ATTACHMENT C

**RESPONDENT'S ARGUMENT** 

## FAX COVER SHEET

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COMPANY		
FAXNUMBER	19167953972	
FROM	Renaker Hasselman Scott LLP	
DATE	E 2022-02-25 00:59:46 GMT	
RE	Respondent's Argument No. 2020-1307	

### COVER MESSAGE

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6	BOARD OF ADMINISTRATION			
7	CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM			
8	In the Matter of the Application for )			
9	Disability Retirement of	) AGENCY CASE NO. 2020-1307 ) OAH NO. 20210200265		
10	ANGELA M. ACEVES,	) RESPONDENT ANGELA M. ACEVES'		
11	Respondent,	) RESPONDENT ANGELA M. ACEVES ) ARGUMENT AGAINST PROPOSED ) DECISION )		
12	and			
13	RIVERSIDE COUNTY SCHOOLS –	) )		
14	MOUNT SAN JACINTO COMMUNITY COLLEGE DISTRICT,	)		
15	Respondent.	) }		
16		)		
17	The Board should remand to the Administrative Law Judge in view of the intervening			
18	decision of the Social Security Administration finding Ms. Aceves disabled under Social			
19	Security's rules as of May 2020. On February 11, 2022 – one day after the Administrative Law			
20	Judge signed his proposed decision in this case – an Administrative Law Judge of the Social			
21	Security Administration issued her decision finding Ms. Aceves totally disabled under Social			
22	Security's rules. Of course, Social Security's standard of disability is not the same as the PERL's			
23	standard: it is far <i>stricter</i> than the standard for CalPERS disability retirement, requiring that Ms.			
24	Aceves be unable to engage in any "substantial gainful work which exists in the national			
25	economy." 42 U.S.C. § 423(d). The PERL's more lenient standard requires only that Ms. Aceves			
26	be substantially limited from performing her usual job duties. McCormick v. Pub. Employees'			
27	Ret. Sys. (2019) 41 Cal. App. 5th 428, 437 ("[S]ection 21156 is concerned with members' ability			
28	to perform their duties for their actual employers, not their ability to perform those duties in the			
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No. 2020-1307 In re Angela M. Aceves

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abstract.") 1

2 Applying the stricter standard, the Social Security Administrative Law Judge found that not only can Ms. Aceves not perform her past relevant work – that is, her usual job duties – but 3 4 she is restricted to a *reduced* range of sedentary work. Under Social Security's rules, even being restrict to the *full* range of sedentary work means that a claimant has "very serious functional 5 limitations." 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(h)(4). A finding that a claimant is 6 7 further limited to less than the full range of sedentary work, as in Ms. Aceves' case, must be 8 "based on careful consideration of the evidence of the individual's medical impairment(s) and the 9 limitations and restrictions attributable to it." Id. Because the Social Security Administrative Law Judge performed that careful consideration, and the Administrative Law Judge here did not, this 1011 matter should be remanded. The disturbing inconsistency in outcomes, with Social Security determining that Ms. Aceves is disabled from any job at all, while CalPERS concludes that she 12 13 can return to her prior job, should be corrected by remand.

14 The Board should also remand because contrary to the proposed decision's analysis, 15 Government Code section 21156 does not establish threshold requirement that a member present 16expert testimony in order to demonstrate that she is substantially incapacitated from performing 17her job duties. A requirement that a member hire a professional disability evaluator to testify in 18support of her application, as CalPERS did to support its denial at a cost of thousands of dollars, 19 penalizes members who lack the financial wherewithal to front that cost. Ms. Aceves presented 20competent medical evidence in the form of records from her treating neurologist of ten years, 21 who retired after completing her CalPERS application materials but before the hearing. The 22 proposed decision ignores that evidence in favor of the opinion of CalPERS' paid disability 23 evaluator, who testified that he met with Ms. Aceves for just thirty minutes, solely because Ms. 24 Aceves did not hire her own paid expert. The Board should remand.

Bv

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26 Dated: February 24, 2022

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No. 2020-1307 In re Angela M. Aceves Respectfully submitted,

RENAKER HASSELMAN SCOTT LLP

Teresa S. Renaker

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# SOCIAL SECURITY ADMINISTRATION

Office of Hearings Operations Suite 1311 1718 Woodlawn Drive Baltimore, MD 21207-4005

Date: February 11, 2022

Angela Marie Aceves

# Notice of Decision - Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

## If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

#### How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. The preferred method for filing your appeal is by using our secure online process available at https://www.ssa.gov/benefits/disability/appeal.html.

You may also use our Request for Review form (HA-520) or write a letter. The form is available at https://www.ssa.gov/forms/ha-520.html. Please write the Social Security number associated with this case on any appeal you file. You may call (800) 772-1213 with questions.

Please send your request to:

Appeals Council 5107 Leesburg Pike Falls Church, VA 22041-3255

Form HA-L76 (03-2010)

Suspect Social Security Fraud? Please visit http://oig.ssa.gov/r or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

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# Time Limit To File An Appeal

You must file your written appeal within 60 days of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not

## What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence with your appeal. Sending your written statement and any new evidence with your appeal may help us

#### How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision, Issue its own decision, or 4
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

# The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

# When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

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#### If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (855) 207-7083. Its address is:

Social Security 3095 W Devonshire Ave Hemet, CA 92545-5003

> Laura Bernasconi Administrative Law Judge

Enclosures: Decision Rationale Form HA-L15 (Fee Agreement Approval)

> Janice James-Lake James Lake & Associates P. O. Box 2060 Sun City, CA 92586

cc;

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