



State of New Jersey

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

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

April 6, 2021

Sent via email to [redacted]

Kathleen Naprstek Cerisano, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman

[redacted]

RE: Susan Seago
[redacted]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Naprstek Cerisano:

I am writing in reference to the decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) regarding your appeal of the Board's denial of your client Susan Seago's request to transfer service credit accrued in her now expired (but still vested) Public Employees' Retirement System (PERS) account to her active TPAF account.

The Board has reviewed your written submissions and the relevant documentation accompanying your appeal and finds that the statutes and relevant case law governing TPAF do not permit the Board to grant Ms. Seago the opportunity to transfer the service credit from PERS to TPAF.

FINDINGS OF FACT

The record shows that Ms. Seago established membership in PERS under account [redacted] on November 1, 2004 based upon her employment as a Paraprofessional with the Edison Township Board of Education (BOE) in accordance with enrollment guidelines at that time. Ms. Seago's PERS account reflects a total of 152 months (12 years and 8 months) of service

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credit from November 1, 2004 through June 30, 2017. Accordingly, Ms. Seago is vested in PERS and eligible for a Deferred retirement from PERS. See N.J.S.A. 43:15A-38.

Subsequently, on September 1, 2017, Ms. Seago became employed as a Teacher also with Edison BOE. On September 5, 2017, Ms. Seago's enrollment application for TPAF was received via the Employer Pension and Benefits Information Connection on-line application, as required due to her new position as a Teacher. The Division properly enrolled Ms. Seago in TPAF under account [REDACTED] with an enrollment date of September 1, 2017.

By letter dated March 5, 2019, Ms. Seago was notified that the date of her last contribution to her PERS account was June 30, 2017. At the time of her last contribution she had 10 or more years of PERS service credit and she was eligible to apply for a retirement benefit. This letter stated:

Your retirement benefit is not automatic. You must submit an Application for Retirement Allowance before any benefit can begin. In addition, the effective date of the retirement cannot be earlier than the date you file the application and there are no retroactive payment for periods prior to the retirement date. For detailed information regarding retirement benefits or withdrawal, or to obtain a retirement estimate, please visit our website at www.state.nj.us/treasury/pensions/ and look for the Expired Accounts information under the heading Hot Topics for members.

No response was received. Ms. Seago did not return to PERS-covered employment within two years and her PERS account expired on June 30, 2019.

By letter dated September 17, 2019, Ms. Seago was notified of the following options:

1. Apply for Withdrawal of Your Contributions in a Lump Sum;
 2. Apply for a Rollover of Your Contributions to an IRA or Employer Retirement Plan;
- or
3. Apply for the Monthly Retirement Allowance.

Again, no action was taken. Ms. Seago's PERS account [REDACTED] remains vested.

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On August 31, 2020, approximately a year and a half after the Division notified Ms. Seago of her last contribution to her PERS account, the Division received a letter from Daniel Michaud, Business Administrator, and Sunita Malhotra, Edison Township BOE, stating that the *Application for Interfund Transfer* was missed out/overlooked by the Payroll Department and was not sent to the Division. Enclosed with this letter was a copy of the *Application for Interfund Transfer*.

By letter dated September 23, 2020, the Division informed Ms. Seago that the *Application for Interfund Transfer* could not be processed as her PERS account [REDACTED] had expired. Therefore, Ms. Seago was not eligible for an interfund transfer.

On September 23, 2020, Marilyn Moore, Pensions Benefits Specialist III, Enrollment and Purchase Bureau, explained in a letter to Mr. Michaud that the transfer never happened because the Division did not receive the *Application for Interfund Transfer* that was required in order to effectuate the transfer. Ms. Moore informed Mr. Michaud that the option to transfer service credit in PERS account [REDACTED] ended on June 30, 2019, when the account expired.

On October 8, 2020, Mr. Michaud appealed the Division's decision to the Board.

On November 10, 2020, Nikki Munko, Supervising Pensions Benefits Specialist, Enrollment Section, advised Mr. Michaud in order to transfer service credit from an account in one State-administered retirement system to an account in another system, an Application for Interfund Transfer must be received within two years of the date of the last contribution to the account in the first system in accordance with N.J.S.A.43:15A-7(e). The date of the last contribution to Ms. Seago's PERS account was June 30, 2017. This account expired on June 30, 2019 and the option to transfer service credit from this account ended on June 30, 2019. Ms. Seago's Application for Interfund Transfer was received on September 10, 2020, more than a year later. Ms. Munko also notified Mr. Michaud that his appeal would be forwarded to the Board for its consideration.

