



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

April 6, 2021

Sent via email to: [REDACTED]

Ms. LaGreta Brown  
[REDACTED]  
[REDACTED]

RE: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Brown:

I am writing in reference to the action of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) in denying your request to change your retirement option selection from Option D to the Maximum Option after your April 1, 2018 retirement allowance became due and payable.

The Board reviewed and denied this request at its January 14, 2021 meeting. By letter dated February 4, 2021, you appealed the Board's decision, thereby requesting a hearing in the Office of Administrative Law (OAL), which was denied at the Board's March 4, 2021 meeting. Findings of Fact and Conclusions of Law, as outlined below, were presented to and approved by the Board at its meeting of April 1, 2021.

The Board has reviewed the written submissions and the relevant documentation and finds that based upon the facts presented in those documents, the statutes and regulations governing the TPAF do not permit the Board to grant your request to change the option on your retirement allowance after it became due and payable.

### FINDINGS OF FACT

According to the records of the Division of Pensions and Benefits (Division), you were enrolled in the TPAF effective September 1, 1983, as a result of your employment as a Teacher with Camden City Board of Education (BOE). Subsequently, on November 1, 1999, you transferred to the Atlantic City BOE, where you remained employed until your retirement.

On January 2, 2018, you spoke with a counselor at the Division and received an *Estimate of Retirement Benefits*, which estimates the monthly retirement allowance, the benefits payable to your beneficiary upon your death under the various retirement options, and the life insurance benefits.

On February 23, 2018, the Division received an online *Application for Retirement Allowance* through the Member Benefits Online System for a Deferred retirement effective November 1, 2021 under the selection of Option D designating [REDACTED] as your pension beneficiary. By letter dated February 23, 2018, the Division acknowledged the application and requested documentation necessary to continue with its processing.

On March 5, 2018, you canceled your retirement application. The Division sent an e-mail dated March 5, 2018 confirming receipt of a notice of cancellation of your application.

Subsequently, on March 16, 2018, you submitted a new *Application for Retirement Allowance*, wherein you changed your retirement date from November 1, 2021 to April 1, 2018 and your retirement type from Deferred to Early. No other changes were made at this time.

The Atlantic City BOE submitted a *Certification of Service and Final Salary* on March 16, 2018 indicating that you resigned effective December 31, 2008. A *Quotation of Retirement Benefits* was issued to you on April 9, 2018, which provided a summary of your retirement, indicating the retirement option you had selected as Option D. It is noted that the Quotation included the statement:

Once you retire, **you cannot change your payment method option**. If you choose payment method options A, B, C, D, 2, 3, or 4, **under no circumstances can you change your beneficiary selection** once you retire, even if your beneficiary dies before you. You have the right to withdraw, cancel, or change your application for retirement at any time before the later of 30 days after your retirement date or 30 days after the Board of Trustees approves your retirement.  
[Emphasis in the original].

Under Option D, where the designated beneficiary is entitled to a benefit equivalent to  $\frac{1}{4}$  of the amount payable to the retiree, the Division uses actuarial reduction factors developed by the actuary to determine the benefit amounts due the retiree and the beneficiary. These actuarial reduction factors are based on life expectancy and take into account the gender of the recipients. An actuarial reduction is applied to the full maximum benefit allowance as benefits are payable over the lives of two specific individuals. The amount of the actuarial reduction depends on the ages of the retiree and the designated beneficiary at retirement. If the designated beneficiary is several years younger than the retiree, the actuarial reduction would be larger as benefits are presumed to be payable over a longer period of time. You were 56 and [REDACTED] was 56 on your effective retirement date of April 1, 2018. Based on these ages, the actuarial reduction factor used to determine your Option D monthly benefit amount was .9820. Your maximum benefit allowance was \$4,721.28. Applying the reduction factor, your Option D monthly benefit amount was determined to be \$4,636.30 ( $\$4,721.28 \times .9820$ ).

