



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

June 20, 2019

Sent via email to: [REDACTED]

Randall R. Milazzo, PC  
[REDACTED]  
[REDACTED]

RE: Maria Del Carmen Garber  
[REDACTED]

Dear Mr. Milazzo:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) in denying your client, Maria del Carmen Garber's request to receive Ordinary Disability retirement benefits prior to the date upon which she attained ten years of PERS service credit in her account as required under N.J.S.A. 43:15A-42. At its meeting of April 17, 2019, the Board considered your personal statements and all relevant documentation in the record and denied Ms. Garber's request to receive retroactive Ordinary Disability retirement benefits. Moreover, because Ms. Garber began receiving Ordinary Disability retirement benefits as of November 1, 2018, no contested issues remained in the Office of Administrative Law (OAL) and therefore the Board voted, consistent with N.J.A.C. 1:1-3.3(a), to withdraw the contested case from the OAL. At its meeting of May 15, 2019, the Board considered and denied your request for an administrative hearing on Ms. Garber's request for retroactive retirement benefits, as there was no genuine issue of material fact in dispute. Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PERS Board at its June 19, 2019, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the PERS Board to grant Ms. Garber's request for Ordinary Disability retirement benefits prior to attaining 10 years of PERS service credit.

### **FINDINGS OF FACT**

The Board made the following findings of fact:

A review of the relevant documentation in this matter establishes that Ms. Garber applied for an Accidental Disability retirement benefit on or about January 25, 2012. The Board considered her application at its meeting of August 15, 2012, and found that although she was totally and permanently disabled, she did not qualify for an Accidental Disability retirement benefit because the alleged incidents were not "undesigned and unexpected" as required by N.J.S.A. 43:15A-53 and relevant case law. Moreover, although Ms. Garber was found to be totally and permanently disabled from her regular and assigned duties, she lacked the requisite 10-years of PERS service credit to qualify for an Ordinary Disability retirement benefit pursuant to N.J.S.A. 43:15A-42. Toward that end, the Board advised in its letter that if Ms. Garber received a Worker's Compensation award or was eligible to purchase additional PERS service credit sufficient to obtain the requisite years of service necessary for an Ordinary Disability retirement benefit, the Division would reconsider her eligibility for that benefit at that time. Ms. Garber appealed the Board's denial of her Accidental Disability application and requested a hearing in the OAL. The Board granted her request and the matter was transferred to the OAL as a contested case.

Subsequent to Ms. Garber's appeal, on or about September 16, 2013, Ms. Garber amended her application to an Ordinary Disability retirement with an effective date of November 1, 2013. On January 5, 2015, Ms. Garber's previous attorney, Mr. Riehl, wrote to the Division requesting to amend her application to a Service retirement. The Service retirement benefit was approved by the Board effective February 18, 2015.

On or about October 12, 2018, Ms. Garber purchased seven (7) pay periods of PERS service credit. Based on that purchase, she established 10 years of PERS-service credit in her account, and therefore became eligible for Ordinary Disability retirement benefits. The Division processed her purchase, added the service credit to her account, and her Service retirement benefit was converted to an Ordinary Disability retirement, effective the first of the month after she purchased her service, November 1, 2018. Thereafter, Ms. Garber requested retroactive disability benefits prior to November 1, 2018. The Division denied her request because she did not qualify for Ordinary Disability retirement benefits until her purchase of the requisite amount of PERS service to attain 10 years and therefore she was not eligible to receive any retroactive benefits.

At the Board's March 20, 2019, meeting, you asserted that Ms. Garber was erroneously denied the right to purchase additional PERS service credit which would have allowed her to attain the requisite 10 years of PERS service credit. You argued that Ms. Garber should have been entitled to purchase additional PERS service at the time she filed her application; however, her employer did not properly classify her leave time as leave for personal illness rather than leave for personal reasons. At that time, the Board tabled consideration of the matter in order to allow you additional time to provide the Board with documentation related to a lawsuit brought against the Division of Children and Families (DCF) as well as a settlement agreement you had negotiated on Ms. Garber's behalf.

On or about March 26 2019, you provided the additional documentation to the Board, including copies of Ms. Gaber's lawsuit, discovery materials, briefs, assorted legal documents and the settlement reached between the parties. The Board considered Ms. Garber's matter at its meeting of April 17, 2019. However, as the Board noted, the Settlement Agreement consisted solely of the DCF adjusting its certification that Ms. Garber was on leave for personal illness rather

than leave for personal reasons. The Board found that there was no finding by the Court that her leave was improperly classified. Therefore, the Board denied Ms. Garber's request for Ordinary Disability retirement benefits for any period prior to the time she established 10 years of PERS service credit in her account. You appealed the Board's April 17, 2019, decision via letter on May 3, 2019. In that appeal, you asserted that whether DCF misclassified Ms. Garber's leave was a disputed fact which required an administrative hearing under N.J.S.A. 52:14B-1 et seq.

At its meeting of May 15, 2019, the Board denied your request for a hearing, finding no genuine issue of material fact in dispute. Rather, the question presented before the Board is purely legal in nature; to wit, whether Ms. Garber is entitled to Ordinary Disability retirement benefits prior to the time she qualified to receive that benefit under the statute. The Board found that the statutory requirements for Ordinary Disability retirement benefits are clear and unambiguous, and requires the member to have 10 years of PERS service credit, and therefore denied her request for benefits prior to her attaining the requisite 10 years of credit. Accordingly, the Board requested the Secretary to issue a Final Administrative Determination relating to this appeal for presentation at the June 19, 2019, meeting.

#### **CONCLUSIONS OF LAW**

The Board reached the following conclusions of law:

This matter is controlled by N.J.S.A. 43:15A-42, which states, in pertinent part:

A member, under 60 years of age, who has 10 or more years of credit for New Jersey service, shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

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It is undisputed that Ms. Garber did not attain the 10 years of PERS service credit until October 2018, and therefore is not eligible to receive this benefit prior to that time. The statute simply does not authorize Ms. Garber's request to receive Ordinary Disability benefits prior to the time she became eligible to receive the same. Accordingly, after careful consideration, the Board voted to deny your client's request to receive Ordinary Disability retirement benefits prior to November 1, 2018, when she established 10 years of PERS service credit in her account.

Finally, the Board considered your arguments that Ms. Garber should have been allowed to purchase additional PERS service credit sufficient to allow her to become eligible for Ordinary Disability retirement benefits, but was unable to do so because her employer did not properly classify her leave time as leave for personal illness rather than leave for personal reasons. You assert that because DCF settled the lawsuit you filed by amending its classification as leave eligible for purchase, the Board should allow the purchase retroactive to her separation from service. The Board disagrees. First, there was no finding by any Court that the employer's classification was incorrect. Rather, in order to settle the lawsuit, the employer simply agreed to amend Ms. Garber's leave status without any explanation as to why it was incorrect. Second, the Board was not a party to the lawsuit or settlement agreement and is therefore not bound thereby. Finally, the statute requires a member to attain 10 years of service credit in order to be eligible for Ordinary Disability retirement benefits. Therefore, the Board voted to deny her request.

As noted above, the Board has considered your personal statements on behalf of Ms. Garber, the written submissions you filed on her behalf 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

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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  
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large loop at the end.

Jeff S. Ignatowicz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-13/JSI

C: D. Lewis (ET); L. Barnett (ET); DAG Robert Kelly (ET)  
Maria Del Carmen Garber