

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Robert J. Gardner (Respondent Robert) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated June 22, 2022. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent Robert appealed CalPERS' determination to deny his request to transfer the lifetime monthly benefit of Hayley Gardner (Hayley) to Ryan Gardner (Respondent Ryan) after Hayley's untimely death. Both Hayley and Respondent Ryan were named as equal share beneficiaries by member Kim M. Gardner (decedent) for the lifetime monthly allowance payable upon her death.

Decedent became a school miscellaneous member of CalPERS through her employment with the Capistrano Unified School District on August 20, 2001. Prior to retiring, decedent visited the CalPERS Orange County Regional Office on January 22, 2020, for a retirement counseling session. A CalPERS team member assisted decedent by explaining the Service Retirement (SR) and Disability Retirement (DR) options, going over the differences between the Pre-Retirement and Post-Retirement death benefits, and instructing decedent on how to obtain online estimates for both SR and DR options. The CalPERS team member also reviewed and explained the precautionary disability application process. When CalPERS is notified that a member has a life-threatening condition, CalPERS will suggest that the member submit a Precautionary Disability Retirement Application in case the member needs to retire due to their condition.

On January 22, 2020, decedent submitted a Precautionary Disability Retirement Application and elected the "Flexible Beneficiary Option 4 with Specific Percentage" (Option 4), naming her two children, Hayley and Respondent Ryan, as equal share beneficiaries to receive the Option 4 benefit payable upon her death. The Option 4 benefit consists of the right to have a retirement allowance paid to a member until his or her death, and thereafter to have a monthly allowance paid to his or her named beneficiary for life (Gov. Code, § 21477, subd. (a).) Decedent named her spouse Respondent Robert as beneficiary for the lump sum Retired Death Benefit.

Decedent passed away on October 11, 2020. CalPERS determined that based on the options decedent elected on her retirement application, Post-Retirement death benefits were payable in accordance with Government Code section 21504. As decedent's surviving spouse, Respondent Robert was entitled to the lump sum Retired Death Benefit and a lifetime monthly Post-Retirement Survivor Allowance (PRSA). Decedent's children, Respondent Ryan and Hayley, were entitled to receive a monthly Option 4 benefit for life, to be split equally between them.

On November 19, 2020, CalPERS notified Respondent Robert, Respondent Ryan, and Hayley of their entitlement to the death benefits payable. They completed and returned

survivor benefit applications shortly thereafter. On January 6, 2021, CalPERS issued the Option 4 benefits to both Hayley and Respondent Ryan in equal shares; and the lump sum Retired Death Benefit and PRSA to Respondent Robert.

On January 19, 2021, Respondent Robert notified CalPERS by telephone that Hayley passed away unexpectedly on January 15, 2021. He asked what would happen to Hayley's Option 4 monthly allowance share now that she had died. On January 20, 2021, Respondent Robert followed up with a letter to CalPERS requesting that Hayley's Option 4 monthly allowance be given to Respondent Ryan to increase his own monthly allowance.

On February 18, 2021, CalPERS denied Respondent Robert's request to have Hayley's Option 4 share transferred to Respondent Ryan. CalPERS explained that upon Hayley's death, her monthly allowance is no longer payable to anyone because CalPERS is only authorized to pay monthly benefits to a named beneficiary for his or her lifetime.

On April 12, 2021, CalPERS sent a determination letter to Respondent Robert formally denying his request to have Hayley's Option 4 share conveyed to Respondent Ryan. CalPERS also informed Respondent Robert of his right to appeal the determination. Respondent Robert appealed CalPERS' determination and exercised his right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on May 25, 2022. Both respondent Robert and Respondent Ryan were present at the hearing and represented themselves.

Prior to the hearing, CalPERS explained the hearing process to Respondents and the need to support their case with witnesses and documents. CalPERS provided Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents' questions and clarified how to obtain further information on the process.

Respondents each testified at hearing on their own behalf that CalPERS' denial of their request to have Hayley's Option 4 allowance added to Respondent Ryan's allowance is not fair or just; and is contrary to decedent's intention to leave a lifetime monthly allowance for her children. Respondent Robert and Respondent Ryan testified that the circumstances of their case are unique and justify an exception. Respondent Robert and Respondent Ryan feel there should be some room for discretion, compromise, and fairness to be administered in this matter.

At the hearing, CalPERS presented documentary evidence and the testimony of staff from the Disability and Survivor Benefits Division. Staff explained CalPERS' determination, and the processing of benefits for decedent's beneficiaries.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied the appeal. The ALJ found that CalPERS correctly determined that Hayley's Option 4 monthly allowance cannot be transferred to Respondent Ryan to increase his monthly allowance. CalPERS' obligation to pay Hayley's Option 4 allowance terminated

when she died. Government Code section 21477 clearly and unambiguously states that the Option 4 monthly allowance is payable to a member's named beneficiary "for life." Section 21477 contains no provision or exception authorizing CalPERS to continue paying an Option 4 monthly allowance beyond the named beneficiary's lifetime. The laws within the Public Employees' Retirement Law (PERL) that govern the other lifetime retirement benefit option allowances similarly provide that a named beneficiary shall receive a monthly allowance "for life." (See Gov. Code, §§ 21475 (Option 2), 21475.5 (Option 2), 21476 (Option 3), and 21476.5 (Option 3).)

While understanding that Hayley's unexpected death three months after decedent's death has caused a tragic and painful situation for the surviving members of the family, the ALJ concluded that there is no legal authority that would allow CalPERS to continue paying Hayley's Option 4 allowance after her death. There is no correctable error in accordance with Government Code section 20160, and the doctrine of equitable estoppel does not apply in this case.

The ALJ found that CalPERS has carried out decedent's intentions in accordance with the PERL. Decedent made a valid designation on her retirement application naming her children as equal share beneficiaries for the Option 4 lifetime beneficiary allowance. After decedent died, CalPERS paid death benefits to her beneficiaries according to her intentions expressed in her application and in accordance with the PERL. CalPERS has fully complied with all requirements under Government Code section 21477. All of decedent's named beneficiaries were paid the benefit for which each was deemed eligible.

There is no statutory authority that would establish Respondent Ryan's entitlement to the benefit increase he seeks. He is entitled to his Option 4 monthly allowance share, as designated by decedent, for his lifetime. He is not entitled to have his Option 4 allowance increased by Hayley's share following her death. Respondent Ryan has received, and will continue to receive for his lifetime, his Option 4 beneficiary allowance. Decedent made no correctable error or omission in completing her retirement application and designating her children as her Option 4 beneficiaries.

In his Petition for Reconsideration, Respondent Robert expresses his deep dissatisfaction with the decision made by the Board, makes accusations that the Board did not take the time to read his letter, and believes if they had, they would have found in his favor. Respondent Robert believes that the Board should use discretion, compassion, and similar arguments he included in his appeal to allow the Board to find in his favor. However, Respondent Robert has provided no legal basis in his argument to justify his position. There is no statute that would allow for his request.

Respondent Robert raises the same arguments that were considered and rejected by the ALJ after hearing. No new evidence has been presented by Respondent Robert that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the September 21, 2022, meeting was well reasoned and based on the PERL and the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board should deny Respondent Robert's Petition for Reconsideration and uphold its prior decision.

November 16, 2022

NHUNG DAO
Attorney