ATTACHMENT B

Staff Argument

Attachment B

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Evelyn L. Alford (Decedent) retired from state service on December 1, 2001. Upon her retirement, Decedent elected Option 4, and under Option 4 she further elected to receive "Option 2W & Option 1 Combined." She designated her husband Shelly Alford as the lifetime beneficiary to receive her Option 2W benefits after her death. Shelly Alford predeceased Decedent on December 22, 2020.

On January 7, 2022, Decedent submitted to CalPERS a special power of attorney (POA) appointing her daughter Paula A. Lehn (Respondent Lehn) and her son Michael S. Alford (Respondent Alford) (collectively, Respondents) as her attorneys-in-fact. Respondent Lehn contacted CalPERS on January 20, 2022, and requested information on changing Decedent's beneficiary designation. That same day, CalPERS mailed Publication 98 containing the requested information to Decedent. Publication 98 provides as follows:

> If you make an election to change your original retirement selection more than 12 months after the qualifying event, the change does not take effect until 12 months after you make the election. By law, both you and your new beneficiary must be living on the deferred election effective date or the change cannot be processed.

Previously, on January 5, 2022, Respondent Lehn accessed Decedent's myCalPERS account. This was a violation of CalPERS' rules that state only the member may access a myCalPERS account. For this reason, an administrative lock was placed on Decedent's myCalPERS account on January 6, 2022. This did not prevent Decedent or Respondent Lehn from conducting any business with CalPERS by telephone, by written correspondence, or by visiting a CalPERS Regional Office.

In response to Decedent's request to change her beneficiary designation, by letter dated February 9, 2022, CalPERS sent Decedent a Modification of Option and/or Life Option Beneficiary (MOLOB) estimate packet which included a "Modification of Original Election at Retirement Estimate" with an effective date of April 1, 2023, a retirement options and description chart, and a "Modification of Election at Retirement" election form. CalPERS advised Decedent that she had until March 31, 2022, to return the completed MOLOB election form or her request would be canceled. The letter stated, in pertinent part, as follows: "The effective date is deferred for one year when the election to modify your option is made more than 12 months after your qualifying event date. Both you and your beneficiary must be alive on the effective date of change."

CalPERS received Decedent's first completed MOLOB form on March 14, 2022. This document attempted to remove Shelly Alford as Decedent's beneficiary and to name Respondents as life option beneficiaries. This document was signed by Respondent

Lehn, as Decedent's attorney-in-fact. CalPERS rejected the document, because under the terms of the POA, Respondent Lehn lacked the power to "[c]reate or change a beneficiary designation."

Subsequently, CalPERS received Decedent's second completed MOLOB form on March 28, 2022. This document was signed by Decedent. On March 29, 2022, CalPERS processed this document and informed Decedent that her new beneficiary election would go into effect on April 1, 2023. On January 31, 2023, CalPERS reiterated that the election would be effective on April 1, 2023, and further informed Decedent that "the Public Employees' Retirement Law requires both you and your new beneficiaries to be living on the effective date of the election."

Decedent passed away on February 3, 2023.

A formal determination letter was sent to Respondent Lehn on October 4, 2023, informing her that Respondents were ineligible to receive continuing monthly lifetime benefits because of Decedent's passing before the MOLOB effective date of April 1, 2023. In this letter, Respondent Lehn was advised of Respondents' appeal rights.

Respondents appealed the 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 March 23, 2026. Respondents were represented by counsel.

At the hearing, Respondents argued that both the doctrine of substantial compliance and Government Code section 20160, which provides for CalPERS to correct mistakes under certain circumstances, required reversal of the determination. CalPERS argued that it properly applied Government Code section 21462 ("Section 21462"), which provides that a member who fails to elect a new beneficiary within twelve months of a qualifying event retains the right to make an election, but the election "shall become effective no earlier than 12 months after the date it is filed with the board, provided that neither the member nor the designated beneficiary die[s] prior to the effective date of the election."

