

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

IN RE: ACCOUNT OF ESMERALDA MATOS
DOCKET NO. 2011-06
CLAIM OF ESMERALDA MATOS

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Report of the Hearing Officer. We note that neither party filed Exceptions to the Proposed Decision and Recommendation of the Hearing Officer. The Board finds appropriate the History, Findings of Fact, Discussion, Conclusion and Proposed Final Order in the Proposed Report. Accordingly, we hereby adopt the Hearing Officer's Proposed Report as our own.

IT IS HEREBY ORDERED that Claimant's request to change the terms of her Retirement Benefit Plan is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: June 12, 2013

By: Melva S. Vogler
Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES RETIREMENT BOARD

IN RE :
ACCOUNT OF ESMERALDA MATOS : DOCKET NO. 2011-06
CLAIM OF ESMERALDA MATOS :

PROPOSED REPORT

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Date of Hearing: October 24, 2012
Hearing Officer: Kenneth Mark Sexton, Esq.

HISTORY

Claimant, Esmeralda Matos, is appealing the Public School Employees Retirement System's (hereinafter referred to as "PSERS") denial of her January 2011 request to change the terms of her May 2003 retirement plan. Ms. Matos's appeal is based on financial hardship and lack of advice. (NT 10/24/2012 at 6).

Ms. Matos was a teacher aide/assistant at Holy Infancy School in Bethlehem Area School District since 1977. *Id.* at 12. In time, she joined PSERS for her pension plan. *Id.* On April 21, 2003, she attended a PSERS Exit Counseling session, where she was informed of the many retirement plans available. *Id.* at 17; *See also* PSERS Ex. 4.

After Exit Counseling, Ms. Matos knowingly selected Option 3 as her Monthly Payment Plan. (NT 10/24/2012 at 24-25); *See also* PSERS Ex. 5. She ultimately retired on June 7, 2003. (NT 10/24/2012 at 17). Thereafter, she received an "Initial Retirement Benefit" letter which included an "Intent to Change the Terms of the Retirement Plan" page, explaining that her choice of retirement plan would become binding within 30 days. *Id.* at 28-30; *See also* PSERS Ex. 6.

Sometime in 2008 or 2009, Ms. Matos called PSERS with regards to a change of her retirement plan, and was informed to write a letter. (NT 10/24/2012 at 40). In January 2011 PSERS received a letter from Ms. Matos requesting an option change to her retirement so that she could receive her full check amount. *Id.* at 39-40; *See also* PSERS Ex. 11.

On January 13, 2011, PSERS sent a letter to Ms. Matos denying her request to change her retirement plan according to the Public School Employee's Retirement Code (hereinafter referred to as "Retirement Code"). *See PSERS Ex. 12; See also* 24 Pa. C.S. § 213.34. Shortly thereafter, Ms. Matos appealed this decision to the Executive Staff Review Committee (hereinafter referred to as "ESRC"). Her appeal was denied. *See Ex. 13-14.*

Following this denial, Ms. Matos requested an administrative hearing, and Mr. Kenneth M. Sexton, Esquire, was appointed as Hearing Officer, and a hearing was held on October 24, 2012. At this hearing, Claimant Matos represented herself, and Kathrin V. Smith, Esquire, Assistant Deputy Chief Counsel, represented PSERS. The Claimant testified on her own behalf and Todd Fulton, a regional representative for PSERS, testified for PSERS.

This proposed report is being submitted after consideration of the hearing testimony, exhibits, and post-hearing briefs. For the reasons stated herein, it is submitted that Esmeralda Matos's request to change her retirement benefits be denied.

FINDINGS OF FACT

1. Ms. Matos came to the United States from Puerto Rico in 1957 and attended High School for one (1) year before finishing the same at night. (NT 10/24/2012 at 10-11).
2. Ms. Matos's classes and collegiate workshops were all taught in English. Id. at 12.
3. Her teaching endeavors began in 1977 when she was a teacher aide/assistant at Holy Infancy School in Bethlehem Area School District. Id.
4. Shortly after commencing her employment, Ms. Matos joined PSERS for her pension plan. Id.
5. Ms. Matos also worked at Broughal Middle School and Northeast Middle School during the summers of 1989-1991. Id. at 14.
6. As a teacher aide, Ms. Matos helped Portuguese and Spanish-speaking children learn how to speak and read English. Id. at 13
7. Ms. Matos retired on June 7, 2003. Id. at 17.
8. On April 21, 2003, she attended a PSERS Retirement Exit Counseling session in Bethlehem. Id. at 17; *See also* PSERS Ex. 4.
9. At this Exit Counseling, her retirement plan options were explained. Id.
10. When Ms. Matos had questions, she would raise her hand. (NT 10/24/2012 at 6, 19).
However, other attendees of the workshop occupied the instructor's time. Id.
11. Ms. Matos failed to ask the instructor questions, and as a result, she chose her own option. Id.
12. Ms. Matos can read, write, and understand the English language. When asked if she could read in English, Ms. Matos responded as follows: "I can, yeah. I mean, there's some things that I cannot understand or – you know, a few things. But I can read and

write in English, yes.” Id. at 15.

