



State of New Jersey

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

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www.nj.gov/treasury/pensions
December 3, 2021

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Leanne Weaver DeTample

[REDACTED]

Re: TPAF MS [REDACTED] (Tier 5)
PERS MS [REDACTED]
TPAF MS [REDACTED] (Tier 1)

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. DeTample:

I am writing in reference to the decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) regarding your appeal of the Board's denial of your request to change your active TPAF membership account from Tier 5 to Tier 1. The Board originally denied your request at its meeting of August 5, 2021. You appealed the Board's decision via letter dated September 28, 2021. At its meeting of November 10, 2021, the Board considered your personal statements, reviewed your written submissions and accompanying documentation and found that the statutes and relevant case law governing the TPAF do not permit the Board to grant you the opportunity to change your active TPAF membership account from Tier 5 to Tier 1 status. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its December 2, 2021 meeting.¹

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

FINDINGS OF FACT

The record shows that you established membership in the TPAF under account [REDACTED] (Tier 1) on September 1, 1993 based on your employment as a teacher with the Lawrence Township Board of Education (Lawrence). The Board noted that your pension contributions with this location continued through June 30, 2013, at which time your account reflected a total of 199 months of TPAF service credit. The 199 months of TPAF service credit means that you are vested in the TPAF and are eligible for Deferred retirement. See N.J.S.A. 18A:66-36(b).

On March 1, 2014, you were enrolled in the Public Employees' Retirement System (PERS) under membership account [REDACTED] as a result of your employment as a Teacher Aide at Kingwood Township Board of Education (Kingwood).

Pursuant to N.J.S.A. 18A:66-7(a) your TPAF Tier 1 membership account expired on June 30, 2015, two years after you ceased making contributions to that membership account.

On December 5, 2016, the Division received an *Application for Interfund Transfer*, in which you requested to transfer service credit from the PERS to the TPAF. On February 10, 2017, the Division sent a letter to Kingwood stating that the transfer could not be processed as the Division had not yet received a new enrollment application for the TPAF. On February 22, 2017, a TPAF enrollment application was received via the Employer Pensions and Benefits Information Connection (EPIC) on-line application, as required due to your new position as teacher. Kingswood certified that you began employment as a teacher effective January 1, 2017. Therefore, pursuant to N.J.S.A. 18A:66-4(b)(3), you were enrolled in the TPAF under membership account [REDACTED] as a Tier 5 member. Subsequently, the *Application for Interfund Transfer* was processed and 34 months of PERS service credit was transferred to your TPAF Tier 5 membership account on April 1, 2017.

On April 17, 2017, the Division received a *Tier-to-Tier Transfer Form*, in which you requested to transfer your TPAF Tier 1 membership to your TPAF Tier 5 membership. This

request was processed on May 23, 2017. As a result, the 199 months of service credit in your expired TPAF Tier 1 account was transferred to your active TPAF Tier 5 account.

On April 14, 2021, the Board Office received an email by you appealing the denial of your interfund transfer.

On May 18, 2021, this email was forwarded to the Division's Enrollment Section for an administrative review and determination.

In response, on May 26, 2021, Nikki Munko, Supervising Pensions Benefits Specialist, Enrollment Section, acknowledged your claim that miscommunication prevented you from filing an *Application for Interfund Transfer* to transfer the service credit from your TPAF Tier 1 account to your PERS Tier 5 account. However, she noted that you emailed the Division on May 12, 2013 regarding your intent to resign from the TPAF position at Lawrence, effective June 30, 2013, and asked what would happen if you took a long term substitute position. The Division responded:

"If you become employed as a long-term substitute, in a budgeted position that is fixed at 32 hours per week, that position qualifies for enrollment in the Public Employees' Retirement System (PERS) on the date of hire. In this scenario you would have a new PERS account and a vested, inactive, TPAF account. You could then apply for an Interfund Transfer of your TPAF Tier account into your PERS Tier 5 account, thereby making the PERS account a Tier 1."

As noted in the Division's response, you were informed that you may interfund transfer your TPAF Tier 1 account to your PERS Tier 5 account and maintain your original Tier 1 status under the PERS account. However, in order to have effectuated the interfund transfer, you were required to file an *Application for Interfund Transfer* with the Division prior to the expiration of your TPAF Tier 1 account. Ms. Munko went on to note that your last contribution to the TPAF Tier 1 account was on June 30, 2013, and your right to transfer this service into your PERS account ended on June 30, 2015, pursuant to N.J.S.A. 18A:66-7(a). In addition, she stated that tier-to-tier transfers are not reversible and upon signing the *Tier-to-Tier Transfer Form* you irrevocably waived all rights to your inactive account.

