alive from November 1 through 21 of 2017, and CalPERS' records showed that she had designated Ms. Craighead as her

primary beneficiary, CalPERS ultimately paid the pro rata allowance attributable to November 1 through 21 of 2017 (\$3,440.06) to Ms. Craighead in accordance with the Beneficiary Designation.

13. Ms. Dao further testified that PERL requires the refund of any benefit payments by warrant to the recipient spouse issued after the death of the recipient spouse. CalPERS then determines the correct pro rata allowance to pay to any designated beneficiary. Ms. Dao explained that in this case, the December 1, 2017 direct deposit of Ms. Vlavianos' monthly survivor allowance (\$3,844.53) occurred after her death on November 21, 2017. As such, PERL required return of the direct deposit funds. According to Ms. Dao, CalPERS records showed that the funds were paid into a joint checking account held by Ms. Vlavianos and respondent. Additionally, respondent held the SPOA concerning Ms. Vlavianos' CalPERS benefits, and Chase ultimately notified CalPERS that there were insufficient funds in the joint checking account to return the direct deposit funds. Therefore, CalPERS determined that respondent was responsible for returning the \$3,844.53. Ms. Dao confirmed that, under PERL, CalPERS would have been required to seek return of those funds regardless of whether it had made any payment of the pro rata allowance to Ms. Craighead.

14. As for the validity of the Beneficiary Designation, Ms. Dao testified that CalPERS reviewed respondent's concerns, including the medical documentation submitted by respondent. That documentation included treatment notes from August 2011, November 2011, and January 2015, reflecting that Ms. Vlavianos suffered a stroke at age 42, lived in an assisted living facility, used a wheelchair, and had a contracted right arm with inability to move the arm due to her stroke. However, she

was also described as alert, oriented, and able to communicate her needs with clear speech.

Ms. Dao explained that the medical documentation from 2011 and 2015 did not indicate that Ms. Vlavianos lacked mental capacity to designate a beneficiary in September 2005, when the Beneficiary Designation was signed. Moreover, respondent presented at the hearing a May 7, 2011 letter from Brenda Gourd, a nurse at the retirement community where Ms. Vlavianos was living at the time, who opined as follows:

I have had many conversations with Suzanne during the past year, and find her to be an interesting and intelligent person who is alert and oriented to person, place, and time. Further, I believe her to be capable of making decisions in regards to her own person.

Additionally, Ms. Dao testified that Ms. Vlavianos was not necessarily required to complete the Beneficiary Designation form herself, as long as she signed it and had the mental capacity to understand what she was signing.

Because there was no indication that the Beneficiary Designation was forged, that Ms. Vlavianos lacked mental capacity to sign it, or that the Beneficiary Designation was subsequently revoked, Ms. Dao explained that CalPERS was required to pay the pro rata allowance in accordance with the Beneficiary Designation. According to Ms. Dao, in light of the 2013 SPOA, respondent could have changed the designated beneficiary for the pro rata allowance to another person, including respondent herself, but CalPERS had no record of such a substitution. Ms. Dao clarified that the SPOA does not in itself change a beneficiary designation.

Respondent's Evidence

15. At hearing, respondent admitted that she held the joint checking account at Chase with Ms. Vlavianos, and that Ms. Vlavianos' monthly survivor benefits of \$3,844.53 for November 2017 were deposited into that account on December 1, 2017. Respondent explained that she used those funds to pay for her mother's funeral expenses and final bills, and that she does not have the money to pay CalPERS back those funds.

16. Respondent provided essentially two reasons for contesting the alleged overpayment.

First, respondent expressed significant concerns regarding the validity of the Beneficiary Designation. She noted that, in light of her stroke, Ms. Vlavianos could not possibly have completed the form herself, although she admitted that the signature on the form appeared to be her mother's signature. Nevertheless, she questions whether Ms. Craighead had somehow misled her mother. Respondent explained that she mistrusts her sister, because her mother at times expressed concerns about Ms. Craighead's management of her finances. For that reason, respondent was later substituted as her mother's general power of attorney. Additionally, Ms. Craighead at one time had improperly filed her mother's taxes, resulting in her mother owing the Internal Revenue Service (IRS) money, which respondent had to help her mother "straighten out."

Second, respondent observed that, even if the Beneficiary Designation is valid, she disputes the amount CalPERS claims she is required to pay back. Respondent has no problem with paying back the portion of benefits related to November 22 through 30 of 2017, i.e., the days in November after her mother's death. However, she feels that

the benefits related to November 1 through 21 of 2017, when her mother was still alive, belonged to her mother. As such, that portion could appropriately be used for her mother's funeral expenses and final bills, and CalPERS should not be entitled to that money. Indeed, respondent explained that she paid those expenses with the December 1, 2017 direct deposit funds in part because CalPERS phone representatives assured her that she could do so. According to respondent, most members of the public are not aware that CalPERS takes the position that benefits paid during the month of death "do not actually belong to the recipient."

17. Respondent sincerely testified that she only intended to "do the right thing" in taking care of her mother's affairs. She observed that the whole experience with the alleged overpayment has been very frustrating and stressful.

