



State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

March 18, 2021

Sent via email to [REDACTED]

Justin P. Kolbenschlag
Kolbenschlag Law, LLC

RE: Veronica Vargas
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Kolbenschlag:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying the request of your client, Veronica Vargas, to change her retirement to Maximum Option. The Board originally denied Ms. Vargas' request at its meeting of September 3, 2019. Subsequent to the Board's decision, Ms. Vargas obtained a Consent Order dated September 26, 2019, in which [REDACTED] waived [REDACTED] rights as her beneficiary, and requested that the Board reconsider its prior decision. The Board again considered her request at its meeting of February 19, 2020. At that time, the Board voted to table the matter in order to seek additional legal review of her appeal.

The Board next considered the matter at its meeting of July 15, 2020, and reaffirmed its original denial. Ms. Vargas filed a timely appeal of that determination on or about August 27, 2020, and advised that she had retained you as counsel. Ms. Vargas also requested that her matter be postponed until the October meeting in order to allow you additional time to file a submission on her behalf. On or about September 30, 2020, you requested additional time to file your submission as you were in the process of moving your legal practice. Ultimately, you filed your submission on or about January 29, 2020, and the matter was heard at the Board's February 17,

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2021, meeting. The Board, after careful consideration of your statements and submission, affirmed its previous denial and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing and directed the Board Secretary to draft findings of fact and conclusions of law for its review at the March 17, 2021, meeting.

The Board has reviewed the documentation and finds that the statutes and regulations governing the PERS and relevant case law do not permit the Board to grant Ms. Vargas' request.

FINDINGS OF FACT

The record before the Board establishes that Ms. Vargas filed for a Service retirement on October 24, 2014, to become effective February 1, 2015. At that time, Ms. Vargas selected [REDACTED] as her pension beneficiary under Option D. The Board approved her application at its meeting of February 18, 2015. The letter indicating the Board's approval, dated February 18, 2015, advised that Ms. Vargas would have thirty days after the effective date of her retirement or the date of Board approval, whichever is later, to "make any changes to [her] retirement." It is undisputed that Ms. Vargas did not seek to amend her retirement application prior to May 20, 2019, many years after the time to change her retirement had passed.

Subsequent to the August 2019 meeting, on or about October 11, 2019, Ms. Vargas provided a Consent Order in which [REDACTED] agreed to waive any right to her pension benefit as outlined in the [REDACTED]. However, the Board noted that the agreement only pertained to benefits she would receive during her lifetime, and did not reflect any agreement with respect to her pension beneficiary. The agreement stated, in pertinent part:

1. Pursuant to paragraph 6 of the parties' [REDACTED] which provides for each party to retain, without equitable distribution, his/her respective tax-deferred retirement assets, if any, including but not limited to 'Veronica's PERS pension and [REDACTED] Vanguard tax-deferred account,' plaintiff consents to the change of beneficiary status of defendant-counterclaimant's PERS pension.

At its meeting of July 15, 2020, the Board reconsidered and reaffirmed its decision denying Ms. Vargas request to remove [REDACTED] as her pension beneficiary. The Board relied upon N.J.A.C. 17:2-6.3, which authorizes a member to amend their retirement application within 30 days of the effective retirement date or Board approval, whichever is later. Thus, in Ms. Vargas' case, she would have had until March 17, 2015, to make any changes. The Division has no record of any contact from Ms. Vargas during that time frame or for several years afterward.

After Ms. Vargas filed her appeal of the Board's decision, you requested that the Board reconsider its prior decision, and alternatively, for a hearing in the Office of Administrative Law. In your January 29, 2021, submission, you assert, inter alia, the Board should use its inherent authority to reopen its previous decision and exercise its equitable powers and grant Ms. Vargas' request. You also assert that the Board's decision was a "rigid and mechanical" application the regulation which is a "reversible error as a matter of law."

After careful consideration of your arguments and all documentation in the record, the Board affirmed its previous denial and determined that there was not genuine issue of material fact in dispute and denied your request for an administrative hearing.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

A PERS member is permitted to amend their retirement application at any time prior their pension benefit becoming due and payable. Changes to a retirement application are governed by N.J.A.C. 17:2-6.3, which states, in pertinent part:

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 through MBOS or by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

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N.J.A.C. 17:2-6.2 provides that a retirement becomes due and payable “30 days after the date the Board approved the application for retirement or 30 days after the date of the retirement, whichever is later.”

Thus, Ms. Vargas would have had 30 days from the date of Board approval, or until March 17, 2015, to make any changes to her retirement application. Ms. Vargas did not request to remove [REDACTED] as her pension beneficiary until May 2019, after having received her pension benefit for several years and well beyond the regulatory time frame to change her application.

With respect to the Consent Order, the Board noted that it was not a party to the Consent Order and cannot be bound thereby. In addition, the Consent Order does not direct the Board to take any action or to allow Ms. Vargas to amend her pension beneficiary designation. Significantly, the rules and regulations governing the PERS cannot simply be waived by agreement between the parties.

The Board also declined to exercise its equitable authority under the facts of this case. There is no question here that Ms. Vargas selected her beneficiary while [REDACTED] and that Ms. Vargas was notified several times of the limited time period in which she could amend her retirement application. It is also undisputed that she collected her pension benefit for several years prior to requesting that her retirement option be changed and she be permitted. While the Board understands the reasons why Ms. Vargas seeks to change her beneficiary, the fact remains that she did not request the change during the time period allotted to amend her application. In fact, she received her pension benefit for years before requesting this change.

For these reasons, the Board denied Ms. Vargas’ request to amend her retirement application.

As noted above, the Board has considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was

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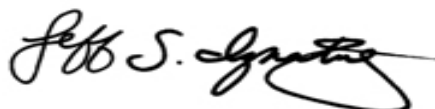
able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You also have the right 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,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

Jeff Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-10 /JSI
C: D. Dinkler (ET)
Veronica Vargas(ET) [REDACTED]