At its meeting of August 5, 2021, the Board considered your request to change your active TPAF membership account from Tier 5 to Tier 1. After careful consideration, the Board denied your request.

By letter dated September 28, 2021, you filed an appeal of the Board's decision. At its meeting of November 10, 2021, the Board considered your appeal and request for a hearing. The Board ultimately found that no genuine issue of material fact was in dispute and therefore directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of December 2, 2021.

CONCLUSIONS OF LAW

The issue before the Board is whether you are eligible to change your active TPAF membership account from Tier 5 to Tier 1 status. As noted above, the last contribution to your TPAF Tier 1 account was on June 30, 2013, at which time your TPAF membership was vested as it reflected 16 years and 7 months of TPAF service credit. There was no record of activity in your TPAF Tier 1 account after June 30, 2013.

The Board affirmed the Division's determination that you are not permitted to change your active TPAF membership account from Tier 5 to Tier 1 status. The basis of the Board's determination that your TPAF Tier 1 membership account was inactive for more than two years, in accordance with N.J.S.A. 18A:66-7(a) and N.J.A.C. 17:3-7.1.

N.J.S.A. 18A:66-7(a) states:

Membership of any person in [TPAF] shall cease:

- (a) if, except as provided in section 18A:66-8, he shall discontinue his service for more than two consecutive years;

...

As N.J.S.A. 18A:66-7(a) stipulates membership in the TPAF shall cease after more than

two years of inactivity, you no longer had the option to resume contributions to your expired TPAF Tier 1 membership account or interfund service credit from that account to your active TPAF membership account.

In addition, N.J.A.C. 17:3-7.1 states in pertinent part:

(b) [A] member is eligible to transfer membership from another State-administered defined benefit retirement system, provided the membership has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

1. A member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another, must file an "Application for Interfund Transfer." This application will terminate membership in the former system when approved. (Emphasis added)

...

5. The member is not eligible to transfer service credit if any of the following conditions apply:

ii. The member has credit in the present system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by *N.J.S.A. 43:15A-14*. *N.J.S.A. 43:15A-14* provides that a member of the PERS at the time of enrollment in the TPAF may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS three or less years from the date of enrollment in the TPAF. The member must apply to transfer this service no more than two years from the date of the last contribution in the PERS, or the member's PERS account has not expired due to the provisions of *N.J.S.A. 43:15A-8*. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

iii. The account has expired (it has been more than two years from the date of the last contribution, and the member is not vested, nor has the member's account remained active due to the provisions of *N.J.S.A. 18A:66-8*).

Interfund transfers of service credit are not mandatory. Rather, such transfers are optional, and occur only at the member's request.

You assert that miscommunication between Kingwood's business office and the Division led you to believe that you could switch from your PERS account back to TPAF Tier 1 if you took a teaching position and that no one mentioned that you would need to complete any forms to do

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this. While some employers may assist a member in matters such as these, as noted above an interfund transfer is optional, and is not a mandatory transaction, like enrollment. Therefore, if an employee chooses to exercise the option, the responsibility to timely file the required application lies with the member, not the employer.

As stated previously, prior to your resignation from your Tier 1 teaching position you emailed the Division to find out what would happen to your account if you took a long-term substitute teaching position. In the Division's response, you were informed that you may interfund transfer your TPAF Tier 1 account into your PERS Tier 5 account and maintain your original Tier 1 status under the PERS account by filing an *Application for Interfund Transfer*. You did not exercise your interfund transfer option, and your TPAF Tier 1 account expired. Farrington v. State, 2018 N.J. Super. Unpub. LEXIS 189, at *8 (App. Div. Jan. 26, 2018) (affirming agency determination that PERS account inactive for more than two years could not be interfund-transferred to active Judicial Retirement System account).

As noted above, the Board has reviewed all relevant documentation and 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 on the basis of the TPAF enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence constitutes 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 determination 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

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Sincerely,

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

Jeff Ignatowitz, Acting Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-6/SD

c: N. Munko (ET)