13. At no time after the PSERS Counseling Session, or prior to submitting her retirement application, did Ms. Matos call PSERS with any questions, go to a PSERS office, or request a one-on-one session with PSERS. Id. at 20.
14. Ms. Matos signed her retirement application on April 21, 2003, at the counseling session; that application was received by mail on May 6, 2003. Id. at 22-23.
15. Ms. Matos states that she knowingly selected option 3 as her Monthly Payment Plan because she thought it was the “right thing at the right time.” Id. at 24-25; *See also* PSERS Ex. 5 at 4.
16. Although Ms. Matos claims she did not understand what Option 3 stated, she admits that she did read the whole statement. (NT 10/24/2012 at 26).
17. Ms. Matos received an “Initial Retirement Benefit” letter which included an “Intent to Change the Terms of the Retirement Plan” page. Id. at 28-30; *See also* PSERS Ex. 6.
18. Ms. Matos stated that she wanted to change her retirement plan in 2007 or 2008, when her husband retired. (NT 10/24/2012 at 30).
19. Ms. Matos received a letter dated May 18, 2004 which stated that her gross monthly check from her retirement plan would be adjusted to \$689.71. At that time, she stated she had no problems with this change. Id. at 31-32; *See also* PSERS Ex. 7.
20. In 2008 or 2009, Ms. Matos called PSERS regarding a requested change of her retirement plan, and was informed to write a letter. (NT 10/24/2012 at 40).
21. In January 2011, PSERS received a letter from Ms. Matos requesting an option change to her retirement so she would receive her full check amount. (NT 10/24/2012 at 39-40).
See also PSERS Ex.11.

22. On January 13, 2011, PSERS sent a letter to Ms. Matos indicating that her request to change her retirement plan was denied. *See* PSERS Ex. 12.
23. Shortly thereafter, Ms. Matos appealed that decision to the Executive Staff Review Committee. Her appeal was subsequently denied. *See* PSERS Ex. 13-14.

DISCUSSION

“A member who is eligible and elects to receive a reduced annuity under Option 1, 2, 3, or 4, shall nominate a beneficiary or survivor annuitant . . . by written designation filed with the board at the time of [her] retirement.” *See* 24 Pa. C.S. §8507(j). A member who elects option 2, 3, or 4, cannot change her benefit plan. *Id.* Although a retirement plan is irrevocable, there are three (3) statutory exceptions. *See* 22 Pa. Code §213.45; 24 Pa. C.S. §8507(j). However, none are applicable to the matter at hand.

Pursuant to those exceptions, a PSERS’s annuitant may change their retirement plan if: (1) the annuitant files a written intent to change the final terms of their benefit payment plan within thirty (30) days of the receipt of her initial benefit letter; (2) if the named survivor annuitant predeceases the annuitant; or (3) there is a change in the annuitant’s marital status. *See Id.* It is clear that option (2) and (3) are inapplicable. This is because Ms. Matos is still married to her husband Rodeberto Matos, whom she named as her survivor annuitant. (NT 10/24/2012 at 26-27). Without filing an Intent to Change letter, the member’s option choice became binding in 30 days. *Id.* at 65-67; *See also* PSERS Ex. 2, 5, 16.

Ms. Matos was made aware of the Intent to Change letter, and the repercussions for not filing the same, since it was included in her exit-counseling. It was also outlined in her PSERS handbook (both the 1998 and 2002 version), and in her Initial Benefits Letter. (NT 10/24/2012 at 29-30, 65, 71); *See also* PSERS Ex. 2, 4, 5, 6, 16. Furthermore, it was clearly stated in the first line of her Initial Benefit Letter, “[t]he terms of the retirement plan you selected are binding unless you file this *Intent to Change the Terms of the Retirement Plan* (PSRS-1242) with the [PSERS]. . . . **by September 2, 2003.**” *See* PSERS Ex. 6 (emphasis in original). Ms. Matos never filed an Intent to Change letter. *Id.* at 73.

Ms. Matos is requesting a change in her retirement plan due to financial hardship and lack of advice at the time she chose her retirement plan. Prior to retiring on June 7, 2003, Ms. Matos attended a PSERS Retirement Exit Counseling session in Bethlehem on April 21, 2003. (NT 10/24/2012 at 17); *See also* PSERS Ex. 4.

