



State of New Jersey

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

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October 25, 2022

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Dorothy Artis
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Artis:

At its meeting on September 21, 2022, the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered all documentation in the record concerning your appeal of the Board's June 15, 2022, decision, which denied your request to waive the accrued interest on the outstanding balance of your pension loan as determined by the Division of Pensions and Benefits (Division). On or about July 31, 2022, you filed a timely appeal of the Board's decision. At its meeting of September 21, 2022, the Board, denied your request for reconsideration and finding no genuine issue of material fact in dispute, denied your request for a hearing and directed the undersigned to draft a Final Administrative Determination for review and consideration at its meeting of October 24, 2022.¹

FINDINGS OF FACT

The record establishes that you were enrolled in the PERS in October 1974 as a result of your employment with the Department of Institutions and Agencies. The record before the Board establishes that when you separated from employment with the Division of Family Development

¹ Due to a scheduling conflict, this matter was moved from the agenda of the PERS Board's regularly scheduled meeting of October 19, 2022 to the agenda of a special meeting on October 24, 2022. Both meetings were conducted via teleconference.

in December 1989, your outstanding loan balance was \$3,550.25. However, the unpaid principal balance continued to accrue interest for the period of time during which you did not participate in the PERS.

The Board noted that by correspondence dated January 8, 1992, you were quoted a loan balance amount of [REDACTED] and advised that if the amount was not received within 30 days, additional interest would accrue until the loan is paid in full. On a statement dated January 10, 1992, you elected to have your monthly retirement checks withheld until the loan balance, plus accrued interest, is satisfied.

At its meeting on January 15, 1992, the Board approved your August 1, 2011 Deferred retirement.

A Quotation of Retirement Benefits dated July 20, 2011, concerning your August 1, 2011 Deferred retirement advised that you had a loan balance of [REDACTED], and that loan deductions in the amount of [REDACTED] would be deducted from your retirement checks until the balance was paid in full.² Loan deductions should have continued with your retirement checks; however, this did not occur.

By letter dated December 13, 2012, the Division notified you that a post-retirement audit of your account discovered the outstanding loan balance of [REDACTED] and advised that absent a lump sum payment within 30 days, a monthly deduction of [REDACTED] from your retirement check would commence. You responded to that notice, advising that you have always intended to pay the loan but inquired about the total amount. On January 8, 2013, the Division advised that the balance of [REDACTED] included accrued interest up to your retirement date. Thereafter, a lump sum payment was not received and no monthly deductions were taken.

On September 11, 2017, the Division again notified you that a review of your PERS account revealed that you had a pension loan balance of [REDACTED] that was never satisfied prior

² Chapter 132, P.L. 1999 permitted members to continue their loan deductions into retirement.

to your retirement as required by N.J.S.A. 43:15A-34. Therefore, the Division established a repayment schedule with payments being deducted from your monthly retirement allowance to satisfy the outstanding obligation with applicable interest. Starting with your check dated October 1, 2017, a loan deduction of [REDACTED] was withheld from your retirement allowance.

On or about October 18, 2017, you replied via letter and requested that the monthly loan deduction be reduced to [REDACTED]. On November 15, 2017, the Division granted your request to reduce your monthly loan deduction to [REDACTED] (effective with your check dated December 1, 2017) until the balance of the loan and accrued interest is satisfied.

An interest rate of 4.00% was used to determine the amount of interest and the interest period is from August 1, 2011 through May 31, 2024. The total accrued interest is equal to [REDACTED]. The interest rate for loans requested prior to June 8, 2007, is set at 4.00%. N.J.S.A. 43:15A-34. Loans requested after June 8, 2007, have an interest rate set annually by the State Treasurer. Ibid. The interest rate remains constant through the life of the loan.

Following its review of your appeal, the Board denied your request to waive the accrued interest owed on the outstanding loan balance.

You filed an appeal of the Board's decision on or about July 21, 2022. At its September, 2022 meeting, the Board considered your appeal and there being no genuine issue of material fact in dispute, directed the undersigned to draft this Final Administrative Determination, which was presented to and approved by the Board at its October 24, 2022, meeting.

CONCLUSIONS OF LAW

N.J.S.A. 43:15A-34 governs the repayment of a PERS member's pension loan and states in part that "[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof." After the enactment of Chapter 92, the State Treasurer sets "a commercially reasonable rate" on January 1 of each calendar year. Ibid. Further:

Loans shall be made to a member from the member's aggregate contributions. The interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

[N.J.S.A. 43:15A-34.]

N.J.S.A. 43:15A-34.1 governs the payment of loans carried into the member's retirement:

In the case of any member who retires without repaying the full amount so borrowed, the Division of Pensions and Benefits shall deduct from the retirement benefit payments the same monthly amount which was deducted from the compensation of the member immediately preceding retirement until the balance of the amount borrowed together with the interest is repaid. In the case of a pensioner who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the pensioner either in the form of monthly payments due to his beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

The PERS is a "qualified governmental defined benefit plan pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service." N.J.S.A. 43:3C-18(a). The Director of the Division is "authorized to modify the provisions of the [PERS], when a modification is required to maintain the qualified status of the [PERS] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS)." N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding \$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then the loan becomes a "deemed distribution" taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does

not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1).

The PERS Board is also aware that the issue of the repayment of loans in retirement implicates more than just your loan. Because the PERS is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the PERS's failure to comply with all the requirements of the IRC could result in the IRS determining that the PERS would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the PERS tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the plan is subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

In your appeal, you assert that you should not have to pay the additional interest and take issue with the Division's handling of the matter over the years. You also requested that a determination be made on whether or not a mistake was made along the way.

While the Board noted that the remaining payment on your loan was not carried into retirement and that this last payment was not deducted from your monthly retirement benefit, N.J.S.A. 43:15A-54, provides for the correction of errors, stating, in pertinent part:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

While the Board noted your arguments, it has no authority to grant your request to waive and/or refund the amount of accrued interest charged on your loan as doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super.

51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 43:15A-34 and N.J.S.A. 43:15A-34.1, IRC Section 72(p), and the State's Closing Agreement with the IRS, which could result in the PERS no longer being considered a tax-qualified plan, which would affect the entire State, all employers in the PERS, and every member and retiree.

As noted above, the Board has considered your personal statements, written submissions 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 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 S. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-7/JSI

C: D. Bernardini (ET)