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

IN RE: ACCOUNT OF DEBORAH K. CAPIZZI (D)  
DOCKET NO. 2020-07  
CLAIM OF THOMAS CAPIZZI

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the proposed Opinion and Recommendation, and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to invalidate or change the terms of Decedent's retirement contract is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 3/22/2024

By: DocuSigned by:  
Richard Vague  
E0D34BEB4E24D3  
Richard Vague, Chairman

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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PSERB  
EXECUTIVE OFFICE

IN RE: :  
ACCOUNT OF DEBORAH K. CAPIZZI (D) :  
CLAIM OF THOMAS CAPIZZI : DOCKET NO. 2020-07

OPINION AND RECOMMENDATION

Date of Hearing: December 20, 2022  
Hearing Officer: Carmen L. Rivera, Esquire  
For Claimant: A. Jacob Younts, Esquire  
Jennifer Nachamkin, Esquire  
STROKOFF & COWDEN, P.C.  
For PSERS: Dwight A. Decker, Jr., Esquire

## HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Thomas Capizzi ("Claimant") from the April 17, 2020 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's request to change the terms of the retirement plan of Deborah K. Capizzi ("Mrs. Capizzi" or "Decedent") from Maximum Single Life Annuity to Option 1, noting that the Intent to Change the Terms of the Retirement Plan process applied exclusively to the PSERS member, not to the estate, spouse, alternate payee, survivor annuitants, or beneficiaries.

Specifically, on September 30, 2019, Mrs. Capizzi submitted her Retirement Application ("Application") to PSERS electing a Maximum Single Life Annuity and to withdraw her total contributions and interest. PSERS accepted and processed Mrs. Capizzi's Application, paid out Mrs. Capizzi's contributions and interest, and began paying Mrs. Capizzi a monthly annuity pursuant to the terms of the Application. Mrs. Capizzi died on November 15, 2019. Thereafter, Mr. Capizzi requested to amend Mrs. Capizzi's retirement monthly payment plan selection, arguing that Mrs. Capizzi was not of sound mind at the time she filled out her Application.

Mr. Capizzi filed a timely appeal of ESRC's April 17, 2020 decision and requested a formal administrative hearing. The administrative hearing was held as scheduled on December 20, 2022. Claimant was represented by Jennifer Nachamkin, Esq. of Strokoff & Cowden, P.C. and presented his case through documentary evidence and presentation of testimony of Certified Registered Nurse Practitioner ("CRNP") Stephanie Gehret, Timothy Capizzi, Thomas Capizzi, and Daniel Farrell. Dwight A. Decker, Jr. represented PSERS at

the hearing and presented its case through testimony of Anthony Pinto, and documentary evidence. The Notes of Testimony ("N.T.") were filed on January 23, 2023. An order scheduling briefs was issued February 3, 2023. Claimant filed an initial post-hearing brief on March 11, 2023. The Commonwealth filed its brief on April 11, 2023. The Claimant's reply brief was due on April 24, 2023. Claimant did not file a reply brief and the evidentiary record in this matter closed on April 24, 2023.

This matter is now before the Board.

## FINDINGS OF FACT

1. In 1998, Mrs. Capizzi began work at East Stroudsburg Area School District and was enrolled as a member of PSERS on October 1, 1998. (N.T. 30, 99).
2. On March 31, 2001, Mrs. Capizzi married Thomas Capizzi. (N.T. 99)
3. On May 7, 2001, Mrs. Capizzi filed a Nomination of Beneficiaries form listing Thomas Capizzi as beneficiary. (N.T. 55; Exhibit C-1).
4. Mr. and Mrs. Capizzi had received help in the past with financial decisions from Mrs. Capizzi's son, Daniel Farrell.<sup>1</sup> (N.T. 105).
5. Around May of 2018, Mrs. Capizzi was diagnosed with cancer and took a leave of absence from work. (N.T. 99).
6. Mrs. Capizzi returned to a light work schedule in May 2019 until the school district term ended in June 2019. (N.T. 99).
7. On June 25, 2019, PSERS issued a form letter informing Mrs. Capizzi of her right to apply for disability retirement based on her absence from work. (N.T. 57-58; Exhibit C-2).
8. Through the Summer of 2019, Mrs. Capizzi's health deteriorated, and she slept for almost 20 hours a day, could barely walk, and "was in severe pain constantly." (N.T. 100).
9. On one occasion, Mrs. Capizzi commented that her medication made her "smiling and giggly," (N.T. 141).
10. Mrs. Capizzi's last day of employment with the District was August 15, 2019. (N.T. 38, 47; Exhibit PSERS-3).
11. On September 16, 2019, Mrs. Capizzi met with Stephanie Gehret, CRNP, of the

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<sup>1</sup> Daniel Farrell lives in Maryland, where he works as divisional Chief Financial Officer (CFO) for Stanley/Black & Decker. (N.T. 105, 113, 135-36). Daniel graduated from Northwestern University with a Master's Degree in Business Administration (MBA) with a focus on Finance Management Strategy. (N.T. 136).

