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

IN RE: ACCOUNT OF ALIDA M. PULSINELLI-RUFFNER
DOCKET NO. 2021-13
CLAIM OF ALIDA M. PULSINELLI-RUFFNER

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the post-hearing briefs, the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"), Alida M. Pulsinelli-Ruffner's ("Claimant") Brief on Exceptions ("Exceptions") and letter requesting oral argument, and the Public School Employees' Retirement System's ("PSERS") Brief Opposing Exceptions with a response that oral argument is unnecessary.

Claimant requests that PSERS stop paying her ex-husband, Kenneth F. Ruffner ("Alternate Payee"), a monthly annuity pursuant to a Domestic Relations Order ("DRO") that was entered by the Court of Common Pleas of Lancaster County ("Court"). The DRO compels that Claimant's PSERS pension, as marital property, be divided equally between Claimant and Alternate Payee.

Claimant retired in 2011 and began receiving a monthly annuity from PSERS. In 2013, Claimant and Alternate Payee separated. In 2016, PSERS received a Divorce Decree from the Court that found that Claimant's pension with PSERS was marital property and subject to equitable distribution. In May 2017, PSERS received a fully executed DRO, between Claimant and Alternate Payee. Pursuant to the Public School Employees' Retirement Code ("Retirement Code"), the DRO thereby became an Approved Domestic Relations Order ("ADRO"). See 24 Pa.C.S. § 8533.1. By letter dated May 19, 2017, PSERS notified Claimant that, pursuant to the ADRO's terms, her gross monthly benefit would be adjusted and Alternate Payee would receive a monthly

benefit. In 2020, which was more than three years after PSERS notified Claimant of her adjusted benefit and began paying accordingly, Claimant first contacted PSERS to ask that it stop paying Alternate Payee. Claimant has never submitted an amended Court order to PSERS, directing that payments are to be adjusted.

By Opinion and Recommendation mailed February 2, 2024, the Hearing Examiner recommends that the Board deny Claimant's request and dismiss her appeal on the basis of waiver. For completeness, the Hearing Examiner also addresses, and rejects, Claimant's substantive arguments. Claimant excepts to the HEO. This Board has reviewed Claimant's Exceptions and, for the following reasons, denies them.

1. Waiver

Claimant argues that her appeal is timely because a letter PSERS mailed to her on May 19, 2017 erroneously included the language, "[DRO] you filed with PSERS," whereas she alleges that she was not personally the one who submitted her DRO to PSERS, and appeal directions were not specifically included in the letter. The Board rejects both arguments. First, a review of the letter establishes the language "you filed" is neither substantive nor relevant:

[PSERS] made a change to your benefit for the reason(s) listed below. This change will take effect with your monthly benefit dated June 30, 2017. Your **gross monthly benefit** will be adjusted to \$2,312.75 based on the following:

The [DRO] you filed with PSERS has been approved. The Alternate Payee listed on the DRO is entitled to a portion of your retirement benefit. Effective June 30, 2017 your Alternate Payee's monthly benefit will be \$2,312.75.

If you have any questions, please contact the PSERS member Service Center by calling toll-free 1-888-773-7748 (1-888-PSERS4U).

(Ex. PSERS-13). If Claimant believed the use of the words "you filed" in the letter was relevant, she could have filed a timely appeal at the time the letter was issued, which

she did not. Claimant also could have contacted PSERS with any questions at the number provided in the letter. Second, a timely appeal must be filed regardless of whether a staff determination letter includes appeal instructions. 22 Pa. Code § 201.3a(b) ("A letter shall constitute action of a subordinate officer whether or not the letter states that an appeal must be taken within 30 days."). Therefore, Claimant was required to file an appeal within thirty (30) days of the date of the May 2017 letters, and when she waited more than three years, until June 10, 2020 to first contact PSERS, PSERS' prior determination was final and her appeal was waived. 22 Pa. Code § 201.3a. Accordingly, this Board agrees with the Hearing Examiner's determination that Claimant's appeal is untimely and her arguments on the merits are waived.

2. Merits Claim

Similar to the HEO, for completeness, this Board also will address Claimant's Exceptions on the merits. Claimant excepts to the HEO on the grounds of "Equity and Authority." Preliminarily, Pennsylvania divorce law provides that a member's pension is to be allocated between marital and nonmarital property using a fraction that takes into account the time during which the pension was earned and the time the parties were married: "The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible and the numerator shall be the number of such months during which the parties were married and not finally separated." 23 Pa.C.S. § 3501(c); Ex. PSERS-19. Thus, when parties to a divorce were married for the entire period during which the pension was earned, which is the case here, the entire benefit would be considered marital property and subject to a division between the parties. 23 Pa.C.S. § 3501(c); NT 11 (Claimant enrolled in PSERS in September 1972 and retired on February 9, 2011); NT 87 (Claimant and Alternate Payee were married on September 2, 1972); Ex. C-7 and C-12, p. 10 (Claimant and Alternate Payee separated on March 6, 2013).

