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**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF CHARLES H. NELSON (DECEASED)  
DOCKET NO. 2019-09  
CLAIM OF JEAN NELSON

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that Jean Nelson's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on March 10, 2023, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated March 10, 2023, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant filed a response to PSERS' motion on April 10, 2023.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. A motion for summary judgment eliminates the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. *See Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations authorize the use of summary judgment. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give her the benefit of all reasonable inferences. *See Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.

Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984). “Summary judgment may be entered against a party who does not respond.” Pa.R.C.P. 1035.3(d).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

The Board has carefully reviewed the entire record in this matter as well as Claimant’s Reply to Motion for Summary Judgment and Memorandum of Facts (“Claimant’s Reply”) and finds that there is no genuine issue as to any material fact. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant is eligible to enroll in the Health Options Program (“HOP”).

#### **FINDINGS OF FACT**

Based on the record, the Board finds the following relevant facts not in dispute:

1. On December 10, 2013, the Board adopted an updated Health Options Program Eligibility and Enrollment Policy (“Policy”), effective January 1, 2014. (PSERS-1). See Board Resolution 2013-54 (Dec. 10, 2013).<sup>1</sup>

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<sup>1</sup> The Board may take official notice of its own resolutions. See 1 Pa. Code § 35.173.

2. As stated by the Board, the Policy's objective was to "encourage enrollment among Eligible Persons that have a financial relationship with PSERS while allowing current participants to continue their health insurance coverage." (PSERS-1, ¶ II).

3. As explained in the Board's Policy, enrollment in HOP is limited to:
- a. annuitants;
  - b. survivor annuitants;
  - c. the spouse of an annuitant;
  - d. the dependents of an annuitant or survivor annuitant; and
  - e. the spouse of a deceased annuitant, provided that the spouse of a deceased annuitant was already enrolled in HOP or is receiving a monthly annuity from PSERS.

(PSERS-1, ¶ III).

4. Charles H. Nelson ("Decedent") was first enrolled in PSERS in the 2007-2008 school year, by virtue of his employment with the Garnet Valley School District ("District"). (MSJ ¶ 6; Claimant's Reply ¶ 6).

5. Claimant was first enrolled in PSERS in 2015 as a Class T-E member, by virtue of her employment with the District. (MSJ ¶ 9; Claimant's Reply ¶ 9).

6. On August 17, 2016, PSERS received Decedent's *Application for Disability Retirement*, wherein he named Claimant, his spouse, as his primary beneficiary. (PSERS-2).

7. Decedent selected a Maximum Single Life Annuity benefit, which provides that "if you die, any remaining balance in the present value of your retirement benefit will be paid to your beneficiary(ies)." (PSERS-2; MSJ ¶ 7; Claimant's Reply ¶ 7).

8. Neither Claimant nor Decedent enrolled in HOP. (MSJ ¶ 14; Claimant's Reply ¶ 14).

9. On October 16, 2016, Decedent died. (MSJ ¶ 15; Claimant's Reply ¶ 15).

10. By letter dated November 17, 2016, PSERS informed Claimant that the approximate death benefit payable to her, as Decedent's beneficiary, was \$76,818.54. (PSERS-5; MSJ ¶ 16; Claimant's Reply ¶ 16).

11. In 2016, the PSERS and HOP websites provided general information regarding HOP, including the eligibility criteria for HOP. (MSJ ¶ 13; Claimant's Reply ¶ 13).

12. On December 19, 2016, Claimant submitted an *Authorization for Direct Rollover (Beneficiary)* form and a *Death Benefit Option Election (Beneficiary)* form, in which she elected to directly rollover 100% of the death benefit. (PSERS-6; MSJ ¶ 17; Claimant's Reply ¶ 17).

13. PSERS processed Claimant's request and issued a lump-sum rollover to Claimant in the amount of \$76,818.54, on January 11, 2017. (PSERS-7; MSJ ¶ 18; Claimant's Reply ¶ 18).

14. In June of 2018, Claimant contacted HOP to inquire whether she was eligible to enroll in HOP and HOP informed her she was not eligible to enroll. (PSERS-4; MSJ ¶ 19; Claimant's Reply ¶ 19).

15. On April 13, 2018, Claimant appealed the determination that she was ineligible for HOP to PSERS' Executive Staff Review Committee ("ESRC"). (PSERS-4; MSJ ¶ 20; Claimant's Reply ¶ 20).

16. The ESRC, by letter dated May 22, 2019, denied Claimant's appeal on the basis that she was not eligible to enroll in HOP because, as a surviving spouse of a deceased member, she was not receiving a monthly annuity from PSERS. (PSERS-8; MSJ ¶ 21; Claimant's Reply ¶ 21).

