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

IN RE: ACCOUNT OF KATHLEEN J. CASNER (D)
DOCKET NO. 2014-04
CLAIM OF TERRY L. CASNER

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Hearing Examiner's proposed Opinion and Recommendation. No exceptions to the proposed Opinion and Recommendation were filed.

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation, and we hereby adopt them as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request that the Public School Employees' Retirement System pay to him the entire death benefit on the account of Kathleen J. Casner ("Decedent") is DENIED; and that 51 percent of Decedent's death benefit is payable to Claimant, as designated by Decedent in Decedent's *Application for Retirement* filed on January 11, 2012.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 6, 2015

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

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JUN 15 2015

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERB
EXECUTIVE OFFICE

In Re: :
Account of Kathleen Casner (D) : Docket No. 2014-04
Claim of Terry Casner :

OPINION AND RECOMMENDATION

Date of Hearing: October 22, 2014
Hearing Examiner: Suzanne Rauer, Esquire
For Claimant: Joseph J. Dixon, Esquire (post-hearing)
For PSERS: Jennifer A. Mills, Esquire

HISTORY

This matter came before the Public School Employees' Retirement Board (Board) on February 27, 2014, at which time Terry L. Casner (Claimant) filed a Request for Administrative Hearing to appeal the December 18, 2013 decision by the Executive Staff Review Committee (ESRC) of the Public School Employees Retirement System (PSERS), of which Claimant was informed by correspondence dated January 31, 2014, which denied Claimant's request to receive 100 percent of Decedent Kathleen Casner's death benefit. The ESRC found that Decedent and PSERS entered into a binding retirement contract when her *Application for Retirement* was filed on January 11, 2012, at which time Decedent named her principal beneficiaries and designated that Claimant would receive 51% of her death benefit, and Thaddey L. Chamberlain, Jr., would receive 49% of her death benefit. (PSERS-8 and PSERS-9) At that same time, Decedent elected to withdraw \$20,000 of her contributions to the retirement plan in two installments. (PSERS-1) Decedent died on July 19, 2012. (PSERS-3) Claimant was notified by correspondence dated October 26, 2012 from PSERS that his portion of the death benefit was \$2,958.12. (PSERS-4) Claimant challenged the validity of Decedent's January 11, 2012 designations, claiming that Decedent did not complete the retirement forms designating beneficiaries and withdrawing contributions to her retirement account, that the forms were completed by Thaddey L. Chamberlain, Jr., her nephew, that the signature on the forms does not look like Decedent's signature, and that Decedent was not competent to make decisions regarding her retirement as of January 11, 2012 as a result of cancer which had metastasized, and of the chemotherapy and other medications Decedent was taking at the time of her completion of the forms.

On August 21, 2014, Suzanne Rauer, Esquire was appointed to act as hearing examiner for the administrative hearing in this matter. A hearing notice was subsequently issued on August 29, 2014, scheduling a hearing for October 22, 2014 in Harrisburg. The hearing proceeded as scheduled on October 22, 2014 at PSERS, 5 North Fifth Street, Harrisburg, PA. Claimant was present at the hearing, *pro se*. Daniel Brigham, Esquire, appeared at the hearing on behalf of PSERS.

Following the close of evidence and upon receipt of the hearing transcript on November 4, 2014, the Hearing Examiner issued a November 25, 2014 notice to the parties establishing a briefing schedule. Pursuant to the briefing schedule, Claimant's brief was due by December 29, 2014, PSERS' brief was due by January 29, 2015, and Claimant's reply brief, if any, was due by February 13, 2015.

By correspondence dated December 19, 2014 and received by the Hearing Examiner on January 14, 2015, Joseph J. Dixon, Esquire, notified the Hearing Examiner and PSERS that he was entering his appearance on behalf of Claimant, and requested that another hearing be scheduled in this matter. By correspondence dated December 23, 2014, PSERS filed its opposition to Claimant's request for a new hearing, stating that Claimant had eight months between receipt of the notice of denial of his appeal and the date of the hearing to obtain counsel, and had proceeded without objection at the hearing. (N.T. 3-4) In addition, PSERS noted that Claimant's request for a new hearing failed to provide material facts, argument or authority, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, to support reopening of the record. On January 15, 2015, the Hearing Examiner issued an Order Denying Claimant's Request to Reopen the Record and Extending Time to File Post-Hearing Briefs. Claimant's brief was now due by February 17, 2015, PSERS' brief was due by

March 18, 2015, and Claimant's reply brief, if any, was due by April 2, 2015. On March 31, 2015, Jennifer A. Mills, Esquire file notice of Substitution of Counsel Without Leave of Court. Timely briefs¹ were filed by the parties, and the matter is now before the Board for final disposition.