Claimant argues that the ADRO is unfair, and she suggests that, instead of ceasing payments to Alternate Payee, PSERS could pay her additional money, representing essentially the difference between what she would have received absent a divorce, and what she receives now because of payments to Alternate Payee pursuant to the ADRO. PSERS cannot, however, pay additional funds to Claimant beyond those authorized in the Retirement Code. See 24 Pa.C.S. §§ 8102 (def. “standard single life annuity”), 8342, 8345; see also 24 Pa.C.S. § 8533.1(a)(2) (PSERS cannot be required to pay, in divorce, more than what the member would otherwise be entitled to receive). Rather, PSERS is a creature of the Legislature and its members have only those rights created by the Retirement Code, and none beyond. *Forman v. Pub. Sch. Emps.’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

Claimant points to PSERS’ fiduciary relationship to the members of the system, which Claimant alleges, PSERS somehow violated when it abided by the ADRO. The Board, however, is a fiduciary to the membership as a whole and paying additional benefits to individual members, beyond what they are entitled to under the law, could affect the solvency of the fund for all other members. 24 Pa.C.S. § 8521(e). A fiduciary relationship neither requires nor allows the Board to violate the Retirement Code and pay benefits beyond those authorized by law.

Claimant further requests equitable relief, arguing in her Exceptions that she would have challenged the Master’s Report or appealed the Court’s Divorce Decree if she knew PSERS would abide by an ADRO. This assertion is rejected as Claimant had no justifiable basis to believe that PSERS would violate the ADRO, and PSERS never induced Claimant to believe it would do so. Further, the argument does not explain why she did not appeal to the Court, or even to PSERS, after PSERS approved the ADRO in 2017 and began paying pursuant to its terms. Moreover, this assertion is contrary to her arguments that she did not challenge the Court actions because of health, funds, and poor legal representation. (See Claimant’s post-hearing brief, pp. 15-16, 20, proposed findings of fact 33, 52-53; NT 109-10).

Claimant argues that PSERS informed her that her Option 1 selection at retirement could not be changed, and that is correct. See 24 Pa.C.S. § 8507(j). An Option 1 payment plan cannot be changed outside of the intent to change window. *Id.*; 22 Pa. Code § 213.45. As a matter of law, however, the amount of the monthly annuity received is subject to attachment through an ADRO. 24 Pa.C.S. § 8533(c).

Claimant asserts that PSERS has a duty to counsel members on the potential impact of divorce on a member's pension, but PSERS has no duty to counsel members on divorce, Pennsylvania divorce law, or the potential impacts of divorce on their retirement or other assets, yet PSERS does provide information to members regarding divorce on its website. See NT 45-46; Ex. PSERS-19; see generally *Trakes v. Pub. Sch. Emps.' Ret. Sys.*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001) (holding that PSERS is not required to provide notice where the Retirement Code does not contain a specific provision mandating such notice); 24 Pa.C.S. § 8103.1 (notice may be provided through publication on the PSERS website). Regardless, the Board does not have authority to violate the express terms of the Retirement Code and increase Claimant's monthly annuity beyond the statutorily-defined calculation. See *Forman*, 778 A.2d at 780.

Purporting to rely on the Retirement Code's correction of records provision, Claimant excepts to the HEO alleging that "policy errors" or "notice errors" can be corrected by paying additional money to annuitants. This argument is erroneous. The Retirement Code's correction of records provision is limited to mistakes "in records." 24 Pa.C.S. § 8534(b). There are no alleged mistakes in PSERS' records here. Moreover, the law mandates the opposite of what Claimant is asking. Specifically, it mandates that members receive only what they are entitled to under the Retirement Code:

Should any change or mistake in records result in any member . . . receiving from the system or plan more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the board shall correct the error and if the error affects contributions to or payments from the system, then so far as practicable shall adjust the payments which may be made for and to such person in

such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

24 Pa.C.S. § 8534(b) (emphasis added). Section 8534 cannot be read piecemeal. Nor can the language “change or mistake in records” be expanded, under the guise of statutory construction and in contradiction to the express terms of the Retirement Code, to justify paying additional money to an annuitant based on alleged notice or policy errors.

Claimant's remaining Exceptions merely reargue issues previously raised in Claimant's post-hearing and reply briefs, which the Hearing Examiner adequately addressed. Therefore, for the reasons set forth above and the analysis set forth in the HEO, this Board denies Claimant's Exceptions.

This Board further finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, Conclusion, and Recommendation attached hereto, and we hereby adopt them as our own, with the following modifications:

1. The Board adds as an additional Finding of Fact: “On September 2, 1972, Claimant and Alternate Payee were married. NT 87.”
2. The Board deletes Finding of Fact 21, as Claimant's correct effective date of retirement is listed in Finding of Fact 2.
3. The Board modifies Finding of Fact 26 to change “received the same response” to “received a similar response” regarding PSERS' letter dated January 15, 2015.
4. The Board deletes Finding of Fact 27: “Claimant did not understand that an order from the court in the divorce matter could affect her monthly retirement benefits. NT 99.”
5. The Board modifies Finding of Fact 47 to the following: “On May 11, 2017, PSERS received supplemental information, providing the names and identifying information for Alternate Payee's children, who, pursuant to Paragraph 13 of the

ADRO, are designated to receive potential payments if Alternate Payee predeceases Claimant. NT 31; Ex. PSERS-20.”