Discussion

18. Even though respondent's testimony was generally credible and her reasons for disputing the overpayment are understandable, her arguments are nonetheless unavailing.

19. As an initial matter, CalPERS correctly determined that the 2005 Beneficiary Designation was valid. Even respondent conceded that the signature on the Beneficiary Designation appeared to be her mother's signature, which, consistent with other documents signed by Ms. Vlavianos, appeared to be scribbled in an uncertain manner. Although the rest of the form may have been filled out by someone else, Ms. Dao explained that there was no requirement that Ms. Vlavianos fill out the form herself; she need only have signed it with sufficient mental capacity.

Significantly, there is no evidence demonstrating that Ms. Vlavianos was incompetent or lacked the mental capacity to understand and sign the Beneficiary

Designation. The medical records provided by respondent to CalPERS failed to show that Ms. Vlavianos lacked the requisite mental capacity in 2005. To the contrary, the May 7, 2011 letter from Brenda Gourd, which respondent herself introduced at hearing, suggested that Ms. Vlavianos was alert, intelligent, and competent to make decisions.

Even assuming, without deciding, that Ms. Craighead at times mishandled Ms. Vlavianos' finances and improperly filed her taxes, that is insufficient to find that Ms. Vlavianos lacked the mental capacity to understand and sign the Beneficiary Designation and/or that Ms. Craighead somehow misled Ms. Vlavianos as to the effect of the Beneficiary Designation. Moreover, in light of the 2013 SPOA, respondent could have changed the designated beneficiary for the CalPERS pro rata allowance, but never did so.

Consequently, CalPERS properly found that the Beneficiary Designation was valid.

20. Additionally, CalPERS correctly determined that respondent was required to refund CalPERS the entire December 1, 2017 direct deposit payment of \$3,844.53. There is no dispute that Ms. Vlavianos' monthly survivor benefits of \$3,844.53 for November 2017 were deposited into the joint checking account held by Ms. Vlavianos and respondent at Chase, and that respondent used those funds to pay for her mother's funeral expenses and final bills. Under applicable law, because the December 1, 2017 direct deposit took place after Ms. Vlavianos' death on November 21, 2017, 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).

Even if, as respondent contends, most benefit recipients do not understand that the pro rata share of benefits payable in the month of their death would be paid to their designated beneficiaries, it does not negate the plain meaning of the statute enacted by the Legislature. To be sure, in this case the law may compel a particularly harsh result. In many instances, the designated beneficiary is also the person tasked with paying for a decedent's funeral expenses and final bills. Here, respondent, undoubtedly with good intentions, took care of her mother's affairs before it was subsequently determined that Ms. Craighead was the designated beneficiary of the pro rata portion of the November 2017 benefits. Nonetheless, CalPERS has no discretion to depart from the requirements of the PERL, regardless of any actual or perceived unfairness in outcome.³ Ultimately, the issue of who bears the burden of Ms. Vlavianos' funeral expenses and final bills is a matter between respondent and Ms. Craighead, and does not implicate CalPERS.

Consequently, CalPERS properly found that respondent was required to refund to CalPERS an overpayment in the amount of \$3,844.53.

LEGAL CONCLUSIONS

1. As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of

³ Even if CalPERS phone representatives assured respondent that she could use the November 2017 benefits to pay Ms. Vlavianos' funeral expenses and final bills, such a purported communication, while unfortunate and regrettable, cannot override the statutory mandate:

going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051). In this matter, the allocation of the burden of proof must be split between the parties. CalPERS had the burden of showing that it was entitled to recover an overpayment under applicable law. Respondent had the burden of proving any affirmative defense to recovery of the overpayment.

2. Government Code section 21250 provides that “[a] pension, an annuity, special death benefit or retirement allowance granted by this part is payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.”

3. Government Code section 21491 provides as follows:

A person who is entitled to receive a monthly allowance as a survivor of a deceased person may designate a beneficiary to receive the pro rata allowance payable following his or her death. The beneficiary designation shall be filed by the survivor with the board in writing in order to be effective, and the designation shall be subject to all laws applicable to designations of beneficiaries. A survivor may revoke his or her beneficiary designation at any time. A beneficiary designation by a survivor shall not be subject to the automatic revocation of designation provisions of Section 21492.

4. Government Code section 21510 provides that "[a]ny payment of benefits by warrant issued after the death of the benefit recipient shall be refunded to the retirement system." Additionally, Government Code section 21267, subdivision (b) provides that "[a]ny payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to the receipt of the benefits from a state retirement system shall be refunded to the retirement system."

5. Based on all the Factual Findings, and Factual Findings 18 through 20 in particular, CalPERS properly determined that respondent is the responsible party to repay CalPERS for an overpayment of \$3,844.53 that was deposited into the bank account of decedent, Suzanne Vlavianos, after her death. Furthermore, respondent has not established any affirmative defense that precludes recovery of the overpayment.

ORDER

The appeal of respondent Anna Suzanne Macanas is DENIED. The decision by CalPERS that respondent is the responsible party to repay CalPERS for the overpayment of \$3,844.53 is AFFIRMED.

DATE: September 6, 2019

DocuSigned by:
Wim van Rooyen
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WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings