ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Lifetime Monthly Allowance Payable Upon the Death of Barry C. Lewis by:

CAROLE MARIE DE GÉRY,

and

KATHLEEN LOUIS LEWIS,

Respondents.

Agency Case No. 2025-0082

OAH No. 2026020178

PROPOSED DECISION

Administrative Law Judge Frances M. Valdez, State of California, Office of Administrative Hearings, heard this matter on July 20 and August 11, 2026, in Oakland, California.

Senior Attorney Austa Wakily represented complainant Sharon Hobbs, Chief of the Disability and Survivor Benefits Division, California Public Employees' Retirement System.

Respondent Carole Marie de Géry represented herself.

No appearance was made by or on behalf of respondent Kathleen Louis Lewis. This matter proceeded as a default as to respondent Kathleen Louis Lewis pursuant to Government Code section 11520.

The record closed and the matter was submitted for decision on August 11, 2026.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. The California Public Employees' Retirement System (CalPERS) reported that Barry C. Lewis (decedent) became a member of CalPERS through his employment with the City of South San Francisco, beginning on September 6, 1974. Decedent later worked for the City of Brisbane as a police officer until his eventual retirement.

2. The City of South San Francisco and City of Brisbane are public agencies contracting with CalPERS for retirement benefits for their eligible employees. CalPERS is governed by the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

3. CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions and by interest and other earnings on those contributions. A member's contribution is determined by applying a fixed percentage to the member's compensation. A public agency's contribution is determined by applying a contribution rate to the payroll of the agency. Using certain actuarial

assumptions specified by law, the CalPERS Board of Administration sets the employer contribution rate on an annual basis.

4. On March 18, 2002, decedent applied for service retirement and completed a Service Retirement Election Application form. He elected the Option 3W Lifetime Monthly Benefit, named his then-wife respondent Kathleen Lewis (Lewis) as the beneficiary, and included her date of birth. Under the option election section, the form states: "I understand that my election is irrevocable and that by electing Option 2W, 3W, or 4, I forfeit my right to an increase in my allowance based on the conditions described in *A Guide to Completing Your CalPERS Service Retirement Election Application*." In the same form, decedent named Lewis as the beneficiary of his Lump Sum Retired Death Benefit. Under the retired death benefit section, the form states: "The person listed above will receive the Lump Sum Retired Death Benefit that is payable upon my death. I understand that I may change this beneficiary at any time and that any change in my marital status or the birth or adoption of a child automatically revokes this designation." The form was signed by decedent and Lewis and was notarized.

5. Decedent's retirement was effective July 6, 2002.

6. A letter sent from CalPERS to decedent on July 19, 2002, stated that CalPERS had processed his Option 3W election, and set forth his monthly retirement benefit. The letter included information regarding beneficiary or survivor allowance, notifying decedent that upon his death "benefits will be paid to your beneficiary in accordance with the designation indicated on your retirement election document." The letter addressed marriage after retirement:

> You may modify your election upon marriage after retirement if a former spouse was not named as the beneficiary. If a former spouse was named, you must have a court order that awards you the entire interest in your CalPERS before you can name a new spouse as beneficiary. You may modify your election upon divorce, annulment or legal separation if you have a court order that awards you the entire interest in your CalPERS benefits.
>
> To request a modification of election to name a new beneficiary for a lifetime option allowance, please contact the Benefit Services Division for information about a recalculation of allowance and the required documentation.

7. Decedent and Lewis entered into a stipulated judgment of dissolution of their marriage that was effective on August 4, 2005. In the stipulated judgment Lewis set over and confirmed onto decedent, "as his sole and separate property . . . [a]ll retirement and other deferred compensation benefits earned by [decedent] at any time through his employment, including but not limited to [decedent's] PERS retirement." There is no other reference to decedent's CalPERS pension in the divorce judgment. Further, the divorce judgement does not reference pension beneficiaries including the Option 3W Lifetime Monthly Benefit.

8. On June 3, 2007, decedent and respondent Carole Marie de Géry (respondent) were married.

9. Decedent died on January 26, 2024.

10. On February 20, 2024, respondent submitted an Application for Retired Member/Payee Survivor Benefits.

11. On March 20, 2024, respondent submitted a letter including attachments contesting the beneficiary of decedent's monthly pension benefits. Respondent wrote "[u]nfortunately, it seems [decedent] was unaware, and neither apparently, was his divorce attorney, that he needed to submit a copy of his divorce decree to CalPERS Survivor Benefits[.] [Decedent] was also not aware that he needed to submit a copy of our marriage certificate." Respondent wrote that "[decedent] listed me as his beneficiary for his CalPERS Deferred Compensation account and perhaps he was under the impression that this would cover both his CalPERS accounts." Respondent attached copies of the divorce judgment, CalPERS deferred compensation beneficiary information naming respondent as decedent's 457 plan beneficiary, certain pages of decedent's last will and testament, and decedent and respondent's marriage certificate.

12. On March 25, 2024, CalPERS wrote a letter to respondent stating that a "one-time PERS payment" would be transmitted to respondent. A $5,000 payment was issued to respondent on April 3, 2024.

13. On July 30, 2024, Shayne Day-Bolar, CalPERS Manager, Exceptional Processing Team, Disability and Survivor Benefits Division, sent a letter to respondent offering her condolences and informing her that a "thorough review" had been conducted of decedent's member file. The letter denied respondent's request that she be named as beneficiary for decedent's CalPERS survivor pension and that Lewis be removed as the Option 3W Lifetime Monthly Benefit designated beneficiary. Day-Bolar explained that benefits are paid in accordance with the Government Code and are based on the retirement elections and beneficiary designations filed by the member.

Regarding designating a new option beneficiary, Day-Bolar explained that the law provides for limited qualifying events and that "the modification of options can only become effective if a member submits the formal election document and if both a member and their new option beneficiary are alive on the effective date for the modification of options." Day-Bolar wrote that Government Code section 20160 permits CalPERS to correct certain kinds of mistakes as long as the correction is within the existing provisions of the PERL. Day-Bolar noted that decedent was advised at the time of his retirement that he needed to notify CalPERS if he wished to change his beneficiary, as set forth in Factual Finding 6, and that CalPERS had no record of decedent's contacting CalPERS to notify CalPERS of his divorce, marriage, or desire to change his beneficiary. Because decedent failed to notify CalPERS following his divorce indicating he wished to change his beneficiary, CalPERS did not find the circumstances constituted an "error or omission" correctable under Government Code section 20160. The letter notified respondent of her appeal rights.

14. On January 7, 2026, complainant Sharon Hobbs, Chief of the CalPERS Disability and Survivor Benefits Division, signed the statement of issues. The statement of issues lists one issue on appeal: whether respondent is eligible for the Option 3W lifetime monthly allowance. Respondent filed an appeal and this hearing followed.

15. Lewis submitted a letter dated June 16, 2026, stating "I am no longer interested in pursuing lifetime payments allowance upon the death of Barry C. Lewis. Agency Case No 2025-0082 CalPERS."

Respondent's Evidence

16. Respondent testified at hearing. She met decedent in 2000 when they were both working in law enforcement and they became friends. Decedent confided in

respondent about his marital problems with Lewis and respondent used her counseling background to facilitate these conversations. He was worried that if he divorced Lewis, he would not see their son. Respondent reported that decedent asked for only two things in his divorce with Lewis: 100 percent of his CalPERS pension and 50 percent custody of their son. Respondent reported that decedent paid a higher spousal support amount than required in lieu of Lewis receiving any of decedent's benefits, although the divorce judgment does not reflect this information. Respondent wrote spousal support checks to Lewis from her bank account because decedent disliked Lewis and did not want to handle those payments.

17. Respondent submitted excerpts from decedent's diary entries. The entries largely discuss his troubled relationship with Lewis and their son. The entries do not make any reference to his CalPERS retirement or beneficiary designations.

18. Respondent was the trustee of decedent's trust. Decedent's trust agreement was submitted into evidence, but it makes no reference to decedent's CalPERS pension or beneficiary designations.

19. Decedent completed a power of attorney for healthcare and named respondent as his attorney-in-fact to make health care decisions for him, which was signed by decedent and notarized on September 30, 2015. The power of attorney does not make any reference to decedent's CalPERS pension or beneficiary designations.