CalPERS further argued that Government code section 20160 is inapplicable here because it prohibits corrections that would "provide the party seeking correction with a status, right, or obligation not otherwise available under" the Public Employees' Retirement Law (PERL). As noted above, the PERL does not give members the right to designate a new beneficiary more than twelve months after the death of the prior beneficiary without complying with the subsequent twelve-month waiting period required under Section 21462, subdivision (c).
Respondent Lehn testified at the hearing. She stated that Decedent did not know she was supposed to inform CalPERS of Shelly Alford's passing. Respondent Lehn also testified that on January 5, 2022, Decedent gave her the information required to access Decedent's myCalPERS account. She stated that they were together when she accessed Decedent's account and requested information on changing Decedent's

beneficiary. On January 7, 2022, she noticed that Decedent's myCalPERS account had been locked. She contacted CalPERS and was told she needed to submit a power of attorney. She then submitted the POA, which was accepted by CalPERS.

Respondent Lehn further testified that she did not learn until March 17, 2022, after she submitted the first MOLOB election on Decedent's behalf, that the POA did not give her authority to change beneficiaries on behalf of Decedent. She contended she was told by a CalPERS representative that she could sign the MOLOB election. She also stated that no one told her she or Decedent could physically visit a CalPERS office to make the change. She claimed that she was told it must be handled through the mail.

Respondent Lehn further asserted that the COVID-19 pandemic caused delays in her ability to submit paperwork to CalPERS and that there were also delays in receiving documents from CalPERS during that time.

Respondents argued at the hearing that CalPERS actively interfered in Decedent's attempts to change her beneficiary by restricting Respondent Lehn's ability to access Decedent's online myCalPERS account, giving incorrect information, and refusing to assist her in the process. Respondents also claimed that the MOLOB election would have been processed by the end of 2022, had CalPERS not engaged in active interference.

Also at the hearing, an Analyst II with CalPERS, who was responsible for reviewing Decedent's attempts to change her death beneficiary, testified that the purpose of the twelve-month waiting period provided for in Government Code section 21462 is to prevent "deathbed elections," or elections too near in time to the death of the member. She further testified that, despite the administrative lock on Decedent's myCalPERS account, Respondent could have conducted any necessary business with CalPERS by telephone, by written correspondence, or by visiting a CalPERS Regional Office. Lastly, she testified that, at the time of Decedent's attempts to change her beneficiaries, CalPERS' offices were open, active, and fully staffed despite the COVID-19 pandemic.

After considering all the evidence introduced and arguments by the parties, the ALJ denied Respondents' appeal. The ALJ found that, when all the evidence was considered, Respondents had failed to prove by a preponderance of the evidence that they were entitled to a lifetime monthly benefit. Decedent named Shelly Alford as her beneficiary when she retired. Shelly Alford died in December of 2020. She did not inform CalPERS of his passing. CalPERS learned of Shelly Alford's death on January 5, 2022, when Respondent Lehn notified CalPERS by way of myCalPERS. Respondent Lehn also confirmed in this message that she knew any change made to Decedent's beneficiary would take twelve months before it would become effective. On January 7, 2022, she learned she did not have access to Decedent's myCalPERS account and that she needed to submit a POA. CalPERS confirmed receipt of the POA on January 12, 2022. There was nothing that would have prompted CalPERS to inform Respondent Lehn that she was not authorized to change Decedent's beneficiary.

CalPERS received Decedent's MOLOB Estimate Request Form on February 7, 2022, and sent the MOLOB estimate packet the next day. Respondent Lehn returned the MOLOB to CalPERS on March 14, 2022, with her signature, not Decedent's. Within three days, CalPERS notified Respondent Lehn that she did not have the authority to sign on behalf of Decedent. CalPERS received a valid MOLOB election signed by Decedent on March 28, 2022, with an effective date of April 1, 2023.

The evidence demonstrates CalPERS' prompt and repeated efforts to assist Decedent and Respondents in their efforts to make a new beneficiary election.

Respondents also did not establish, by a preponderance of the evidence, that there was a correctable mistake under Government Code section 20160.

In the Proposed Decision, the ALJ concludes that CalPERS, in accordance with the PERL, correctly determined that Respondents are not entitled to a lifetime monthly benefit from Decedent's retirement.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, Staff recommends that: (1) paragraph 23 on pages 10 through 11 of the Proposed Decision read, in its entirety as follows: "By letter dated October 4, 2023, CalPERS denied Respondents' request for reconsideration. CalPERS informed Respondents that Decedent's MOLOB election can become effective only if both Decedent and they are alive on the effective date of April 1, 2023."; and (2) all references in paragraphs 24 through 25 on page 11 of the Proposed Decision be changed from "Government Code section 21464" to "Government Code section 21462."

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

July 15, 2026

Sean Stowers
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