Gynecological Oncology Division of Lehigh Valley Hospital as a follow-up to her emergency room visit on September 13, 2019. (N.T. 15; Exhibit C-3).

12. During her medical appointment, CRNP Gehret informed Mrs. Capizzi that her cancer had returned, and presented Mrs. Capizzi with options to pursue chemotherapy or palliative care. (N.T. 18).

13. Mrs. Capizzi appeared overwhelmed and anxious during the appointment; however, she was making her own decisions, was aware of her surroundings, and understood everything that was discussed with her that day. (N.T. 15, 21-23; Exhibit C-3).

14. Right after her appointment with CRNP Gehret, Mrs. Capizzi and her stepson, Timothy Capizzi, stopped to get a birthday gift at the hospital giftshop for her husband, who had been hospitalized. (N.T. 95).

15. Mrs. Capizzi tried to buy a gift using a grocery store rewards card instead of her credit card. (N.T. 95).

16. In May of 2019, Mrs. Capizzi ceased participating in financial decisions, so Mr. Capizzi began paying bills by himself. (N.T. 106, 133).

17. Between September and October 2019, Mrs. Capizzi's health did not improve; during that time, Mr. Capizzi would go to work early and would leave Mrs. Capizzi home sleeping until he got her up for dinner. (N.T. 111-112).

18. Mrs. Capizzi's son, Jeffrey, and his wife Abby, would visit Mrs. Capizzi almost every day. (N.T. 111-112, 132).

19. In November of 2019, Mr. and Mrs. Capizzi together decided that she would pursue chemo treatments-rather than enter palliative care as a "last hope." (N.T. 133-134).

### Communications with PSERS

20. On September 19, 2019, Mr. and Mrs. Capizzi called PSERS to request information about Mrs. Capizzi's retirement. (N.T. 62).

21. During the phone call, Mrs. Capizzi provided her social security number to the PSERS representative and gave consent for her husband to speak on her behalf because she was hearing impaired. (N.T. 61-62, 104).

22. The PSERS representative explained the normal retirement process to Mr. and Mrs. Capizzi and then began the process of procuring a retirement estimate for Mrs. Capizzi. (N.T. 63-64; PSERS-1).

23. Mr. Capizzi requested information on Mrs. Capizzi's retirement benefits retroactive to August 15, 2019. (N.T. 62, 64; Exhibit. C-4).

24. The PSERS representative explained that in order to receive retroactive benefits, Mrs. Capizzi needed to undergo counseling and submit a retirement application within 90 days of the last working day, or by November 13, 2019. (N.T. 64; Exhibit C-4, p. 3).

25. The PSERS representative also advised Mr. and Mrs. Capizzi that a retirement counseling session could be scheduled that day for approximately eight weeks out, but that PSERS could not schedule one any earlier than November 14, 2019. (N.T. 64; Exhibit C-4, p. 3)

26. Retirement counseling is scheduled after a retirement estimate is provided to the member, but it can be scheduled sooner if a member is concerned about timing. (N.T. 87).

27. Mr. Capizzi advised the PSERS representative that "we have very smart people in our family who are financial people. They can help us fill out the form." (N.T. 66, 104; Exhibit C-4, p. 4).

28. PSERS mailed Mrs. Capizzi a Normal Retirement Estimate on September 27, 2019

(N.T. 34; PSERS-2).

29. Mr. and Mrs. Capizzi did not schedule retirement counseling with PSERS nor did they seek assistance with completing the Application. (N.T. 88, 103).

**Retirement Application Submitted to PSERS**

30. On September 26, 2019, Mrs. Capizzi completed, signed, and mailed the Application to PSERS without any assistance. (N.T. 41-42, 106, 114, 129, 131-32; PSERS-3)

31. PSERS received Mrs. Capizzi's Application on September 30, 2019. (N.T. 37; PSERS-3).

32. Mrs. Capizzi's Application contained accurate information, including Mrs. Capizzi's termination date, social security number, date of birth, address, phone number (including a note that she was hearing impaired), e-mail address, primary (Thomas Capizzi) and secondary beneficiary information for her three sons, Jeffrey, Daniel and Zachary Farrell (including their full names, addresses, social security numbers, dates of birth, gender, and relationship to Mrs. Capizzi), and direct deposit information. (N.T. 38, 41, 129-31, 147; Exhibit PSERS-3).