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At its meeting on December 3, 2020, the Board considered this matter, reaffirmed the Division's administrative determination, and denied Ms. Seago's request to interfund transfer service credit from her expired PERS account into her active TPAF account. The Board based its determination upon the provisions of N.J.S.A. 43:15A-7(e) and N.J.A.C. 17:3-7.1. You appealed the Board's denial by letter dated January 27, 2021; thereby requesting a hearing in the Office of Administrative Law. At its meeting on March 4, 2021, the Board determined there are no factual issues to be adduced at a hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. The Findings of Fact and Conclusions of Law as detailed below were presented and approved by the Board at its April 1, 2021 meeting.

CONCLUSIONS OF LAW

The issue is whether or not Ms. Seago is eligible to interfund service credit from her expired PERS account into her active TPAF account. As noted above, the last contribution to Ms. Seago's PERS account was on June 30, 2017, at which time her PERS membership was vested as it reflected 12 years and 8 months of PERS service credit. There was no record of activity in Ms. Seago's PERS account after June 30, 2017. On September 1, 2017, Ms. Seago was enrolled in TPAF based upon her position as a teacher. Thereafter, on August 31, 2020, Ms. Malhotra emailed the Division requesting to interfund service credit from Ms. Seago's expired PERS account into her active TPAF account as the Application for Interfund Fund transfer was not submitted and past the two year deadline.

The Board upheld the Division's determination that Ms. Seago is not permitted to interfund service credit from her expired PERS account into her active TPAF account. The basis of the Board's determination is that Ms. Seago's PERS account was inactive for more than two years, in accordance with N.J.S.A. 43:15A-7(e) and N.J.A.C. 17:3-7.1.

N.J.S.A. 43:15A-7(e) states:

Membership of any person in [PERS] shall cease if he shall discontinue his service for more than two consecutive years.

As N.J.S.A. 43:15A-7(e) stipulates membership in PERS shall cease after more than two years of inactivity, Ms. Seago no longer had the option to resume contributions to her expired PERS account or interfund service credit from that account into TPAF.

In addition, N.J.A.C. 17:3-7.1 states in pertinent part:

(b) [A] member is eligible to transfer membership from another State-administered defined benefit retirement system, provided the membership has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

1. A member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another, must file an "Application for Interfund Transfer." This application will terminate membership in the former system when approved. (Emphasis added)

...

5. The member is not eligible to transfer service credit if any of the following conditions apply:

ii. The member has credit in the present system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by *N.J.S.A. 43:15A-14*. *N.J.S.A. 43:15A-14* provides that a member of the PERS at the time of enrollment in the TPAF may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS three or less years from the date of enrollment in the TPAF. The member must apply to transfer this service no more than two years from the date of the last contribution in the PERS, or the member's PERS account has not expired due to the provisions of *N.J.S.A. 43:15A-8*. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

iii. The account has expired (it has been more than two years from the date of the last contribution, and the member is not vested, nor has the member's account remained active due to the provisions of *N.J.S.A. 18A:66-8*).

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Interfund transfers of service credit are not mandatory. Rather, such transfers are optional, and occur only at the member's request.

You assert that the responsibility to request an interfund transfer was that of Ms. Seago's employer, Edison Township BOE, rather than her own. However, while some employers may assist a member in matters such as these, as noted above an interfund transfer is optional, and is not a mandatory transaction, like enrollment. Therefore, if an employee chooses to exercise the option, the responsibility to timely file the required application lies with the member, not the employer.

In this case, the Division informed Ms. Seago on March 5, 2019 that the date of her last contribution to her PERS account [REDACTED] was June 30, 2017, well before the account expired. Ms. Seago did not exercise her interfund transfer option in a timely manner, and her PERS account expired on June 30, 2019 in accordance with N.J.S.A. 43:15A-7(e). Therefore, Ms. Seago is not eligible to interfund transfer service credit from the expired PERS account to her active TPAF account. Cf. Farrington v. State, 2018 N.J. Super. Unpub. LEXIS 189, at *8 (App. Div. Jan. 26, 2018) (affirming agency determination that PERS account inactive for more than two years could not be interfund-transferred to active Judicial Retirement System account).

As noted above, the Board has reviewed all relevant documentation and written submissions, and 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 TPAF enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

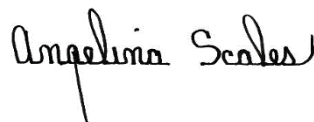
You have the right, if you wish, to appeal this final administrative determination to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in

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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,



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

G-5/AS

c: Susan Seago (sent via email to: [REDACTED])
N. Munko (ET)
DAG Amy Chung (ET)