20. Respondent submitted decedent's last will and testament dated October 12, 2018, which lists respondent as executor, but does not make any reference to decedent's CalPERS pension or beneficiary designations.

21. Respondent described decedent as a generous person who left shares of an apartment complex to her son from a previous marriage. Respondent reported that

decedent believed he was very good with financial planning and he had advisors in relation to his family trust fund. Respondent reported that decedent had dyslexia, problems understanding forms, little patience for calling institutions and being placed on hold, and did not know how to navigate phone tree systems. When he became ill, decedent told respondent that she would be taken care of and would have money every month.

22. Respondent testified that decedent told her she would receive all of his CalPERS retirement benefits upon his death. She stated that decedent told her that he had changed the beneficiary to name her as 100 percent beneficiary.

23. Respondent submitted a screenshot from decedent's 457 plan website where he designated respondent as his primary beneficiary. The screenshot shows a CalPERS logo in the upper left corner. Under "Permissions" and "Linked Accounts" the webpage states "These apps have access to some of your Voya data and accounts." Respondent confirmed that decedent's 457 plan was managed by Voya. The screenshot does not demonstrate how respondent navigated to the website or what may have appeared before arriving at the website screenshot that was submitted into evidence. Respondent argued that when decedent changed his 457 plan beneficiary on this website, he thought he had changed his beneficiary across all of his CalPERS accounts. Respondent acknowledged that she received funds from decedent's 457 plan after his death.

24. A CalPERS Customer Touch Point report dated February 1, 2010, indicates that a conversation occurred regarding income verification for decedent. The note text states: "Spoke to Carol DeGery, the spouse of the member. Sent a verification of income to the address on file." Respondent contends that this note demonstrates CalPERS was aware that she was decedent's spouse because CalPERS representatives

would not discuss personal financial information regarding a member with a spouse without having supporting documentation. Respondent contends that this note demonstrates decedent must have submitted their marriage certificate to CalPERS.

25. Respondent submitted affidavits from individuals who knew decedent and had conversations with him about his CalPERS pension. Generally, the individuals wrote that decedent told them respondent would receive a monthly payment from his pension after his death.

WITNESS TESTIMONY

26. Dominique Chastenet de Géry testified at hearing and wrote an affidavit dated May 22, 2024. She is respondent's sister and knew decedent for approximately 20 years. In approximately 2007 and 2010, she spoke with decedent on several occasions about financial planning and he assisted her with the purchase of a home by co-signing her mortgage. She reported that decedent told her that respondent would be well cared for because she would receive his retirement, which he referred to as his "401k" and his "retirement" from the police department. Chastenet de Géry was concerned about what could happen to her mortgage if decedent were to pass away; however, he reassured her that respondent would be able to buy out the loan because she would receive his retirement benefits. She believed that decedent thought his 401k plan and retirement were one portfolio. Decedent told Chastenet de Géry that to ensure respondent received what decedent had intended, he went to his lawyer and he felt it had been done.

27. Janet Louise Childs testified at hearing and wrote a letter dated May 7, 2024. Childs worked with decedent in the 1990s co-teaching stress management and critical incident stress management classes for law enforcement. They became friends

and she counseled him when he became ill. Childs reported that decedent made it "crystal clear" that he wanted his retirement to go to respondent. She believes they discussed this in approximately 2019. With regard to his pension, Childs reported that decedent "wasn't sure" or "certain" of what he had to do and that Childs encouraged him to do what he needed to do legally and logistically to accomplish his wishes. Childs testified that decedent did not mention any paperwork and acknowledged that decedent was not good with paperwork. Decedent spoke to Childs about Lewis, stating that he did not have respect for her and that she made it very difficult for him to have a relationship with their son, which caused him to be very angry and frustrated.

28. MJ Kahle testified at hearing and wrote an affidavit dated May 6, 2024. She knew decedent and respondent since approximately 2018 when they worked on a homicide investigation team together based out of respondent and decedent's home. Kahle is a licensed psychologist and a CalPERS member. It was clear to Kahle that decedent wanted respondent to get his retirement benefits because he wanted respondent to be taken care of if anything happened to him. She reported that decedent was under the impression that respondent was his CalPERS designated beneficiary. Kahle was aware that decedent had dyslexia and eventually had a stroke, which impacted him cognitively. Kahle recalled that she and decedent discussed the difficulties of using online platforms. Kahle reported that she and decedent complained about how they were used to speaking with someone in person rather than going online to accomplish tasks. Kahle reported it has been personally challenging for her to navigate CalPERS websites and to understand the differences between the deferred compensation website and the retirement benefits website.