6. The Board modifies Finding of Fact 51 to the following: “By letter dated May 19, 2017, which letter Claimant received, PSERS advised Claimant that, based on the ADRO filed with and approved by PSERS, effective June 30, 2017, her gross monthly benefit would be adjusted to \$2,312.75, and the Alternate Payee would receive a monthly benefit of \$2,312.75. Ex. PSERS-13; Ex. C-18; NT 35-37, 109.”
7. The Board adds as an additional Finding of Fact: “Effective June 30, 2017, PSERS began paying according to the ADRO on file with PSERS. NT 37.”
8. The Board adds as an additional Finding of Fact: “Claimant has never submitted an amended Court Order to PSERS. NT 40, 45.”
9. On page 13, the Board changes the sentence: “All witnesses were credible; in addition, however, little in the way of relevant factual matter is disputed, as noted below.” To: “Little in the way of relevant factual matter is disputed, as noted below.”
10. On page 19, Conclusion, the Board modifies the first paragraph to the following: “Even aside from the waiver that occurred here, the record establishes that PSERS acted in accordance with the law in honoring the ADRO and denying Claimant’s request to begin paying her the full retirement benefit amount.”

As to the modifications, the Board finds that, although Claimant may have correctly understood that she could not change her retirement *payment plan* selection from an Option 1, she could not have reasonably believed that her pension could not be divided in divorce. She initially selected a retirement option that preserved a death benefit for her Alternate Payee. Ex. PSERS-1. Moreover, when she requested valuations of her pension for divorce purposes on two occasions and received Court

documents addressing her pension, she again could not have reasonably believed that the divorce Court could not divide her pension between herself and Alternate Payee through the divorce process. Also, the evidence does not support that claim given that Claimant had been represented by counsel during her divorce, until February 22, 2017; she hesitated in signing the DRO, which she would have had no reason to do if she did not believe it would be implemented by PSERS, until the Court issued an order to compel her signature; PSERS notified her, in less than one month after it received the DRO, that PSERS was adjusting her benefit pursuant to the ADRO; and PSERS, in fact, adjusted her monthly benefit within two months of receiving the DRO. NT 17, 20; Ex. PSERS-3; Ex. PSERS-4; Ex. PSERS-5; Ex. PSERS-11; Ex. PSERS-13; Ex. C-7. Although these facts are not relevant to the determinative issues in the case, the Board rejects proposed Finding of Fact 27 because it is contradicted by the other facts of record in this matter.

Furthermore, the Board does not opine as to the fairness or equity of the party's ADRO, which was handled in a separate forum with individuals with expertise in divorce law and does not adopt the statement that "the circumstances in this case are extremely unfortunate." Under Pennsylvania law, a pension earned during marriage is marital property, and the Board does not suggest that this law or the concept that both spouses may be entitled to a portion of that marital pension is inherently unfair or unfortunate. 23 Pa.C.S. § 3501(c).

Additionally, Claimant has requested oral argument before the Board. Section 201.12 of the Board's regulations provides that it is within the Board's discretion to grant oral argument to the extent such argument would be helpful:

(a) The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board to acquire an understanding of and to resolve the issues. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

22 Pa. Code § 201.12(a). The Board does not believe that oral argument will be helpful in enabling the Board to understand and resolve the issues in this matter, and therefore, Claimant's request is denied.

IT IS HEREBY ORDERED that Claimant's request for oral argument is DENIED, Claimant's appeal is DENIED, and PSERS must continue paying according to the terms of the ADRO on file with PSERS.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 1/6/2025

By:

Signed by:
Richard Vague
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Richard Vague, Chairman

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

In Re: Account of Alida M. Pulsinelli-Ruffner : Docket No. 2021-13

Claim of Alida M. Pulsinelli-Ruffner :

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PSEB
EXECUTIVE OFFICE

OPINION AND RECOMMENDATION

Hearing Examiner: Debra Sue Rand, Esquire

For the Claimant: Thomas W. Scott, Esquire

For PSERS: Cayla Jakubowitz, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an Appeal and Request for Administrative Hearing ("Appeal") filed by Alida Pulsinelli-Ruffner ("Claimant") on June 14, 2021 from the action of the Public School Employees' Retirement System ("PSERS"), paying a portion of her PSERS benefits to her former spouse, Kenneth E. Ruffner. On July 6, 2021 PSERS filed an Answer to the Appeal. On August 8, 2022 PSERS' docket clerk issued a letter scheduling a hearing in the matter for Wednesday, October 12, 2022. By letter of that same date Terrill J. Sanchez, Secretary of the Public School Employees Retirement Board ("Board"), delegated the matter to the undersigned to hold a hearing and issue a proposed opinion and recommendation.