33. Of the several options available - Maximum Single Life Annuity, Option 1, Option 2, and Option 3 – Mrs. Capizzi selected a Maximum Single Life Annuity, opted to withdraw her contributions and interest, waived retirement counseling, indicated that she wanted to receive a "Tax-free Withdrawal," and signed the certification at the end of the Application. (N.T. 39-41, 68-69; PSERS-3).

34. Mrs. Capizzi made a minor error in her Application when she selected the tax-free, rather than taxable, subsection of Section 4, but the section also stated in a box that "The IRS requires that PSERS withhold 20 percent federal income tax from the taxable portion of your contributions and interest paid directly to you." (N.T. 68-69, 84; PSERS-3).



35. Selecting tax-free rather than taxable on the Application is a common mistake for which PSERS has a procedure to address and does not invalidate an application. (N.T. 89).

36. Because Mrs. Capizzi had no tax-free contributions and interest to withdraw, PSERS applied Mrs. Capizzi's selection to her taxable contributions and interest, per its procedure. (N.T. 89).

37. Mrs. Capizzi's Application contained all the required information to be processed by PSERS. (N.T. 40-41).

38. The retirement estimate, dated September 27, 2019, was mailed right after Mrs. Capizzi submitted her application on September 26, 2019. (N.T. 34, 73; Exhibit PSERS-2).

39. The retirement estimate included all of the options available to Mrs. Capizzi and explained the difference in the monthly benefits, including the amount of monthly payment, death benefits that would be protected, and years until death benefit is depleted between the Maximum Single Life Annuity and Option 1 retirement options (the Single Life Annuities), and another page included information for *Joint Survivor Annuities* under Option 2 and Option 3 noting the monthly check options to the members and the survivor annuitant. (PSERS-2).

40. PSERS date-stamped Mrs. Capizzi's retirement application as received on September 30, 2019. (N.T. 37; PSERS-3).

41. Similarly, the annual statement of account ending June 30, 2019 included the present-day value of Mrs. Capizzi retirement benefits to be \$194,477. (Exhibit C-12, p. 3).

42. According to the 2019 annual statement, if Mrs. Capizzi selected Maximum Single Life Annuity and withdrew her contributions and interest, her monthly check would be \$900. (Exhibit C-12, p. 3).

43. Mrs. Capizzi's total contributions and interest amounted to \$46,910. (N.T. 75-76;

PSERS-2, p. 4).

44. Daniel Farrell, Mrs. Capizzi's son, visited Mr. and Mrs. Capizzi on October 27, 2019. (N.T. 113).

45. On that date, Mr. Farrell reviewed the PSERS estimate and said to Mr. Capizzi "you're okay as long as you didn't pick the Maximum Single Life Annuity." (N.T. 113, 139).

46. Mr. Capizzi believed that Mrs. Capizzi had selected the Maximum Single Life Annuity, and Mr. Farrell, who provided his parents with financial counseling, stated, "that's a problem that we need to fix." (N.T. 139-140).

47. On October 29, 2019, PSERS issued Mrs. Capizzi's Finalized Retirement Benefits letter. (N.T. 43, 80; Exhibit P-4).

48. The Finalized Retirement Benefits letter stated that PSERS had "finalized [Mrs. Capizzi's] retirement benefit based on [her] option selection and the final salaries reported by [her] employer." (Exhibit P-4).

49. The letter also confirmed that Mrs. Capizzi "selected Maximum Single Life Annuity and decided to withdraw [her] total contributions and interest." (Exhibit P-4).

50. The letter stated that "The terms ... will be binding unless you file the enclosed Intent to Change ... by December 4, 2019", that "[w]ithin three weeks a payment for \$1,361.36" would be disbursed for retroactive benefits, and that "[a] 20 percent federal withholding tax [was] deducted from the taxable portion of [her] partial lumpsum withdrawal." (Exhibit P-4).

51. Specifically, the letter notified Mrs. Capizzi that \$9,448.82 would be withheld from the lump sum payment in federal taxes, even though Mrs. Capizzi had elected to have no federal withholdings. (N.T. 83-84; Exhibit C-15)

52. The Finalized Retirement Benefits Letter further stated that "[b]ecause you have

withdrawn all of your contributions and interest, there are no death benefits." (PSERS-4 (emphasis added)).

53. Mrs. Capizzi received a blank Intent to Change Form from PSERS, and Mr. Farrell planned to help his family fill out the form to change the retirement application selections on a later date. (N.T. 141).

54. By a second letter dated October 29, 2019, PSERS informed Mrs. Capizzi that she would receive a lump sum payment within 15 days. (ExhibitC-15).