CalPERS's Evidence

29. Taneshia Uehara, an Analyst II in the Survivor Benefits Section, testified at hearing. She has been employed by CalPERS for 19 years. In her current role, she analyzes complex matters, such as disputed survivor benefits and industrial death benefits; interprets laws and internal procedures; and prepares benefit terminations and recommendation memoranda. Uehara was assigned to review the dispute regarding decedent's Option 3W Lifetime Monthly Benefit beneficiary designation.

30. Uehara explained that different forms are completed when a member designates beneficiaries before and after they retire. Prior to retirement, the beneficiary designation is revocable and the member can change it at any time. At retirement, the member is given options and can choose to receive a lower monthly amount to allow a beneficiary to receive a lifetime allowance after the member's death. The member must provide the beneficiary's date of birth in order for CalPERS to make an actuarial calculation and provide an allowance estimate to the member. Uehara explained that there is also a separate retired death benefit, which is a lump sum employer contracted benefit and the beneficiary designation is revocable.

31. If a member seeks to modify the beneficiary for their lifetime option allowance, they must contact CalPERS to make a recalculation. CalPERS needs the new beneficiary's date of birth to prepare the calculation, and the member must elect an option.

32. Decedent selected the Option 3W Lifetime Monthly Benefit to allow a continuing lifetime allowance to his beneficiary, Lewis, who was his spouse at the time he retired. Decedent also selected Lewis as his retired death benefit beneficiary at the time he retired. However, upon their divorce, the retired death benefit beneficiary was

automatically revoked. Respondent received the $5,000 retired death benefit payment referenced in Factual Finding 12 because she was the statutory beneficiary at the time of decedent's death.

33. When Uehara analyzes disputes, she reviews the entire file including the retirement application and any documents submitted to CalPERS. Decedent never contacted CalPERS after his retirement. He did not contact CalPERS to notify CalPERS of his divorce from Lewis or his marriage to respondent. He did not submit his divorce judgment to CalPERS. Decedent did not contact CalPERS seeking assistance with the CalPERS website or changing beneficiaries. Uehara analyzed all the information, including documents submitted by respondent, and determined that decedent made no attempt to remove Lewis as the Option 3W Lifetime Monthly Benefit beneficiary or to name respondent as the new beneficiary.

34. Uehara did not find any evidence of a correctable mistake because there was no indication that decedent tried to change his beneficiary designation. Uehara evaluated the change in beneficiary designation for decedent's 457 plan and believes it demonstrates only that decedent intended to update his beneficiary designation for his 457 plan and nothing more. Further, Uehara opined that it would have been reasonable for decedent to contact CalPERS regarding changing his beneficiary designations. In Uehara's experience, a correctable mistake typically occurs when a member tried to call or write to CalPERS to make a request, but some error occurred. If a member contacts CalPERS, there should be a note in CalPERS's system, but there were no notes for decedent aside from the income verification note in 2010 (Factual Finding 24).

35. Uehara testified that CalPERS did not receive decedent and respondent's marriage certificate until after decedent's death. She asserted that the Customer Touch

Point Report referenced in Factual Finding 24 does not demonstrate that CalPERS received a marriage certificate, only that a CalPERS representative spoke with an individual who identified themselves as a member's spouse. Uehara also stated that call notes do not indicate any personal financial information was discussed and that CalPERS routinely sends information to a member's address on file.

36. Uehara's testimony was credible and fully consistent with the exhibits admitted at hearing. She demonstrated a thorough knowledge of eligibility determinations for beneficiaries of Option 3W Lifetime Monthly Benefits and Lump Sum Retired Death Benefits, and the law regarding correctable mistakes.

LEGAL CONCLUSIONS

1. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that the party is asserting. (Evid. Code, § 500.) The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.) Accordingly, in this case, respondent has the burden to prove by a preponderance of the evidence that she is eligible for the Option 3W Lifetime Monthly Benefit.