On September 2, 2022 Mr. Ruffner was given notice of the hearing and advised of his right to intervene in the matter. On September 7, 2022 PSERS sent a letter requesting the undersigned to conduct a prehearing conference. By order entered September 8, 2022 that request was granted and a prehearing conference was scheduled for September 14, 2022 at 2:00 p.m. The conference was held as scheduled via Microsoft TEAMS and both Claimant, acting on her own behalf, and Attorney Jakubowitz, representing PSERS, participated.

At that conference and in several emails thereafter sent by Claimant and on which either Attorney Jakubowitz was copied, or they were forwarded by the undersigned to her, Claimant expressed concerns about being in the same room with Mr. Ruffner, should he be at the hearing. Accordingly, on September 22, 2022 the undersigned *sua sponte* changed the location of the hearing from the PSERS' building at 5 N. Fifth Street in Harrisburg to One Penn Center, 2601 North Third Street in Harrisburg and changed the commencement time of the hearing from 10:00 a.m. to 10:30 a.m. to allow members of the public to have time to attend if they went first to the

previous location.¹ The change in location was based on possible security concerns, that could be better dealt with at the One Penn Center location.

On October 3, 2022 Attorney Jakubowitz responded by letter to an email inquiry from Claimant as to whether Attorney Jakubowitz was related to a Diane Jakubowitz, someone apparently known to Mr. Ruffner, and she indicated that she did not know that person.

On October 12, 2022, the day before the scheduled hearing, Thomas W. Scott, Esquire, entered an appearance on behalf of Claimant and sought an extension to prepare for the hearing, just recently have been retained. The request was unopposed and was granted by order issued October 12, 2022.

By letter dated January 4, 2023 the matter was rescheduled by the Appeal Docket Clerk to be heard on March 16, 2023. On March 3, 2023 Claimant, though Counsel, sought a second continuance due to medical issues. The request was unopposed and was granted by order entered March 8, 2023.

By letter dated June 21, 2023 the matter was again rescheduled by the Appeal Docket Clerk and the hearing was set for October 5, 2023 at 10:00 a.m. The hearing was held as scheduled. Claimant and her Counsel were present as was Counsel for PSERS.

The Notes of Testimony ("NT") were filed on October 26, 2023. On October 27, 2023 a briefing order was issued. By email dated November 21, 2023 Claimant's Counsel sought an extension of the briefing schedule, which was unopposed. By order of that same date the request was granted. Claimant timely filed her brief on December 18, 2023. PSERS timely filed its brief

¹ The Appeal Docket Clerk posted a notice on the hearing room door at the PSERS's building to advise the public of this change in location.

on January 10, 2024. Claimant filed a timely reply brief on January 24, 2024. The matter is now ready for adjudication.

FINDINGS OF FACT

1. Claimant first became a member of PSERS in September 1972. NT 11; *see also* Ex. C-1.
2. Claimant's effective date of retirement was February 9, 2011. NT 11; Ex. PSERS-4.
3. Claimant is an annuitant. NT 13.
4. Russell Pointer is a Supervisor for the Benefits Section of PSERS. NT 10.
5. He has been in that position since 2021. NT 10.
6. His duties include overseeing his section and ensuring that when benefits are processed the employees of PSERS are following the Retirement Code. NT 10-11.
7. He is familiar with PSERS' exhibits in this matter and credibly testified that they were received or produced during the ordinary course of PSERS' business. NT 11.
8. On November 17, 2010 PSERS received an application for retirement from Claimant. NT 11-12; Ex. PSERS-1.
9. Claimant, along with Kenneth Ruffner, who was then her spouse, attended a retirement counseling session on November 17, 2010. NT 76, 92-93.
10. Rachel Ferguson was the retirement counselor employed by PSERS in 2010 who conducted the retirement session. NT 73; 92.
11. Ms. Ferguson's duties included explaining to members the retirement options they had and helping them complete retirement applications. NT 73.
12. In the retirement counseling checklist, there is nothing that specifically address what happens if there is a divorce. NT 75; Ex. C-3.
13. In a counseling session the counselor does not provide information about what would occur to a member-retiree's benefits if there were a divorce. NT 77-78.