55. PSERS processed Mrs. Capizzi's Application, paid out her lump sum withdrawal, and began paying her a monthly annuity. (N.T. 40-41, 44, 50, 118-19; PSERS- 3, PSERS-4, PSERS-5).

56. Specifically, on November 5, 2019, PSERS disbursed payments according to the retirement application as follows: \$1,361.36 in retroactive benefits for August and September of 2019 and a lump sum of \$37,795.26 after taxes for the contributions and interest. (N.T. 44; Exhibits PSERS 5 and C-20)

57. PSERS's disbursed a monthly payment of \$897.92 on November 14, 2019. (Exhibit C-20).

58. Mrs. Capizzi passed away on November 15, 2019. (NT 117; Exhibit P6).

59. Thomas Capizzi is the Executor for Mrs. Capizzi's estate. (N.T. 120; Exhibit C-24).

60. No one had power of attorney for Mrs. Capizzi and Mr. Capizzi did not seek to have a guardian appointed for her. (N.T. 132-133, 147-148).

61. PSERS processes approximately 9,500 retirement applications per year and does not assess member competency at the time an application is received. (N.T. 41).

62. By letter dated November 21, 2019, Mr. Capizzi, with the assistance of Mrs. Capizzi's son, Daniel Farrell, sent a letter to PSERS seeking to change Mrs. Capizzi's retirement benefits, and

attached an Intent to Change form signed only by Mr. Capizzi. (N.T. 117-119; Exhibit C-19).

63. By letter dated April 17, 2020, the ESRC notified Mr. Capizzi that it denied his request because Mrs. Capizzi was presumptively competent when she filed her Application and the "Intent to Change" process applies solely to the member. (N.T. 53-54, PSERS-7).

64. Mr. Capizzi timely filed an appeal and request for administrative hearing, and the hearing was scheduled and held on December 20, 2022, before Hearing Examiner Carmen L. Rivera, Esquire.

65. Mr. Capizzi appeared at the December 20, 2022 hearing represented by counsel and had an opportunity to testify, examine witnesses, and offer documentary evidence. (N.T., *passim*; Board Record).

## CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with his appeal.  
(Findings of Fact, No. 65)
2. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, et seq.
3. Claimant has only those rights recognized by the Retirement Code and none beyond.  
*See Bittenbender v. State Employees' Rel. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
4. Claimant bears the burden of establishing those facts upon which he relies in order to prevail. *See* 22 Pa. Code §§ 201.12(d), 201.10, 201.8(a); *Gierschick v. State Employees' Rel. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999).<sup>2</sup>
5. Mrs. Capizzi's Application contains the information necessary under the Retirement Code to effectuate her written application to retire. (Findings of Fact, Nos. 1-58).
6. An adult is presumed competent to enter into an agreement, and a signed document gives rise to "the presumption that it accurately expresses the state of mind of the signing party." *McGovern*, supra, 517 at 526 (citations omitted); *See Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001) (citations omitted).
7. Pursuant to 24 Pa.C.S. § 8507(j) and 22 Pa. Code § 213.45, a retirement option election is irrevocable unless it falls within one of the narrow exceptions set forth in the Retirement Code or regulation, which are not applicable in this case.
8. By executing and submitting the Application, Mrs. Capizzi entered into a binding retirement contract with the Board under which it must be presumed that she wished to receive a monthly retirement benefit under the terms of a Maximum Single Life Annuity. (Findings of Fact,

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<sup>2</sup> Cases interpreting provision of the SERS Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

Nos. 1-58)

9. Mrs. Capizzi's Application with PSERS is a binding contract. (Findings of Fact, Nos. 1-58)

10. The presumption that a signed document is valid can be overcome by establishing through clear and convincing evidence that the individual executing the document was not able to understand the nature and consequences of their actions at the time they executed the document.

*McGovern*, 517 A.2d at 526; *Forman* 778 A.2d at 780.

11. Mr. Capizzi, Claimant in this matter, failed to provide clear and convincing evidence contrary to Mrs. Capizzi's intent to retire and elect a Maximum Single Life Annuity as evidenced on the Application filed with PSERS. (Findings of Fact, Nos. 1-64)

12. Equitable relief is unavailable to Claimant. *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 850-51 (Pa. Cmwlth. 1989); *Bittenbender*. 622 A.2d at 405.

13. Claimant has not proven that the Application was invalid. (Findings of Fact, Nos. 1-64)

## DISCUSSION

### Mrs. Capizzi's Retirement Application

The Board's regulations provide "a general rule that, once a member has filed an application for benefits and chosen an option, such option shall be deemed irrevocable." *Gold v. Public School Employees' Ret. Bd.*, 407 A.2d 482,484 (Pa. Cmwlth. 1979) (citing 22 Pa. Code§ 213.45); see also *Buchan v. State Employes' Ret. Bd.*, 470 A.2d 208,209 (Pa. Cmwlth. 1984).