Applicable Law

2. The California Constitution imposes on CalPERS a duty to "ensure the rights of members and retirees to their full, earned, benefits." (*City of Oakland v. Public Employees' Retirement System* (2002), 95 Cal.App.4th 29, 46.) But, "[CalPERS's] fiduciary duty to its members does not make it an insurer of every retirement promise contracting agencies make to their employees. [CalPERS] has a duty to follow the law." (*City of Pleasanton v. Bd. of Administration* (2012) 211 Cal.App.4th 522, 544.)

3. Pension legislation should be liberally construed and all ambiguities should be resolved in favor of the pensioner. (*In re Retirement Cases* (2003) 110 Cal.App.4th 426, 473.) "However, this rule of liberal construction is applied for the purpose of effectuating obvious legislative intent and should not blindly be followed so as to eradicate the clear language and purpose of the statute and allow eligibility for those for whom it was obviously not intended." (*Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1603.)

4. The PERL established the Option 3W Lifetime Monthly Benefit. (See Gov. Code, §§ 21457 [establishing Option 3], 21459 [establishing the waiver or "W"].) A beneficiary designation under the Option 3W Lifetime Monthly Benefit is irrevocable from the time of the first payment on account of any retirement allowance. (Gov. Code, § 21492.)

5. Government Code section 21453 addresses when an election is made and changes in retirement status:

> An election, revocation, or change of election shall be made within 30 calendar days after the making of the first payment on account of any retirement allowance or, in the event of a change of retirement status after retirement, within 30 calendar days after the making of the first payment on account of any retirement allowance following the change in retirement status. "Change in retirement status" includes, but is not limited to, change from service to disability retirement, from disability retirement to service retirement, from nonindustrial disability retirement to

industrial disability retirement, or from industrial to nonindustrial disability retirement.

For purposes of this section, payment shall be deemed to have been made on the date a warrant is mailed, or the date funds are electronically transferred to a bank, savings and loan association, or credit union account for deposit in the member's account.

This section shall not be construed to authorize a member to change his or her retirement status after the election, revocation, or change of election provided in this section.

This section shall apply to any member who retires on or before December 31, 2017.

6. Government Code section 21454, regarding dissolution of marriage and modification of the Option 3W Lifetime Monthly Benefit, states:

Notwithstanding Section 21453, an election of optional settlement 2 or 3, or optional settlement 4 involving life contingency in which a spouse is designated as the beneficiary, **may be modified as provided in this section in the event of a dissolution of marriage or a legal separation in which the division of the community property awards the total interest in the retirement system to the retired member**, or in an annulment of the marriage in which a court confirms the annulment. The modification shall provide that payment shall be continued

during the retired person's lifetime in accordance with the optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any, by which the member's accumulated contributions at retirement exceed the total payments made to the retired person to the date of his or her death.

This section shall apply to any member who retires on or before December 31, 2017.

(Emphasis added.)

7. Government Code section 21462 addresses marriage dissolution and election for a change in allowance and beneficiary:

(a)(1) Notwithstanding any other provision of this part, **a member who elected to receive optional settlement 2, 3, or 4 at retirement, involving a life contingency of the beneficiary, may**, if the beneficiary predeceases the member or if the member marries and the former spouse was not named as beneficiary, or, **if a former spouse was named, in the event of a dissolution of marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member**, or in an annulment of marriage in which the court confirms the annulment, **elect to have the actuarial equivalent**

reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.

. . .

(3) Notwithstanding paragraph (1), for an election under this section that occurs on or after January 1, 2014, a member may name the same beneficiary as previously designated, provided that the resulting benefit to the member and the named beneficiary otherwise meets the requirements of this section.

(b) The election provided by this section is irrevocable and shall be made within 12 months following the death of the beneficiary who predeceased the member, within 12 months of the date of entry of the annulment of marriage or judgment dividing the community property of the parties, or within 12 months following marriage if the spouse is named as beneficiary. The election shall become effective on the date specified on the election, provided that this date is not earlier than the day following receipt of the election in this system under this section.