14. On the application, which was signed and dated by Claimant on November 17, 2010, Claimant checked a block under the heading "Court Order," certifying that "there is **no existing** court order or pending divorce proceeding which affects or will affect the distribution of my benefit to someone other than myself." (Emphasis in original). Ex. PSERS-1, p. 8.
15. If the retiree checks the block on the application indicating that there *has been such a court order or that a divorce is pending*, the retiree is told that if there is an existing domestic relations court order, a copy of it needs to be sent to PSERS. NT 81-82.
16. If the retiree checks a block on the application indicating a divorce is pending, the retiree cannot start collecting an annuity from PSERS until the divorce is finalized. NT 82.
17. In her application, Claimant elected Option 1 as her payment plan and, in addition, identified Mr. Ruffner, as her primary beneficiary on her Application for Retirement. NT 77; Ex. PSERS 1.
18. Under Option 1 the retiree receives a monthly payment of retirement benefits for life. NT 77.
19. Claimant's understanding was that under Option 1 the monthly benefit payment to her could never be changed. NT 94-95.
20. By letter dated February 22, 2011 PSERS advised Claimant that her monthly benefit would be \$4,625.50 with taxes taken from that. NT 95; Ex. C-5.
21. Claimant retired on February 2, 2011, effective February 9, 2011. NT 92; Exs. PSERS-1, p. 11, PSERS-4.
22. Approximately two years later, on March 6, 2013, Mr. Ruffner file a "Complaint in Divorce" in the Court of Common Pleas of Lancaster County. NT 96; Ex. C-7.

23. Upon being served with the divorce paperwork, Claimant contacted PSERS and on March 14, 2013, changed her beneficiary from Mr. Ruffner to her two children. NT 97-98; Ex PSERS-2.
24. On April 2, 2014 Claimant sent a letter to PSERS requesting “a retirement estimate for divorce purposes.” NT 98-99; Ex. PSERS-3.
25. By letter dated April 10, 2014 PSERS responded and indicted “[t]he only equitable distribution that can be accomplished through a Domestic Relations Order is your current gross monthly benefit in the amount of \$4,625.50.... If your PSERS retirement pension is considered marital property and subject to equitable distribution, you will be required to submit a Domestic Relations Order for Review....” NT 98-99 Exs. PSERS-3, PSERS-4.
26. Claimant sent a similar inquiry on December 28, 2014 and received the same response by letter dated January 15, 2015. NT 18-21, 99; Exs. PSERS-4, PSERS-5.
27. Claimant did not understand that an order from the court in the divorce matter could affect her monthly retirement benefits. NT 99.
28. On September 30, 2016 a Master’s Report was filed regarding the divorce and, as is relevant here, it recommended that Claimant’s pension be divided equally between Claimant and Mr. Ruffner. Ex. C-12, p. 9.
29. On October 28, 2016 the common pleas court adopted the Master’s Report, including the recommendation regarding equal division of Claimant’s PSERS monthly pension payments. Ex. C-14.
30. On November 28, 2016 PSERS received a copy of the divorce decree informing it that Claimant’s divorce was occurring. NT 22; Ex. PSERS-7.

31. It is standard practice for PSERS when it receives a divorce decree to review it and see if there is anything that would indicate the matter would involve the subject of equitable distribution. NT 23-24.
32. By letter of December 2, 2016 PSERS notified Claimant that it had received the divorce decree; that the decree indicated that Claimant's pension was subject to equitable distribution, and that a Domestic Relations Order ("DRO") must be submitted to PSERS for review to be sure it complies with the Retirement Code. Ex. PSERS-8.
33. On December 16, 2016 PSERS received a draft form copy of the DRO. NT 26-27; Ex. PSERS-9.
34. A draft form is submitted so that PSERS can conduct its review to see if the draft form complies with the Public School Employees' Retirement Code, 24 Pa. C.S. §§ 8101, *et. seq.*, ("Retirement Code"). NT 27.
35. PSERS does not review the draft to determine if is "fair." NT 27, 33.
36. On January 17, 2017 PSERS notified the actuary firm that had sent it the draft order and Mr. Ruffner that "the proposed DRO may be approved subject to receipt of the fully executed DRO. NT 28-29; Ex. PSERS-10.
37. It is standard practice that a copy of such letters is also sent by PSERS to the member. NT 68.
38. On February 22, 2017 the common pleas court granted the request of Claimant's attorney to withdraw his appearance in the pending divorce matter and, thereafter, she acted *pro se*. Ex. C-7.

39. On that same date Counsel for Mr. Ruffner filed a Petition to Compel Signature of qualified Domestic Relations Order and the court issued a Rule to Show Cause on Claimant as to why that relief should not be granted. Ex. C-7.
40. On March 21, 2017, pursuant to an order of the court, Claimant, acting *pro se*, signed the Stipulation for the Entry of Domestic Relations Order. Exs. C-7, C-16.
41. On May 1, 2017 the “Stipulation for the Entry of Domestic Relations Order,” dated April 28, 2017, was entered on the docket.
42. On May 5, 2017 Counsel for Mr. Ruffner forwarded a copy of the DRO to PSERS for its review. Ex. C-15.
43. In that letter he mentioned that at that time Claimant was unrepresented. Ex. C-15.
44. Mr. Pointer admitted that when PSERS receives a DRO for review, it does not provide to members any additional advice or information merely because they are *pro se*. NT 57.
45. PSERS has a booklet entitled “PSERS Divorce Guidelines” on its website, which is available to PSERS members. NT 45-46; Ex. PSERS-19.
46. On May 8, 2017 PSERS received a copy of the DRO. NT 29-30; Ex. PSERS 11.
47. On May 11, 2017 PSERS received supplemental information indicating that if Mr. Ruffner predeceased Claimant his share would be payable to their children. NT 31; Ex. PSERS-20.
48. This information is routinely received by PSERS as a supplement. NT 31.
49. By letter dated May 15, 2017 PSERS gave notice to Mr. Ruffner’s attorney that it had reviewed the DRO and approved it, rendering it an Approved Domestic Relations Order (“ADRO”) and further advised that PSERS would implement it. NT 33, 55; Ex. PSERS 12.