An application is "proper" if it contains all the statutory requirements found in the Retirement Code. Section 8507(f) states in pertinent part:

(f) Termination of service.--Each member who terminates school service and who is not then a disability annuitant shall execute on or before the date of termination of service a written application, duly attested by the member or his legally constituted representative, electing to do one of the following:

\* \* \*

(3) Receive an immediate annuity, and may, if he is a joint coverage member, elect to become a full coverage member and agree to pay within 30 days of date of termination of service the lump sum required.

(Emphasis added) 24 Pa.C.S. § 8507(f)(3). When submitting the application for retirement, the member must elect one of the annuity options found in Section 8345(a), which provides in pertinent part:

(a) General rule.--Any ... eligible member upon termination of school service may apply for and elect to receive either a maximum single life annuity, ... or a reduced annuity certified by the actuary to be actuarially equivalent to the maximum single life annuity and in accordance with one of the following options,

(1) Option 1.--A life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision that, if, at his death, he has received less than such present value, the unpaid balance shall be payable to his beneficiary.

(2) Option 2.--A joint and survivor annuity payable during the lifetime of the member

with the full amount of such annuity payable thereafter to his survivor annuitant, if living at his death.

- (3) Option 3.--A joint and fifty percent (50%) survivor annuity payable during the lifetime of the member with one-half of such annuity payable thereafter to his survivor annuitant, if living at his death.
- (4) Option 4.--Some other benefit which shall be certified by the actuary to be actuarially equivalent to the maximum single life annuity, subject to the following restrictions:

- (i) Any annuity shall be payable without reduction during the lifetime of the member.

\* \* \*

- (iii) A portion of the benefit may be payable as a lump sum, except that such lump sum payment shall not exceed an amount equal to the accumulated deductions standing to the credit of the member. The balance of the present value of the maximum single life annuity adjusted in accordance with section 8342(b) shall be paid in the form of an annuity with a guaranteed total payment, a single life annuity, or a joint and survivor annuity or any combination thereof but subject to the restrictions of subparagraphs (i) and (ii) of this paragraph.

24 Pa.C.S. § 8345(a).

The member must also "nominate a beneficiary or a survivor annuitant, as the case may be, by written designation filed with the board at the time of his retirement." 24 Pa.C.S. § 8507(j). If a member elects to withdraw any portion of their accumulated deductions, Section 8505.l(a) requires the member to "elect to receive the amount in not more than four installments." 24 Pa.C.S.

§8505.l(a). The rollover information requested in Section 4 of the retirement application is not essential to the processing of the application and does not invalidate an application.

Mrs. Capizzi completed all required sections of her Application. She provided her name, social security number, gender, date of birth, and contact information-including a note with her phone number that she was hearing impaired. In Sections 4 and 5, Mrs. Capizzi elected the Maximum Single Life Annuity and opted to withdraw her contributions and interest. She then



completed Section 7, providing accurate addresses, social security numbers, and dates of birth for her husband and three sons. She provided accurate banking information for her direct deposits in Section 10. She certified that there was no existing court order or pending divorce in Section 12 and signed and dated the certifications in Section 13. She then mailed her Application to PSERS, which was received by PSERS on September 30, 2019.

Thus, Mrs. Capizzi provided all the necessary information on her Application as required under the Retirement Code, and the application was processed and finalized. After processing Mrs. Capizzi's Application, PSERS notified Mrs. Capizzi by letter dated October 29, 2019 that \$9,448.82 would be withheld for federal taxes from her total contributions and interest of \$46,910.21.

On November 5, 2019, PSERS disbursed payments accordingly as follows: \$1,361.36 in retroactive benefits for August and September of 2019, a lump sum of \$37,795.26 for the contributions and interest minus federal taxes, and \$897.92 monthly annuity payment. Mrs. Capizzi received these payments via direct deposit. There is no evidence in the record that Mrs. Capizzi inquired about or contacted PSERS regarding the federal taxes paid by the PSERS.

#### **Mr. Capizzi's Challenge to Mrs. Capizzi's Retirement Application**

Shortly after Mrs. Capizzi's passing, Mr. Capizzi and Mr. Farrell sent a letter to PSERS seeking to change Mrs. Capizzi's retirement benefits along with a signed *Intent to Change* form signed by only her husband, Mr. Capizzi. Mr. Capizzi presented evidence at the hearing in support of his argument that Mrs. Capizzi's Application was invalid based on selections she made on the application itself and based on Mrs. Capizzi's incompetence around the time the Application was completed.