17. On June 20, 2019, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-9; MSJ ¶ 22; Claimant's Reply ¶ 22).

18. On July 2, 2019, PSERS filed an Answer. (PSERS-10; MSJ ¶ 23; Claimant's Reply ¶ 23).

19. Claimant terminated from the District as of September 30, 2019, with 0.68 years of service credit. (PSERS-3).

20. Claimant is a nonvested member of PSERS. (PSERS-3; PSERS-4; MSJ ¶ 9-11; Claimant's Reply ¶ 9-11).

21. Claimant is not receiving and is not eligible to receive an annuity from PSERS. (PSERS-4; MSJ ¶ 9-11; Claimant's Reply ¶ 9-11).

22. On March 10, 2023, PSERS filed a Motion for Summary Judgment.

23. Claimant filed Claimant's Reply in response to PSERS' Motion for Summary Judgment on April 10, 2023.

24. The matter is ripe for Board adjudication.

#### **DISCUSSION**

Pursuant to Section 8502.2 of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, et seq., and Section 8901 of the Public School Retirees' Health Insurance Act, 24 Pa.C.S. § 8701, et seq. the Board sponsors a participant-funded, group health insurance program, i.e., HOP. 24 Pa.C.S. §§ 8502.2, 8901 see, e.g., Board Resolution 2013-54 (Dec. 10, 2013). The Board, as a matter of law, is granted the "powers necessary or convenient to carry out [HOP]," including, but not limited to, the authority to determine and make necessary changes to the benefit structure for the program, determine enrollment procedures, and impose and collect necessary fees and charges. 24 Pa.C.S. § 8901; see 24 Pa.C.S. § 8502.2. Accordingly, effective January 1, 2014, the Board adopted the Policy at issue in this Appeal.<sup>2</sup> (PSERS-1); see Board Resolution 2013-54 (Dec. 10, 2013).

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<sup>2</sup> The Policy was amended on October 9, 2020. Because Claimant's Appeal was initiated prior to that Amendment, this Decision considers the Policy effective at the time of her Appeal. See Board Resolution 2020-35 (Oct. 9, 2020). Nevertheless, the outcome is the same under either version of the Policy.

Pursuant to the Retirement Code and the Board's Policy, enrollment in HOP is limited to the following eligible individuals:

- a. annuitants;
- b. survivor annuitants;
- c. the spouse of an annuitant;
- d. the dependents of an annuitant or survivor annuitant; and
- e. the spouse of a deceased annuitant, provided that the spouse of a deceased annuitant was already enrolled in HOP or is receiving a monthly annuity from PSERS.

See 24 Pa.C.S. §§ 8502.2, 8702 (def. "eligible person"); (PSERS-1, ¶ III). The issue on appeal is whether Claimant is eligible to enroll in HOP. The Board concludes that she is not eligible, for the following reasons.

Claimant is not an annuitant. An "annuitant" is defined as "any member on or after the effective date of retirement until his annuity is terminated." 24 Pa.C.S. § 8102. Claimant is a Class T-E member of PSERS, who was first enrolled in PSERS in 2015, by virtue of her employment with the District. Claimant is not receiving an annuity from PSERS. (PSERS-4; MSJ ¶¶ 9-11; Claimant's Reply ¶¶ 9-11). Nor is she currently eligible for an annuity in the future. (*Id.*). Indeed, Claimant is a nonvested, Class T-E member of PSERS with 0.68 years of service credit. (PSERS-3). To become vested and to be eligible for an annuity, a Class T-E member must accrue 10 or more years of service credit with PSERS. See 24 Pa.C.S. § 8102 (def. "vestee"). Therefore, Claimant is not eligible for HOP as an "annuitant." 24 Pa.C.S. §§ 8102, 8702; (PSERS-1, ¶ III).

Claimant is not a survivor annuitant. A "survivor annuitant" is "the person or persons last designated by a member under a joint and survivor annuity option to receive an annuity upon the death of such member." 24 Pa.C.S. § 8102. Claimant's husband was a PSERS member, and he retired and became a PSERS annuitant. (PSERS-2). He did not, however, elect an option at retirement that would provide Claimant with a survivor annuity. (PSERS-2, § 2). Rather, on Decedent's *Application for Disability Retirement*, he selected the MSLA option that provided him with the

maximum monthly benefit and made a death benefit available to his beneficiary *if* there was any remaining balance in the present value of his retirement benefit at the time of his death. (PSERS-2, Section 2); see 24 Pa.C.S. §§ 8342, 8345. He identified Claimant as his primary “beneficiary.” (PSERS-2, Section 4). Consequently, Claimant is not eligible for HOP as a “survivor annuitant.” See 24 Pa.C.S. § 8345; (PSERS-1, ¶ III).