(c) A member who has a qualifying event prior to January 1, 1988, and who fails to elect by January 1, 1989, or a member who has a qualifying event on or after January 1, 1988, and who fails to elect within 12 months, shall retain the right to make an election under this section. However, this 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 prior to the effective date of the election.

(d) **This section shall not be construed to mean that designation of a new beneficiary causes the selection of an optional settlement. An optional settlement shall be selected by a member in a writing filed by the member with the board.**

(e) Nothing in this section shall be construed to permit any election that will result in additional costs to the employer.

(f) This section shall apply to any member who retires on or before December 31, 2017.

(Emphasis added.)

8. Government Code section 20160 addresses corrections of errors and omissions:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any

beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration

of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot

be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

(Emphasis added.)

Analysis

9. Respondent did not establish by a preponderance of the evidence that she is eligible under applicable law to receive an Option 3W Lifetime Monthly Benefit. An Option 3W Lifetime Monthly Benefit beneficiary designation is irrevocable unless certain circumstances exist, such as dissolution of marriage. This principle was made clear to decedent both in his service retirement application and in the letter sent by CalPERS. (Factual Findings 4 & 6.)

10. After dissolution of marriage, Government Code section 21462, subdivision (a)(1), states that a member "may . . . elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of the election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary." The record did not establish that decedent ever made an election and named respondent as a beneficiary, which would have caused CalPERS to recalculate his monthly retirement allowance to reflect his and respondent's remaining life expectancies. Therefore, CalPERS cannot provide the relief requested by respondent. This result is made even more clear by the requirement that a member must select an optional settlement "in writing." (Gov. Code, § 21462,

subd. (d).) The record contains no evidence that decedent selected an optional settlement in writing as required by statute in order to change his beneficiary after divorce and remarriage.

11. Respondent asserts that CalPERS should correct the alleged error in beneficiary designation and remove Lewis as decedent's Option 3W Lifetime Monthly Benefit beneficiary and name her as the beneficiary. The evidence does not establish that Government Code section 20160 applies to this matter. A correctable error or omission does not include "[f]ailure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances." (Gov. Code, § 20160, subd. (a)(3).) Here, there is no evidence that decedent attempted to contact CalPERS to change his Option 3W Lifetime Monthly Benefit beneficiary. Respondent argues that decedent had trouble using online platforms and navigating phone trees. Still, there is no evidence that decedent even attempted to call CalPERS or visit a CalPERS office. Finally, it is not reasonable that decedent would believe he had changed his Option 3W Lifetime Monthly Benefit beneficiary simply by changing his 457 plan beneficiary. Decedent completed his service retirement application in March 2002, which required him to select an option, name a beneficiary, provide the beneficiary's date of birth, have the beneficiary sign the application, and have the application notarized. He divorced in 2005, and married respondent in 2007. By the time he married respondent, it had only been approximately five years since he completed his service retirement application. After having gone through that process, a reasonable person would contact CalPERS to ensure they correctly named a new beneficiary. Decedent had over 18 years after he divorced Lewis and before his death to contact CalPERS to ensure his beneficiaries were listed in a manner he wished, but no evidence demonstrates he did so.

12. Respondent argues that the doctrine of substantial compliance should apply because decedent received his retirement benefits as his sole property in his divorce, married respondent, named respondent as his beneficiary for his 457 plan, and made his wishes clear to numerous individuals. Respondent also asserts that decedent submitted their marriage certificate to CalPERS prior to his death, but no documentary evidence supports that assertion. Respondent contends decedent reasonably believed he completed the process and there was no reason to believe there were any other requirements because CalPERS did not notify him that there needed to be an actuarial recalculation. The evidence does not support respondent's belief that decedent substantially complied with the PERL as set forth in Factual Findings 4 and 6, and Legal Conclusions 7 and 10.

13. Evidence and arguments presented by the parties that are not referenced in this proposed decision were considered in reaching this proposed decision. All arguments contrary to this proposed decision are rejected.

ORDER

The appeal of respondent Carole Marie de Géry to receive an Option 3W lifetime monthly benefit or allowance due to the death of Barry C. Lewis is denied.

DATE: 09/02/2026

Frances Valdez

FRANCES M. VALDEZ
Administrative Law Judge
Office of Administrative Hearings