Mr. Capizzi first argues that Mrs. Capizzi's error in marking her election to withdraw all her contributions and interest in the tax-free rather than in the taxable portion of Section 4 of her

Application was an invalid option and is sufficient grounds to invalidate the Application and the retirement plan contract between Mrs. Capizzi and PSERS.

PSERS presented one witness to support that Mrs. Capizzi's mistake in marking her selection in the tax-free subsection despite her lump sum withdrawal being taxable is a common error made by members. The error is so common that PSERS has a process to address it without requiring members to resubmit an application. As noted by PSERS in its post-hearing brief, the elections made in Section 4 are not statutorily required elements that would negate the contractually binding nature of the Application.

Mr. Capizzi further argues that Mrs. Capizzi's Application should be voided because she was incompetent and therefore unable to understand the nature and consequences of her actions at the time the Application was completed and filed with PSERS. Specifically, Mr. Capizzi argues that his wife was incompetent because she was "addled from pain medication," slept for significant portions of the day, and-in one instance--handed a cashier a grocery store card rather than a credit card. PSERS argues that the evidence of Mrs. Capizzi being "drug addled" is that, on one occasion, Mrs. Capizzi commented that a medication made her "giggly," which evidences Mrs. Capizzi awareness of the medication's effect on her. In addition, confusing two similarly sized cards on the day she was informed her cancer had returned also does not show incompetence.

On the day she signed the Application, Mrs. Capizzi was making her own decisions, was aware of her surroundings and understood everything that she discussed with CRNP Gehret that day. Mrs. Capizzi was understandably upset by the news she received but, nevertheless, recalled that it was Mr. Capizzi's birthday and wished to purchase him a gift from the gift shop, further evidencing that Mrs. Capizzi did not lack introspection. During that time, Mrs. Capizzi was staying with her husband in his room at the hospital because he was currently admitted to the hospital. She was alert

enough to keep her husband company during his hospital stay. Although Mrs. Capizzi was understandably upset by the news of her cancer diagnosis, like in *Forman*, the stress of dealing with an illness does not equate to incompetency. *Forman*, 778 A.2d at 779-80.

PSERS further notes that mental incompetence is best established by evidence of the individual's words, conduct, and observations thereof on the date in question. See *McGovern*, 517 A.2d at 526; *Forman*, 778 A.2d at 780. Specifically, PSERS points out that at the time Mrs. Capizzi filed her Application with PSERS, the only proffered evidence of incapacity was that Mrs. Capizzi slept for significant periods of the day, but that she was "coherent" when she was awake. PSERS also maintains that Mr. Capizzi taking over the chore of paying the bills does not establish Mrs. Capizzi's incapacity. More importantly, during that time, no one had power of attorney or guardianship over Mrs. Capizzi, and Mr. Capizzi was able to continue working outside the home, leaving Mrs. Capizzi at home, sometimes by herself.

With regard to the Application, Mr. Capizzi explained that he learned that selecting the Maximum Single Life Annuity was a problem from Daniel Farrell on October 27, 2019. Mr. and Mrs. Capizzi then received the Finalized Retirement Benefits letter dated October 29, 2019 with more detailed information about several options along with a blank Intent to Change form. Mrs. Capizzi never signed or filed the Intent to Change form.

PSERS argues that the best evidence presented of Mrs. Capizzi's mental state at the time she filed her Application is the Application itself. The Application shows that Mrs. Capizzi accurately completed her termination date; her and her beneficiaries' social security numbers, addresses, and dates of birth; contact information; and banking information. Her only error was one so common that PSERS has a procedure in place to remedy it. After completing the application on her own, Mrs. Capizzi successfully mailed the application to PSERS. PSERS processed Mrs. Capizzi's Application

and began paying benefits in accord with the selections made by Mrs. Capizzi.

Mr. Capizzi next seeks to invalidate Mrs. Capizzi's Application on the basis that Mrs. Capizzi's selection of the options available on the Application was unreasonable. The Pennsylvania Supreme Court has previously addressed challenges to a retirement contract based on the assertion that the choices made were unreasonable or unwise, and rejected such a standard, explaining:

From some points of view, that may be true, but no one can say that belief that another will overcome a terrible disease and live is lunatic; no one can successfully assert that such a belief, even against the medical evidence, renders one incompetent. Such a belief may be, from some points of view, thoughtless, against scientific probabilities, irrational, and when combined with what amounts to a testamentary disposition of property in favor of the ill person as opposed to another who seems to be healthy, it may even be said to be selfish and heedless of the needs of others. But whatever may be said about it, it cannot, without more, be said to prove incompetence. Thus, the claim that is made here in the name of incompetence is in reality a challenge to the wisdom, the desirability, the thoughtfulness and the rationality of the disposition. But such a challenge may not succeed, for neither courts nor disappointed heirs may alter the disposition of the property of a deceased person merely on the grounds that that person acted in a way that the challenger believes to be irrational.