50. There is no clear evidence that a copy of this notice went to Claimant, although routinely such notices are also sent to the member. *See* NT 34, 48.
51. By letter dated May 19, 2017 PSERS advised Claimant that as of June 30, 2017 her gross monthly benefit would be adjusted to \$2,312.75. NT 35-37, 109; Ex. PSERS-13.
52. On June 10, 2020 Claimant sent an email to PSERS contesting the payment to Mr. Ruffner. NT 38-39; Ex. PSERS-15.
53. By letter dated July 14, 2020 Claimant contacted PSERS and asked it to stop paying benefits to Mr. Ruffner. NT 41-42; Ex. PSERS 16.
54. On August 11, 2020 PSERS responded that unless and until it received an order from a court of competent jurisdictions that modified the DRO, it could not stop payments to Mr. Ruffner. NT 42-43Ex. PSERS-17.
55. That letter also advised Claimant that she could appeal that determination to the Executive Staff Review Committee. Ex. PSERS-17
56. Claimant appealed, and by letter dated June 3, 2021, the Executive Staff Review Committee declined to direct the payments to Mr. Ruffner be stopped, giving the same explanation that had appeared in the August 11, 2020 order. NT 43-44; Ex. PSERS-18.
57. That letter advised Claimant of her right to file an appeal and request a hearing. Ex. PSERS-18.
58. On June 14, 2021 Claimant filed an *Appeal and Request for Administrative Hearing*. NT 44; (Official Notice² – PSERS’ Docket).

² Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

59. An administrative hearing on Claimant's appeal was held on October 5, 2023, commencing at 10:00 a.m., at One Penn Center, 2601 North Third Street, Harrisburg, Pennsylvania.
60. Claimant appeared for hearing with Counsel and had an opportunity to be heard in accordance with Section 504 of the Administrative Agency Law, 2 Pa. C.S. § 504. NT 1-138; Case file.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa. Code §35.173.

Official notice is also permitted under case law. *See, for example, Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard, in accordance with Section 504 of the Administrative Agency Law, 2 Pa. C.S. §504. Finding of Fact No. 60.
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); *Gierschick v. State Employees' Ret. Bd.*, 733 A. 2d 29, 32 (Pa. Cmwlth. 1999).
3. The burden of proof before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1992).
4. A preponderance of the evidence is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).
5. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code, 24 Pa. C.S. §§8101, *et. seq.*, ("Retirement Code"); *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A. 2d 778, 780 (Pa. Cmwlth. 2001).
6. Claimant did not timely appeal from the May 19, 2017 letter notifying her of the payout amount based on the ADRO, resulting in a waiver of her rights. 22 Pa. Code § 201.3a; Findings of Fact Nos. 51-52. *See also* Discussion.
7. A PSERS member's payments under an annuity are subject to attachment in favor of an alternate payee in an approved domestic relations order. 24 Pa. C.S. § 8533(a), (c). *See also* 24 Pa. C.S. § 8533.1; Findings of Fact Nos. 32-34 and Discussion.
8. If the statutory requirements in a an ARDO are met, PSERS must approve a DRO. § 8533(a), (c); 24 Pa. C.S. § 8533.1.

DISCUSSION

Claimant filed this appeal to request PSERS to cease to follow the order of the domestic relations court to distribute half her monthly benefits to Mr. Ruffner.

A. BURDEN OF PROOF

Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); *Gierschick v. State Employees' Ret. Bd.*, 733 A. 2d 29, 32 (Pa. Cmwlth. 1999). The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). Claimant therefore has the burden of proving that she is entitled to the *entire* monthly retirement benefit.

All witnesses were credible; in addition, however, little in the way of relevant factual matter is disputed, as noted below.

B. CLAIMANT'S ARGUMENT

There is no factual dispute that Claimant retired from her position as a public school teacher, made her benefits selection with PSERS at a time when divorce was not on the horizon, and was not expressly counseled by PSERS at the time she was proceeding with her retirement paperwork that a divorce could affect her benefit level. It is also not disputed that she later was divorced and in the context of that proceeding a Judge of competent jurisdiction adopted the

recommendation of a Master that her pension be split 50/50 with her soon-to-be ex-spouse. Also not disputed is that Claimant did not appeal from the final decision of the common pleas court.