At said counseling session, Ms. Matos was informed about numerous topics and details regarding her retirement, including “Elections: withdrawals, payment plans” and “Intent to Change Terms of Retirement.” *See* PSERS Ex. 4. Over the course of the counseling session, Ms. Matos did not ask her counselor any questions. (NT 10/24/2012 at 18-19). She did attempt to speak directly with the counselor; but claimed that “when she was coming over [to Ms. Matos], somebody else grabbed her. And [Ms. Matos] never got a chance to talk to her . . . on a one to one.” *Id.* at 8, 19.

Ms. Matos is requesting to make a change from her “Option 3” selection. *See* PSERS Ex. 11. She is requesting this change because her medical bills have increased, she lost her husband’s insurance after his retirement, and her checks were getting lower. (NT 10/24/2012 at 8, 43). She admits that she chose Option 3, after reading it in its entirety, because she felt it was the “right thing to do.” *Id.* at 24-26.

The details of Option 3 were not only discussed at her exit-counseling session, they were also outlined in her PSERS handbook (both the 1998 and 2002 version) and in her 2002 Retirement Estimate. Further, Ms. Matos stated she understood what she was doing when she selected Option 3. *Id.* at 25, 63; *See* PSERS Ex. 1, 2, 4, 5, 16.

Per this selection, Ms. Matos received \$609.46 per month from August 2003 through May 2004, and then \$689.71 from June 2004 through the present day. (NT 10/24/2012 at 42). She claims that this amount, while accurate, began to decrease after June 2004 when she bought

health insurance through PSERS. *Id.* It was around 2009 when Ms. Matos realized she was not getting her full check amount under Option 3. However, she did nothing until she sent her letter requesting a change in 2011. *Id.* at 41-42; *See also* PSERS Ex. 11.

Although Ms. Matos first contacted PSERS about her chosen retirement option in 2009, she never formally requested a change until she sent her January 2011 letter. (NT 10/24/2012 at 39-41). When asked why Ms. Matos delayed in contacting PSERS, she explained, "I didn't have anybody. And then, I forgot about it" *Id.* at 40.

Soon after formally requesting a change, Ms. Matos received a letter from Troy W, Peechatka, Appeals Administrator from PSERS, denying her request for a change in retirement benefits, and explaining the reasons why. *See* PSERS Ex. 12. Ms. Matos then appealed to the ESRC making the same claims she did in her original PSERS letter. Her claim was denied again. *See* PSERS Ex. 13-14.

Lastly, Ms. Matos claims she was not properly informed at the time she chose Option 3 for her retirement benefits. However, information regarding the different option choices was in her possession since the day she became a member with PSERS. *See* Ex. 16. Additionally, Ms. Matos received numerous documents regarding her accounts, the option choices, details on how to change her benefits, and contact information for PSERS. (NT 10/24/2012 at *passim*); *See also* PSERS Ex. 1-16.

All of the documents Ms. Matos received were distributed in PSERS's normal course of business either throughout a member's employment or during the exit counseling session. (NT 10/24/2012 at *passim*).

The plight that Ms. Matos must endure does not go unnoticed. She worked for many years dedicating her life to the education of others and duly earned the right to retire. Initially,

she had no issues with her retirement selection. It was not until she had troubles paying medical bills that she made an effort to change her benefits. Although there was a plethora of information at her disposal, she sat on her rights and made no attempts to address her benefits for at least seven years. Regretfully, the law in this matter is clear, and Ms. Matos's request to change her retirement benefits must be denied.

CONCLUSION

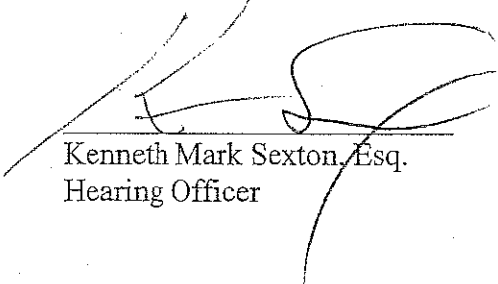
In light of the aforementioned, it is submitted that Esmeralda Matos's request to change her retirement benefits be **DENIED**.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES RETIREMENT BOARD

IN RE :
ACCOUNT OF ESMERALDA MATOS : DOCKET NO. 2011-06
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PROPOSED FINAL ORDER

AND NOW, this 2nd day of April 2013, based upon the foregoing Findings of Fact and Discussion, the Hearing Officer for the Public School Employees Retirement Board recommends that the Request for Claimant, Esmeralda Matos, to Change the terms of her Retirement Benefits should be **DENIED**.



Kenneth Mark Sexton, Esq.
Hearing Officer