*McGovern*, 517 at 527.

PSERS offers *Forman* and *McGovern* as instructive to support denying Mr. Capizzi's request to invalidate Mrs. Capizzi's Application. In *Forman*, the claimant filed an application for retirement on September 2, 1998. 778 A.2d at 779. PSERS later notified claimant that she was ineligible to retire because she missed the statutory deadline of July 11, 1998 under Act 41 (Act 41 was "early retirement window" legislation that permitted certain employees to retire, although not normally qualified to do so, if they had 30 eligibility points. *Forman*, 778 A.2d at 780). *Forman* appealed the decision and argued that mental incapacity resulting from, among other things, her struggle with breast cancer prevented her from filing her application in a timely manner. *Id.* The Commonwealth Court denied her appeal. The Court concluded that Act 41 created a specific window of opportunity

without exception, and that the Board "has no authority to grant rights beyond those specifically set forth in the retirement code." *Id.* at 780 (citing *Hughes v. Pub. Sch. Employees' Ret. Bd.*, 662 A.2d 701 (Pa. Cmwlth. 1995)). The Court went on to explain that the claimant's evidence that she was agitated by concerns over a new labor contract and her struggle with cancer were insufficient to rebut the presumption that a signed document "accurately expresses the state of mind of the signing party." *Id.*, 778 A.2d at 779-80 (citing *McGovern*, 517 A.2d at 526).

In *McGovern*, the heirs of a deceased member sought to invalidate a member's retirement application arguing that the member was incompetent at the time his retirement contract was created. *McGovern*, 517 A.2d at 526. The member, Mr. McGovern, elected a joint and survivor annuity naming his wife, Mrs. McGovern, as survivor annuitant even though she was terminally ill at the time. *Id.* at 524. Mrs. McGovern died fourteen days after Mr. McGovern retired and then, five days later, Mr. McGovern died. *Id.* Mr. McGovern's heirs challenged the retirement contract alleging Mr. McGovern was impaired by his alcoholism, refusal to acknowledge that his wife was going to die, and that he was otherwise not attuned to reality. *Id.* Nevertheless, Mr. McGovern did understand the nature and consequences of his actions as evidenced, in part, by his coherence when making his retirement selections and following subsequent directions. *Id.* at 525-26. The Supreme Court further explained that believing in the ability to overcome a terrible disease, even when it is against medical evidence, does not equate to incompetence. *Id.* at 527.

In *McGovern*, it was insufficient proof of incapacity that Mr. McGovern was sometimes too drunk to work or keep appointments, would occasionally dress in his work uniform and demand to be taken to work despite being retired, would refuse to eat, and was heard having conversations with his dead father. *See McGovern*, 517 A.2d at 524.

The hearing examiner agrees with the Commonwealth that Mrs. Capizzi's explanation that

her medication made her "giggly" does not make her "addled" or incompetent. And although Mrs. Capizzi slept for significant portions of the day, her stepson testified that she was "coherent" when awake, and Mr. Capizzi acknowledged that he left her home alone for periods of time while he went to work. In fact, Mrs. Capizzi was able to complete the retirement application in its entirety and mail it to PSERS without any assistance. Notably, there was no testimony offered from Jeffrey and Abby, the two individuals who were visiting Mrs. Capizzi the most around the time she filed her Application.

PSERS argues that to the contrary, Mrs. Capizzi was participating in important decisions independently through November of 2019, noting that after Mrs. Capizzi mailed her Application and PSERS processed it, Mr. and Mrs. Capizzi together decided that she would pursue chemo treatments-rather than enter palliative care as a "last hope." PSERS contends that Mr. Capizzi's argument is "in reality a challenge to the wisdom, the desirability, the thoughtfulness and the rationality of the disposition" and that "such a challenge may not succeed, for neither courts nor disappointed heirs may alter the disposition of the property of a deceased person merely on the grounds that that person acted in a way that the challenger believes to be irrational." *McGovern* 517 A.2d at 527.

All considered, Claimant's has failed to establish that Mrs. Capizzi was incompetent when she filled out her Retirement Application.

### **Equitable Relief**

Mr. Capizzi next argues in its post-hearing brief that PSERS's actions entitle him to equitable relief because PSERS misled Mrs. Capizzi by using and referring to terms within the Retirement Code and also when it said one thing, while doing another. PSERS maintains that its use and reiteration of statutory terms and provisions was not an error or failure, that its customer service in

delivering results sooner than promised was not an error or failure, and that equitable relief is not available to Claimant.