At its meeting of May 3, 2018, the Board approved your Early retirement effective April 1, 2018, under Option D, in accordance with the selection indicated on both of your Applications for Retirement Allowance. In the May 3, 2018 letter, the following information was included:

In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.

Accordingly, your retirement became due and payable 30 days after the date your retirement was approved by the Board – that is, on June 2, 2018.

On August 24, 2020, the Division received a letter from you stating:

Based on my only sister's traumatic brain injury, I need to change my choice for receipt of my monthly pension benefits. I need to receive all of my fiscal benefits per month.

Subsequently, on October 27, 2020, the Division received a letter from you stating:

Based on my only sister's traumatic brain injury, I need to change my choice for receipt of my monthly pension benefits. I need to receive all of my fiscal benefits per month; I am requesting Retirement Option Change from D to Maximum.

By letter dated November 6, 2020 and November 16, 2020, you were informed by the Division's Retirement Bureau that the Division could not comply with your request due to the regulations governing retirement option selection, particularly N.J.A.C. 17:3-6.3. The letter also informed you of your appeal rights. By letter dated November 21, 2020, you wrote to the Board Secretary asking to be permitted to change your pension option selection from Option D to the Maximum Option.

At its meeting of January 14, 2021, the Board considered your personal statements, correspondence and all relevant documentation in your pension file and denied your request to change your option, in accordance with N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a).

By letter dated February 4, 2021, you appealed the Board's denial, thereby requesting a hearing in the OAL. At its meeting of March 4, 2021, the Board denied the hearing request, essentially for the reasons set forth in the Board's letter dated January 26, 2021, and because there are no issues of fact to be adduced at a hearing, the issue before the Board is a purely legal question. This Final Administrative Determination serves as formal notice that the Board has denied your request for an option change and your request for a hearing.

#### **CONCLUSIONS OF LAW**

The Board denied your request to change the payment option on your retirement allowance from Option D to the Maximum Option, in accordance with the provisions of N.J.A.C. 17:3-6.1(d), N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a).

N.J.A.C. 17:3-6.1(d) states in pertinent part:

A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:3-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates

a pension beneficiary, that beneficiary cannot be changed. The options, as established by N.J.S.A. 18A:66-47, include the following:

(Emphasis added)

...

9. Option D provides, upon the member's death, a lifetime monthly retirement allowance equal to 25 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

In addition, N.J.A.C. 17:3-6.2 states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

N.J.A.C. 17:3-6.3(a) states, in pertinent part:

Except as provided by N.J.A.C. 17:3-6.1 and 6.7, a member shall have the right to withdraw, cancel, or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

(Emphasis added)

...

At its meeting of May 3, 2018, the Board approved your April 1, 2018 Early retirement under your selection of Option D. Therefore, in accordance with N.J.A.C. 17:3-6.2, your retirement became due and payable on June 2, 2018. You had until June 2, 2018 to make any changes to your retirement option selection in accordance with N.J.A.C. 17:3-6.3(a). The record indicates that your request to change your option was dated August 24, 2020, after the maximum time allowed for changes had passed. Your request to make a change was not within the requisite time period, in accordance with the provisions of N.J.A.C. 17:3-6.1(d), N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a); therefore, you are prohibited from changing your retirement option selection from Option D to the Maximum Option.

Despite the unfortunate circumstances surrounding your situation, the Board is without authority to grant your request. The Board finds that the statutory and regulatory language above is clear and unambiguous. The law mandates that changes to retirement applications must be made

Ms. LaGreta Brown  
April 6, 2021  
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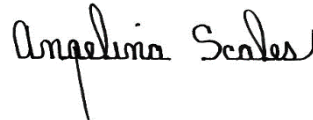
within 30 days of the retirement date or the Board approval date, whichever is later; in this case, no later than June 2, 2018. Therefore, the Board is obligated to deny your request.

As noted above, the Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling regulations and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Angelina Scales, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-4/AS

c: D. Dinkler (ET)  
DAG Amy Chung (ET)