¹ As PSERS pointed out, Claimant's Brief was simply a renewed request for a new evidentiary hearing on the basis that Claimant should have been represented by counsel at the administrative hearing and that failure to have such counsel violated his due process rights.

FINDINGS OF FACT

1. Kathleen Casner (Decedent) was first enrolled in PSERS in September 1979. (PSERS-8)
2. Decedent filed an *Application for Retirement* with PSERS dated December 31, 2011 and received by PSERS on January 11, 2012, retiring from employment effective January 6, 2012. (PSERS-1; N.T. 13)
3. In completing her *Application for Retirement*, Decedent elected the Maximum Single Life Annuity. (PSERS-1; N.T. 13)
4. The Maximum Single Life Annuity gives the member the highest monthly benefit that the member can receive until death. (N.T. 11)
5. As part of her *Application for Retirement*, Decedent made a \$20,000.00 partial withdrawal of her contributions and interest, \$10,000.00 to be paid immediately upon retirement and \$10,000.00 to be paid in April 2012. (PSERS-1 and PSERS-8; N.T. 13)
6. The death benefit associated with the Maximum Single Life Annuity is equal to the member's contributions and interest, but reduced by (a) any partial withdrawal of the member's contributions and interest upon retirement, and (b) the monthly annuity the member had received prior to death. (N.T. 11, 14)
7. In the event the member elects to withdraw all contributions and interest to the retirement plan upon retirement when selecting the Maximum Single Life Annuity, there is no death benefit. (N.T. 11)
8. On the *Application for Retirement*, Decedent nominated Claimant as principal beneficiary with distribution of 51%, and Thaddey L. Chamberlain, Jr. as principal beneficiary with distribution of 49%. (PSERS-1; N.T. 13)

9. Decedent's address on her *Application for Retirement* is listed as [REDACTED], which is the address of Decedent's nephew and beneficiary, Thaddey L. Chamberlain, Jr. (PSERS-1 and PSERS-6)

10. Claimant and Decedent lived at that address with Thaddey L. Chamberlain, Jr. for two years prior to Decedent's death because their home was condemned. (PSERS-6)

11. By correspondence dated April 24, 2012 to Decedent at [REDACTED], PSERS confirmed that Decedent in completing her *Application for Retirement* selected the Maximum Single Life Annuity and elected to withdraw a specific amount of her contributions and interest, and advised Decedent that the terms of her retirement plan would be binding unless Decedent filed the enclosed *Intent to Change the Terms of the Retirement Plan* by May 29, 2012. (PSERS-2; N.T. 14-16)

12. The April 24, 2012 correspondence informed Decedent that as of the time the correspondence was prepared, the death benefit due her beneficiaries was \$9,812.42. (PSERS-2; N.T. 16)

13. Decedent did not submit an *Intent to Change the Terms of the Retirement Plan* prior to the deadline of May 29, 2012, or at any time prior to her death. (N.T. 16)

14. Decedent did not contact PSERS for any reason after the date of her retirement and prior to her death. (N.T. 18)

15. Decedent died on July 19, 2012, leaving a death benefit of \$2,958.12 to be paid to named principal beneficiary Claimant and a death benefit of \$2,842.12 to be paid to named principal beneficiary Thaddey L. Chamberlain, Jr.. (PSERS-1, PSERS-4, PSERS-5; N.T. 18, 20)

16. By correspondence dated October 26, 2012, PSERS advised Decedent's principal beneficiaries, Claimant and Thaddey L. Chamberlain, Jr., that they were eligible for distribution of the death benefit. (N.T. PSERS-4 and PSERS-5)

17. On November 5, 2012, PSERS received undated correspondence signed by Claimant and Thaddey (Ted) L. Chamberlain Jr., requesting that PSERS place a rush on the processing of the death benefits because of financial hardship. (PSERS-6; N.T. 21)

18. PSERS received a completed death benefit form from Thaddey L. Chamberlain, Jr., and the death benefit due to him was paid by PSERS. (N.T. 20-21, 22)

19. PSERS did not receive a completed death benefit form from Claimant, and did not pay the death benefit due to Claimant. (N.T. 22)

20. Claimant filed an appeal with PSERS challenging the amount of the death benefit. (N.T. 22)

21. By correspondence dated June 14, 2013, PSERS advised Claimant that Decedent had elected a Maximum Single Life Annuity, that Decedent withdrew a total of \$20,000.00 of her contributions and interest upon retirement, that Claimant was due a death benefit payment of \$2,958.12, and that payment would be made upon receipt of a completed death benefit form from Claimant. (PSERS-7; 23-25)

22. Claimant filed an appeal of PSERS' determination to the ESRC. (N.T. 25)

23. By correspondence dated January 31, 2014, the ESRC advised Claimant of its denial of his appeal in pertinent part as follows:

The Committee denied your request. PSERS and Kathleen Casner entered into a binding retirement benefit contract when her *Application for Retirement* was filed on January 11, 2012. The *Application* was filed properly and her Principal Beneficiaries were named. Claimant would receive 51% of her death benefit, and Thaddey L. Chamberlain, Jr., would to (sic) receive the remaining 49%. Under Pennsylvania Law, the member is presumed competent to have made her

beneficiary designation. Therefore, the *Application for Retirement*, dated and received by PSERS on January 11, 2012, will govern the distribution of Ms. Casner's retirement/death benefit.

