

ATTACHMENT C

RESPONDENT'S ARGUMENT

LAW OFFICE OF ELLEN MENDELSON, PC



533 BELLA VISTA WAY, 1ST FLOOR
SAN FRANCISCO, CALIFORNIA 94127-2303
www.publicemployeeelaw.com

TELEPHONE 415-585-0815
FAX 415-585-8200
EMAIL: Ellenlaw@aol.com

June 25, 2026

BY FAX AND EMAIL 916-795-3972
Board Services Unit Coordinator
CalPERS
Post Office Box 942701
Sacramento, CA. 94229-2701
Board@CalPERS.ca.gov

Re: In the Matter of the Appeal of Lifetime Beneficiary Benefit Payable Upon the Death of Evelyn L. Alford, by PAUAL A. LEHN, Respondent, and MICHAEL S. ALFORD, Respondent. OAH No. 2025040199, Agency Case No. 2024-0516

RESPONDENTS' ARGUMENT

The decision of the Administrative Law judge completely fails to acknowledge CalPERS interference with its Member's attempts to modify her life-time beneficiary after the death of her husband, the original lifetime beneficiary. CalPERS knew that the member wanted to change her beneficiary. On February 9, 2022, CalPERS issued a recalculated benefit amount. It first became aware that the member was seeking to modify her beneficiary on January 5, 2022. It was evident that the member was seeking to change her beneficiary.

If CalPERS had electronically sent a MOLOB in connection with the recalculation to the member's email address, which it undoubtedly had, or to her POA, who had the authority under the POA to deal with government benefits, the notarized MOLOB would have been returned immediately. Whether or not the POA granted the power to change beneficiaries, it granted respondent the power to deal with government benefits. CalPERS should have communicated electronically with Respondent and its member. Let us not forget that in January 2022, we were all limited to our homes because of the pandemic, mail times were incredibly slow, the post office was reluctant to handle certified mail. Equity and good conscience require this Board to consider these facts and to enforce the clear intent of its member. Case law supports this argument. See Watenpaugh v. State Teachers' Retirement System, (1959) 51 Cal. 2d 675, Gallaher v. State Teachers' Retirement System, 237 Cal. App. 2d 510. Courts have recognized that delays caused by the COVID-19 pandemic may constitute exceptional and extraordinary circumstances, rather than chronic administrative issues. This distinction is critical in determining whether delays are justifiable under the law.

The Decision has a few of the facts wrong. At paragraph 6 the judge writes that the member identified her deceased husband as beneficiary for any lump sum payout. That is wrong. Exhibit J, the member's retirement application, identifies Respondents as the beneficiaries of any

lump sum payout. Clearly the judge did not review the exhibits when making her decision. This alone requires review by this Board and constitutes an abuse of discretion. The identification of respondents as beneficiaries makes a difference- CalPERS has fiduciary duties to these beneficiaries- it breached these duties. If Tara Hench testified as indicated in the decision, she misrepresented the facts.

CalPERS further misrepresented the facts when informed Respondent of the ways to contact it as described in Paragraph 11 of the Decision. CalPERS maintains a fax line that Respondent should have been informed of, frankly, CalPERS could have faxed a copy of the MOLOB to respondents. CalPERS did everything it could to delay and impede its member's desire. The evidence shows that it electronically prepared an estimate on January 5, 2022, for the change in beneficiary.

The shutting down of computer access to the Member was wrongful. If a POA specifically grants authority over "government benefits," the attorney-in-fact is legally authorized to manage the principal's CalPERS retirement benefits, which fall under this category. Torres v. Torres, 135 Cal. App. 4th 870 (2006). The Power of Attorney allowed Respondent Lehn to act as authorized representative for her mother's governmental benefits, whether or not it gave her power to change beneficiaries. An attorney-in-fact acting under a valid POA specifically granting authority over government benefits constitutes an "authorized representative" or holder of "written authorization" under this statutory framework . Cal Gov Code § 20230. Consequently, CalPERS is statutorily authorized—and generally required in fulfillment of its duty to promptly deliver services and to recognize such representatives . Cal Const, Art. XVI § 17, Cal Gov Code § 20230. CalPERS should have electronically sent the MOLOB and electronically accepted the MOLOB. The wrongful termination of the ability to electronically communicate, during the height of the pandemic, caused the delay that is the subject of this appeal. Had Respondent been able to file the MOLOB electronically, the change in beneficiaries would have been complete before the end of January 2022.

CalPERS does not have the legal authority to deny MyCalPERS online access to an attorney-in-fact holding a valid POA that covers government benefits, provided the POA meets all California statutory execution requirements. CalPERS is constitutionally and statutorily obligated to deliver benefits and services promptly, which includes permitting authorized representatives access to confidential member records. However, CalPERS has the authority and duty to reject a POA—and deny access to the online system—if the document is facially invalid, fails to meet the execution formalities of dating, signature, and notarization or witnessing, or if the scope of the authority granted does not encompass the administration of government benefits. There is no evidence in the record that shows the POA submitted to CalPERS on January 12, 2022, is facially invalid.

CalPERS Board
June 25, 2026
Page 3

The refusal to apply the logic of the Manderson-Saleh (2021) 60 CA5th 674, decision to the holdings is another abuse of discretion. From a policy perspective pension plans have a legal obligation to credit substantial compliance with the statutory framework. Respondent seeks retroactive recognition of the change in beneficiaries to January 31, 2022. Had CalPERS complied with its fiduciary duties the MOLOB would have been completed by that date.

Finally, the Administrative Law Judge cites the wrong law in her decision. For some reason she cites Government Code Section 21464 as the applicable statute. Tara Hench's testimony as to this statute is inapplicable and cannot justify this decision. This statute has nothing to do with this case. The "death bed" election claim has nothing to do with this case. That section applies to spouses and the length of a marriage before enforceable change in beneficiary. That is the reason for the 12-month survival requirement. Government Code Section 21464 does not apply to this case. The entire decision is an abuse of discretion because it applies the wrong law.

In Paragraph 13 of the Cause for Denial of the Appeal the judge writes "there was nothing prohibiting Decedent from accessing her CalPERS account". That is not true- CalPERS shut down computer access to the account. It locked her account. Had the Member had electronic access to her account she would have made the changes, and she would have been able to receive the MOLOB form.

Respondents' respectfully request that the Board review the decision and reverse the decision and award the benefits which respondents seek and their Mother authorized.

Respectfully submitted,



Ellen Mendelson
Attorney for Respondents

cc. Clients