



State of New Jersey

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

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

March 18, 2021

VIA REGULAR MAIL

Law Office of Stephanie McClure
Stephanie McClure, Esq.



RE: German Diaz
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. McClure:

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, German Diaz to amend his retirement option from Option A to Maximum after the 30-day period for amending his application had expired.

The Board originally denied Mr. Diaz' request at its meeting of October 21, 2020.¹ You filed a timely appeal of that determination on December 3, 2020, and requested a hearing in the Office of Administrative Law.² At its meeting of February 17, 2021, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its March 17, 2021, meeting.

FINDINGS OF FACT

The record before the Board reveals that Mr. Diaz filed his application for Ordinary Disability retirement benefits on April 22, 2019, with an effective date of January 1, 2020. On the

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

² Mr. Diaz appeared at the meeting pro se.

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application, Mr. Diaz selected Option A, designating [REDACTED] as his beneficiary. After Mr. Diaz filed his application, the Division of Pensions and Benefits (Division) provided him with an *Estimate of Retirement Benefits*, dated May 8, 2019, which provided the calculations for each retirement option. That letter advised Mr. Diaz that he could amend his retirement application within 30 days of his effective retirement date or the date of Board approval, whichever is later.

The estimate also advised:

Once you retire, **you cannot change your payment method option.** If you chose payment method options A, B, C, D, 2, 3, 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 original.)]

Mr. Diaz was notified of the time-frame in which he could amend his retirement application, and how to do so, a second time via letter dated January 16, 2020. You do not dispute that Mr. Diaz received this letter. This letter advised Mr. Diaz that the Board approved his application for Ordinary Disability retirement benefits effective January 1, 2020 under Option A at its meeting of January 15, 2020. The letter advised Mr. Diaz that:

Changes to your application should be made through MBOS; however, if you are unable to make the changes through MBOS, you must provide a written statement to the Retirement Bureau within 30 days from the date of board approval or the date of retirement, whichever is later.

Thus, pursuant to (N.J.A.C. 17:2-6.3(b) and as detailed in the Board letters, Mr. Diaz had until February 14, 2020, to amend his retirement option. The Division's records indicate that Mr. Diaz first called the Division on February 27, 2020, which is beyond the 30 days to amend the application as permitted under the regulation. The counselor who spoke to Mr. Diaz advised him

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that he was no longer able to amend his application, but that he could write to the Division and explain that he sought to change his retirement option.

On or about March 6, 2020, Mr. Diaz wrote the Division requesting to amend his retirement option. The Division responded via letter dated March 9, 2020, advising Mr. Diaz of the regulation and denied his request. Mr. Diaz appealed the Division's determination to the Board. At its meeting of October 21, 2020, the Board denied Mr. Diaz' request for the reasons detailed above. At its meeting of February 17, 2021, the Board denied Mr. Diaz' request for an administrative hearing and directed the Board Secretary to draft findings of fact and conclusions of law for review at its meeting of March 17, 2020.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

PERS regulations provide that "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..." N.J.A.C. 17:2-6.3(a). Such changes are permitted prior to the member's retirement becoming "due and payable," which occurs after 30 days have elapsed following the effective retirement date or Board approval, whichever is later. Ibid.

Here, there is no dispute that Mr. Diaz's retirement application was approved by the Board on January 15, 2020. Thus, pursuant to the regulation, Mr. Diaz had until February 14, 2020 to amend his retirement option. However, his request to do so was dated March 6, 2020, and received in the Division beyond the 30 days as permitted under the aforementioned regulation. The Board also noted that you acknowledged that Mr. Diaz received the January 15, 2020, letter from the Board advising that his application had been approved, and that he would have a period of 30 days to amend his application if he chose to do so. Thus, there is no dispute that Mr. Diaz was informed of this time limit at the very least, with the January 16, 2020, letter. Accordingly,

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the Board denied his request to amend his retirement option from Option A to Maximum as he was beyond the time period for doing so under the regulation.

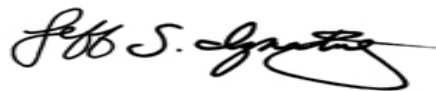
As noted above, the Board has considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and 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,



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

G-8/JSI
C: D. Dinkler (ET)

German Diaz