Claimant is not the spouse or dependent of an annuitant. Decedent passed away on October 16, 2016. (MSJ ¶ 15; Claimant’s Reply ¶ 15). Under his MSLA selection at retirement, as a matter of law, he was eligible for an annuity only for life. (PSERS-2, PSERS-5); 24 Pa.C.S. §§ 8342, 8345, 8347. Upon his death, his annuity, his status as an annuitant, and his spouse’s status as the spouse of an annuitant ended. See (PSERS-5); 24 Pa.C.S. §§ 8102 (def. “annuitant”), 8342, 8345, 8347. Accordingly, Claimant is not eligible for HOP as an annuitant’s spouse or dependent.

Claimant is the spouse of a deceased annuitant, but she was not already enrolled in HOP<sup>3</sup> and she is not receiving a monthly annuity from PSERS. After Decedent passed away, Claimant elected to receive 100% of the death benefit as a lump-sum rollover, which was paid out on January 11, 2017. (PSERS-6; PSERS-7). She did not elect a payment option that would have provided her with a monthly annuity, as funded by the death benefit, for life. (See PSERS-6, § 2). By doing so, she has no financial relationship with PSERS as the spouse of a deceased annuitant or otherwise. Claimant’s decision to rollover the death benefit, rather than to collect an annuity, was irrevocable.<sup>4</sup> See 22 Pa. Code § 213.49(c). Thus, Claimant is not eligible for HOP as the spouse of deceased annuitant.

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<sup>3</sup> Claimant argues that neither she nor Decedent were eligible for HOP because they were not yet eligible for Medicare. (Claimant’s Reply ¶ 14). This argument is without a factual basis because the “HOP Pre-65 Medical Plan” is available to eligible persons who are not Medicare-eligible. See, e.g., PSERB Resolution 2015-35 (setting the HOP Pre-65 Medical Plan premium rates); see *also*, PSERS-1.

<sup>4</sup> Because the election was irrevocable, Claimant’s request to return the death benefit to PSERS and collect an annuity is not permissible.

Notwithstanding her ineligibility under the law and the Board's Policy, Claimant requests that the Board permit her to enroll in HOP because she was not aware of the eligibility requirements for HOP when she elected to receive Decedent's death benefit as a lump sum. At the time Claimant submitted her *Authorization for Direct Rollover (Beneficiary)* and *Death Benefit Option Election (Beneficiary)* forms in 2016, however, PSERS provided general information regarding HOP, including eligibility criteria, on both the PSERS website and the HOP website. (MSJ ¶ 13; Claimant's Reply ¶ 13). PSERS' letter dated November 17, 2019, which informed her of the death benefit, also provided Claimant with a phone number for any questions and it directed her to the PSERS website for more general information. (PSERS-5). Regardless, PSERS is under no statutory obligation to inform anyone of HOP or its requirements. 24 Pa.C.S. §§ 8502.2, 8701-9102; see generally *Trakes v. PSERS*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001). In addition, notice via a publicly accessible website, in a manner reasonably calculated to give actual notice, constitutes sufficient notice under the Retirement Code. 24 Pa.C.S. § 8103.1; see also *Watrel v. Dept. of Ed.*, 518 A.2d 1158, 1161 (Pa. 1986) (members are charged with knowledge of the provisions of the Retirement Code). Thus, Claimant's lack of awareness of the HOP eligibility requirement do not support her claim for relief.

To the extent Claimant is requesting equitable relief, such relief is not authorized by the Retirement Code. Indeed, although the Board must liberally administer the system, it does not have the authority to waive the eligibility requirements for enrollment in HOP. See *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd* 591 A.2d 1053 (Pa. 1991). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. See *Forman*, 778 A.2d at 780; *Marinucci v. State Employees' Ret. Sys.*, 863 A. 2d 43 (Pa. Cmwlth. 2004).

The Board may not circumvent the express language of the Retirement Code and ignore the statutory definition of "Eligible Person." 24 Pa.C.S. §§ 8702, 8502.2; see *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001);



*Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004); *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd* 591 A.2d 1053 (Pa. 1991). Moreover, Claimant's request for equitable relief is contradictory to the Policy's objective, as stated by the Board, to "encourage enrollment among *Eligible Persons that have a financial relationship* with PSERS while allowing current participants to continue their health insurance coverage." (PSERS-1, ¶ II. (emphasis added)).

Accordingly, Claimant's appeal must be dismissed.

### **CONCLUSION**

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant is entitled to enroll in HOP. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF CHARLES H. NELSON (DECEASED)  
DOCKET NO. 2019-09  
CLAIM OF JEAN NELSON

**ORDER**

AND NOW, upon consideration of Claimant's Appeal and Request for Administrative Hearing, Public School Employees' Retirement System's ("PSERS") Motion for Summary Judgment, and Claimant's Reply:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request to enroll in the Public School Employees' Retirement System Health Options Program.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 6/12/2024

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Richard Vague  
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By: \_\_\_\_\_  
Richard Vague, Chairman