### **Retirement Code**

Specifically, Mr. Capizzi contends that PSERS used words like "maximum" to make it sound like it is the option with the highest and best benefit." (Claimant's brief, p. 20). PSERS explained that "maximum single life annuity" is a statutory term found in the Retirement Code at 24 Pa.C.S. § 8342 ("Maximum single life annuity"). A maximum single life annuity, or MSLA, provides a member with the highest monthly annuity benefit. 24 Pa.C.S. §§ 8342, 8345. Similarly, Mr. Capizzi asserts in its post-hearing brief that Mrs. Capizzi was misled by the "blandly labeled, 'Option 1' ", which provided a higher present value than Mrs. Capizzi's selection. (Claimant's brief, p. 23). PSERS argues that such argument ignores the plain language of the Retirement Code. "Option 1" is one of multiple options available to a retiring member, all of which provide for a "reduced annuity certified by the actuary to be actuarially equivalent to the maximum single life annuity." 24 Pa.C.S. § 8345. Because all available options are actuarially equivalent, they all have the same "present value." 24 Pa.C.S. §§ 8342, 8345. As such, it was not error for PSERS to accurately describe a member's available options.

In addition, PSERS points out that the 90-day deadline that Mr. Capizzi accuses PSERS of using to pressure Mrs. Capizzi into submitting her Application, is also an important deadline dictated by the Retirement Code found in 24 Pa.C.S. §§ 8102 (def. "effective date of retirement"), 8507(i), and that it was not error to remind Mrs. Capizzi of that deadline. PSERS also explained in its brief that the 90-day deadline provided by the Retirement Code, was important to keep in mind because Mrs. Capizzi did not contact PSERS until after she terminated service with her employer, leaving limited time to prepare a retirement estimate and schedule counseling with PSERS. Notably, when

made aware of the timing concerns, Mr. Capizzi requested the application form to fill out stating that "they have very smart people in our family who are financial people. They can help us fill out the form."

### **Representations by PSERS regarding the Application**

Mr. Capizzi further argues that PSERS informed Mrs. Capizzi (1) that the process to request an estimate takes about four to six weeks but the estimate was actually prepared and sent to Mrs. Capizzi in eight days; (2) that it was misleading for PSERS to state that it would issue her payment for retroactive benefits within three weeks of October 29, 2019, when payment was received by Mrs. Capizzi on November 5, 2019; and (3) that PSERS stated that Mrs. Capizzi would receive her lump sum withdrawal within 15 days of October 29, 2019, when the payment was actually received one week later on November 5, 2019.

PSERS argues that it provided payments within the estimated times given to Mrs. Capizzi, and that prompt processing of requests is more akin to good customer service and not misdirection. More importantly, PSERS proffers that equitable relief is unavailable to void provisions of the Retirement Code, and that Mr. Capizzi has failed to prove the necessary elements, citing to *Finnegan*, 560 A.2d at 852. In *Finnegan*, prior to retirement, a PSERS member had numerous conversations with PSERS during which she was advised that she could purchase fifteen years of out-of-state service. 560 A.2d at 850. Based on this erroneous information, she prematurely retired. *Id.* The Retirement Code, however, limits such purchases of service to twelve years. See 24 Pa.C.S. § 8304(c), so PSERS informed the member that she could only purchase twelve years of out-of-state service. *Id.* at 850. The Court acknowledged that the retiree "specifically inquired as to whether or not she could purchase fifteen years of out-of-state teaching service and government service in order to qualify for early retirement and relied on the mistaken information supplied by PSERS to her



detriment." *Id.* However, despite the clear elements of estoppel being met, the Court held that equitable estoppel cannot apply where it would prevent PSERS from asserting a statutory provision. *Id.* at 851. The Court explained that to find otherwise would allow an employee error to have the effect of altering the law. *Id.* at 850.

Based on the findings of fact, conclusions of law, and discussion, the hearing examiner finds that Claimant has failed to provide clear and convincing evidence that Mrs. Capizzi's Application is invalid.

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: :  
ACCOUNT OF DEBORAH K. CAPIZZI (D) :  
CLAIM OF THOMAS CAPIZZI : DOCKET NO. 2020-07

RECOMMENDATION

AND NOW, this 21<sup>st</sup> day of June 2023, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, it is hereby recommended that Claimant's request to void the Retirement Application of Deborah K. Capizzi is **DENIED**.

Either 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 Administrator and must be received 30 days after the mailing date of this Amended opinion and memorandum. 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 briefs on exceptions within 20 days after the time limited 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).

*Carmen L. Rivera*

Carmen L. Rivera  
Hearing Officer

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