Claimant seeks to have the entire monthly retirement benefit amount paid to her based on a claim that PSERS did not expressly counsel her that divorce could affect her pension and that as she understood it, her retirement amount could not be changed by *anyone*. Additionally, she contends that due to the conduct of her lawyer in the divorce matter (who is not her counsel in this matter) she has suffered gross inequity.

C. PSERS' ARGUMENT

PSERS responds that it was required to accept the ADRO and pay as it dictated and any challenge to its determination to do so is waived. It also contends that it has no statutory duty to counsel its members/retirees on the possible consequences of a divorce on a pension; that equitable relief is not available under the Retirement Code and that it cannot overturn an ADRO based on it being "unfair."

D. ANALYSIS

1. Waiver

PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code, 24 Pa. C.S. §§8101, *et. seq.*, ("Retirement Code"); *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A. 2d 778, 780 (Pa. Cmwlth. 2001). Under Section 24 Pa. C.S. 8533(e), PSERS benefits are "subject to attachment in favor of an alternate payee as set forth in an approved domestic relation order." As defined in 24 Pa. Code 8102, an "approved domestic relations order" is a court order relating to the division of marital assets, which has been approved by PSERS in accordance with Section 8533.1(a) of the Retirement Code. Here, there is no dispute that a DRO was submitted to PSERS for review, was reviewed and found by PSERS to

be in accord with the Retirement Code and became an ADRO. Claimant had thirty days to challenge that approval, *see* 22 Pa. Code 201.3a, but did not do so. Thus, any challenge was waived. Although on this basis alone PSERS' decision should be upheld, for purposes of completeness Claimant's other arguments will be discussed.

2. Merits Claims

The following statutory framework is relevant. Section 8533 of the Public School Employees' Retirement Code ("Code"), 24 Pa. C.S. §8533, titled "Taxation, attachment and assignment of funds," provides in relevant part:

(a) General rule.--Except as provided in subsections (b), (c) and (d), the right of a person to a member's annuity, a State annuity, or retirement allowance, to the return of contributions, any benefit or right accrued or accruing to any person under the provisions of this part, and the moneys in the fund and the trust are hereby exempt from any State or municipal tax, levy and sale, garnishment, attachment, the provisions of Article XIII.1 of the act of April 9, 1929 (P.L. 343, No. 176),¹ known as The Fiscal Code, or any other process whatsoever, and shall be unassignable.
...

(c) Domestic relations order.--Rights under this part shall be subject to attachment in favor of an alternate payee as set forth in an approved domestic relations order.

Further, Section 8533.1. pertinently states

Approval of domestic relations orders

(a) Certification regarding members.--A domestic relations order pertaining to a member of the system *shall be certified* as an approved domestic relations order by the secretary of the board, or his designated representative, only if such order meets all of the following:

(1) Requires the system to provide any type or form of benefit or any option applicable to members already provided under this part.

(2) Requires the system to provide no more than the total amount of benefits than the member would otherwise receive (determined on the basis of actuarial value) unless increased benefits are paid to the member or alternate payee based upon cost-of-living increases or increases based on other than actuarial value.

(3) Specifies the amount or percentage of the member's benefits to be paid by the system to each such alternate payee or the manner in which the amount or percentage is to be determined.

(4) Specifies the retirement option to be selected by the member upon retirement or states that the member may select any retirement option offered by this part upon retirement.

(5) Specifies the name and last known mailing address, if any, of the member and the name and last known mailing address of each alternate payee covered by the order and states that it is the responsibility of each alternate payee to keep a current mailing address on file with the system.

(6) Does not grant an alternate payee any of the rights, options or privileges of a member under this part.

(7) Requires the member to execute an authorization allowing each alternate payee to monitor the member's compliance with the terms of the domestic relations order through access to information concerning the member maintained by the system. An authorization granted under this section shall be construed as an authorization for the alternate payee to receive information concerning the administration, calculation and payment of the alternate payee's share of the benefits payable under this part and not as an authorization to exercise the rights afforded to members or obtain information that is not related to the administration, calculation and payment of alternate payee's share of the benefits payable under this part.

...

(b) Determination by secretary.--Within a reasonable period of time after receipt of a domestic relations order, the secretary of the board, or his designated representative, shall determine whether the order is an approved domestic relations order and notify the member or participant and each alternate payee of this determination. Notwithstanding any other provision of law, the exclusive remedy of any member, participant or alternate payee aggrieved by a decision of the secretary of the board, or his designated representative, shall be the right to an adjudication by the board under 2 Pa.C.S. Ch. 5 (relating to practice and procedure) with appeal therefrom to the Commonwealth Court under 2 Pa.C.S. Ch. 7 (relating to judicial review) and 42 Pa.C.S. § 763(a)(1) (relating to direct appeals from government agencies).

(Italicized emphasis added).

As is clear from the italicized language in Section 8533.1, if the listed criteria are met certification is mandated. *See e.g., 1-A Realty v. Pennsylvania Public Utility Com'n*, 63 A.3d

480, 484 (Pa Cmwlth 2013) (“shall is mandatory for purposes of statutory construction when a statute is unambiguous.”).

