



State of New Jersey

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

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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

August 3, 2018

Joseph Falana
[REDACTED]
[REDACTED]

RE: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Falana:

I am writing in reference to the action by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) in denying your request to change the option selection on your retirement allowance after your retirement allowance became due and payable.

The TPAF Board reviewed and denied this request at its April 5, 2018 meeting. By letter dated May 15, 2018, you appealed the Board's decision, thereby requesting a hearing in the Office of Administrative Law (OAL) which was denied at the Board's July 12, 2018 meeting. Findings of Fact and Conclusions of Law, as outlined below, were presented to and approved by the TPAF Board at its meeting of August 2, 2018.

The TPAF 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 TPAF Board to change the option on your retirement allowance.

FINDINGS OF FACT

According to the records of the Division of Pensions and Benefits ("Division"), you were enrolled in the TPAF effective September 1, 2001, as a result of your employment as a Teacher with Pennsauken Township Board of Education. Your TPAF membership continued based on

your employment at Pennsauken Township Board of Education, until your retirement, effective July 1, 2017.

The Division received an online *Application for Retirement Allowance* through the Member Benefits Online System (MBOS) on March 16, 2017, requesting a Service retirement effective July 1, 2017 under the Maximum retirement option.

A *Quotation of Retirement Benefits* was generated and mailed to you on April 20, 2017, indicating your request for a July 1, 2017 Service retirement, under the Maximum retirement option. It is noted that the Quote 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.”

The record also shows that on May 4, 2017, your application for Service retirement was approved by the Board for a July 1, 2017 effective date, under the Maximum retirement option. A letter of that same date was mailed informing you of the Board’s action. In the May 4, 2017 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 effective date of your retirement – that is, on July 31, 2017.

On October 25, 2017, the Division received a letter from you stating:

“I recently retired on July 1, 2017. As I was a widower at that time I chose Pension Option Maximum Option with no Beneficiary. I then got married on September 17th, 2017. I would like to now switch to Option C: 50% to

Beneficiary. [REDACTED] |

appreciate your attention to this matter.”

By letter dated November 3, 2017, 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(a). The letter also informed you of your appeal rights. By letter postmarked February 26, 2018, you wrote to the TPAF Board Secretary asking to be permitted to change your pension option selection from Maximum to Option C.

At its meeting of April 5, 2018, the Board considered all your correspondence and relevant documentation in your pension file and denied your request to change your option, in accordance with N.J.S.A. 18A:66-47, N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a).

By letter dated May 15, 2018, you appealed the Board’s denial, thereby requesting a hearing in the Office of Administrative Law. At its meeting of July 12, 2018, the TPAF Board denied the hearing request, essentially for the reasons set forth in the Board’s letter dated April 10, 2018, 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 the Maximum retirement option to Option C, in accordance with the provisions of N.J.S.A. 18A:66-47, N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a).

N.J.S.A. 18A:66-47 states in pertinent part:

At the time of retirement a member shall receive benefits in a retirement allowance payable throughout life, or the member may on retirement elect to receive the actuarial equivalent of the member’s retirement allowance, in a lesser retirement allowance payable throughout life...

...

Option 5. Some other benefit, which is equivalent to the full amount, three-quarters, one-half or one-quarter of the member's retirement allowance, shall be paid to whomever the member nominates and if that nominee dies before the member, the member's retirement allowance shall increase to the maximum retirement allowance for the member's lifetime, provided that such other benefit together with the member's lesser and maximum retirement allowances shall be certified by the actuary to be of equivalent actuarial value.

...
Further, N.J.A.C. 17:3-6.2, which 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.

In addition, N.J.A.C. 17:3-6.3 states in pertinent part:

- (a) 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.

...
The record shows that your retirement was Board approved on May 4, 2017, effective July 1, 2017, under your selection of the Maximum retirement option. Therefore, a written request to amend your option selection must have been received no later than July 31, 2017. You contacted the Division by phone on October 4, 2017, and spoke to a counselor who advised you that you had only thirty days from your retirement date to make any changes to your retirement option.

On October 25, 2017, you made a subsequent request to the Division. By letter dated November 3, 2017 from the Retirement Bureau, the Division properly denied your request to change your retirement option because the law prohibits the change of option selection beyond the 30-day "due and payable" period. At its meeting of April 5, 2018, the Board upheld the administrative denial as you were no longer permitted to make an option change for your pension benefit when you made the request.

By letter dated May 15, 2018, you wrote to the Division appealing the Board's April 5, 2018 decision denying your request to change your retirement option from the Maximum Option to Option C. At its meeting of July 12, 2018, the Board considered your statement and the reasons you provided as the basis of your request to make an option change. Despite the unfortunate circumstances surrounding your situation, the TPAF Board is without authority to grant your request.

Your request to make a change was not within the requisite time period, in accordance with the provisions of N.J.S.A. 18A:66-47, 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 Maximum to Option C.

The TPAF Board finds that the statutory and regulatory language above is clear and unambiguous. The law mandates that changes to retirement applications must be made within 30 days of the retirement date or the Board approval date, whichever is later; in this case, no later than July 31, 2017. Therefore, the TPAF Board is obligated to deny your request.

As noted above, the TPAF Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the TPAF 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.

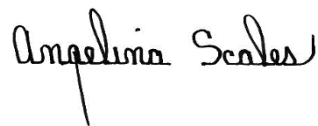
You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006

Joseph Falana
August 3, 2018
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Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink that reads "Angelina Scales". The signature is written in a cursive style with a long vertical line extending downwards from the end of the name.

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

G-3

c: Amy Chung, DAG
DAG Jeff Ignatowitz (ET)
Cheryl Chianese (ET)