Claimant seeks to avoid this result through equitable arguments.

First, she contends that the 50/50 division of the pension benefits is “unfair.” However, PSERS has no legal authority to review an ADRO on that basis. Rather, it is constrained by Section 8533.1(a). Therefore, this this cannot be a basis to ward her relief.

Next, Claimant argues that paying full benefits to her would not harm PSERS because it would not be paying out any greater amount. However, for the sum to be the same this would result in paying *nothing* to the Alternate Payee, Mr. Ruffner, which PSERS has no authority to do under Section 8533(c). Therefore, Claimant cannot prevail under this theory.

Claimant also asserts that she should be given the relief she seeks because she honestly misunderstood that her divorce could impact here benefits. First, PSERS is correct that nothing in the Code requires that its employees counsel retiring members on the possible consequences of divorce on their retirement benefit selections. *See generally*, 24 Pa. C.S. § 8533.1; *accord Trakes v. Pub. Sch. Employees' Ret. Sys.*, 768 A.2d 357 (Pa. Cmwlth. 2001) (PSERS has no duty to provide notice of a deadline where the Retirement Code has no specific provision mandating it to do so). Second, there is no indication in the record that divorce was not even on the horizon in this case at the time Claimant applied for benefits and, hence, any such possibility did not even relate to Claimant's circumstances at the time she completed the retirement paperwork. Third, there is nothing in this record from which one could conclude that there was any active misleading on the part of PSERS as to the effect of a possible divorce on a Claimant's benefits. In addition, there is

no basis to conclude that PSERS sought to induce Claimant to act in a certain way³ and, hence, no basis to find estoppel. *See e.g., Sabino v. Junio*, 272 A2.d 508, 510 (Pa. 1971) (requiring for estoppel, *inter alia*, inducement by the party sought to be estopped). Therefore, Claimant cannot prevail on this theory.

Finally, Claimant's present Counsel also asserts that Claimant may not have been well served by her one-time counsel, who appears not to have clearly advocated her position to the Master. In addition, that counsel's motion to withdraw was immediately granted leaving her unrepresented at a critical juncture because it occurred the same day the petition to compel her signature was filed by Counsel for Mr. Ruffner. This then was followed by the judge's order to Claimant sign the stipulation for entry of the DRO order or the judge would allow Mr. Ruffner to do so for her.

However, even assuming this is an accurate picture of what occurred, if Claimant did not like the terms of the divorce agreement, her remedy was to appeal from the decision of the Lancaster County court in the divorce matter, not to attempt to circumvent that process by going to PSERS several years later. Unfortunately, that she lacked funds or suffered from ill health, making such an appeal of the common pleas court order impossible at that time, are not bases that would allow PSERS to remedy any perceived wrong.⁴

³ PSERS' practice of not providing any additional or special advice to those not represented at some point during the process, does not in and of itself constitute a basis for relief under the notion of estoppel.

⁴ This is not to say that there may not be other *fora* where some type of relief could be possible.

E. CONCLUSION

Even aside from the waiver that occurred here, the circumstances in this case are extremely unfortunate; however, it is not the first time that an equitable claim has been rejected in a retirement board setting. *See, e.g., Weaver v. State Employees Retirement Board*, 129 A.2d 3d 585 (Pa. Cmwlth. 2015), *allocator denied*, 635 Pa. 779 (2016) (collecting cases). In addition, in *Millick v. Millick*, 592 A.2d 788 (Pa. Cmwlth. 1991), *allocatur denied*, 529 Pa. 557 (1992), the Board was strongly admonished for not complying with the order of the domestic relations court. Here, the record establishes that PSERS acted in accordance with the law in honoring the ADRO and denying Claimant's request to begin paying her the full retirement benefit amount.

Accordingly, the following recommendation will be made to the Board.

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

In Re: Account of Alida M. Pulsinelli-Ruffner : Docket No. 2021-13
Claim of Alida M. Pulsinelli-Ruffner :

RECOMMENDATION

AND NOW, February 2, 2024, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, the Hearing Officer recommends that the Board **DENY** Claimant's request to be paid the entirety of the monthly PSERS retirement benefits and **DISMISS** Claimant's appeal on the basis of **WAIVER**.

A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). 22 Pa. Code § 201.11(d). Exceptions shall be filed with the below-noted Appeal Docket Clerk and must be **received by Monday, March 4, 2024**. See 1 Pa. Code § 35.211 (participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in brief on exceptions; brief opposing exceptions may be filed in response to brief on exceptions within 20 days after the time limit for the filing of briefs on exceptions or such other time as may be fixed by the agency head). If exceptions are filed, the Board will rule upon the exceptions; the Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. 22 Pa. Code § 201.11(c).

A legal assistant for the Office of Hearing Examiners will distribute this proposed opinion

and recommendation to the Appeal Docket Clerk and the parties.

/s/Debra Sue Rand
Debra Sue Rand
Chief Hearing Examiner

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