(PSERS-8)

24. By correspondence dated February 26, 2014 and received by PSERS on February 28, 2014, Claimant filed an Appeal from the decision of the ESRC and Request for Administrative hearing. (Official Notice, Board records)

25. The administrative hearing was held October 22, 2014 as scheduled by notice to the parties dated August 29, 2014; Claimant was present at the hearing, *pro se*, stating that he was "just trying to find out what happened" and that he "had [an attorney] that was going to come; then he supposedly never dealt with PSERS so he backed out. Then the guy that I was dealing with the last day or two, he needed money up front, and I didn't have it." (N.T. 3)

26. Claimant did not object to the hearing proceeding on October 22, 2014. (Transcript, *passim*)

27. Claimant testified at the hearing that Decedent did not complete the *Application for Retirement*, that the *Application for Retirement* was actually completed by her nephew and beneficiary, Thaddey L. Chamberlain, Jr., and that Claimant was "trying to see if my wife died for this pension . . ." (N.T. 33-34)

28. Claimant proffered no evidence that Claimant's nephew and beneficiary, Thaddey L. Chamberlain, Jr., completed the *Application for Retirement* on Decedent's behalf or that fraud was perpetrated by Mr. Chamberlain. (Transcript, *passim*)

29. Following the close of evidence and upon receipt of the hearing transcript on November 4, 2014, the Hearing Examiner issued a November 25, 2014 notice to the parties establishing a briefing schedule, pursuant to which Claimant's brief was due by December 29,

2014, PSERS' brief was due by January 29, 2015, and Claimant's reply brief, if any, was due by February 13, 2015. (Official Notice, Board records)

30. By correspondence dated December 19, 2014², Joseph J. Dixon, Esquire, notified the Hearing Examiner and PSERS that he was entering his appearance on behalf of Claimant, and requested that another hearing be scheduled in this matter. (Official Notice, Board records)

31. On December 23, 2014, PSERS filed its opposition to Claimant's request for a new hearing, stating that Claimant had "nearly 9 months" between receipt of notice of denial of his appeal and the date of the hearing to obtain counsel and had proceeded without objection at the hearing, and that Claimant's request for a new hearing failed to provide material facts, argument or authority, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, to support reopening of the record. (Official Notice, Board records)

32. On January 15, 2015, the Hearing Examiner issued an Order Denying Claimant's Request to Reopen the Record and Extending Time to File Post-Hearing Briefs; Claimant's brief was now due by February 17, 2015, PSERS' brief was due by March 18, 2015, and Claimant's reply brief, if any, was due by April 2, 2015. (Official Notice, Board records)

33. On March 31, 2015, Jennifer A. Mills, Esquire file notice of Substitution of Counsel Without Leave of Court. (Official Notice, Board records)

² Attorney Dixon's correspondence was received by the hearing examiner on January 14, 2015.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-33)
2. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. (Findings of Fact Nos. 1-33)
3. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
4. A preponderance of the evidence is the correct burden of proof to be applied in this administrative action. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1998); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A. 2d 678 (Pa. Cmwlth. 2005).
5. 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. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986); *A.B. v. Slippery Rock Area School District*, 906 A. 2d 674 (Pa. Cmwlth. 2006).
6. PSERS is a creature of statute and derives its authority from the provisions of the Retirement Code. 24 Pa.C.S. §§8101 *et. seq.*
7. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code; the Board has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Burriss v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).

8. Members of PSERS have only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).

9. A "beneficiary" is defined under the Retirement Code as "[t]he person or persons last designated in writing to the board by a member to receive his accumulated deductions or a lump sum benefit upon the death of such member." 24 Pa.C.S. §8102 (relating to definition of "beneficiary")

10. When a member of PSERS retires and elects a retirement option, she enters into a binding contract with PSERS. *Estate of McGovern v. State Employees' Retirement Board*, 517 A.2d 523 (Pa. 1986); *Estate of Burlingame v. Public School Employees' Retirement System*, 557 A.2d 1128 (Pa. Cmwlth. 1989), appeal denied, 568 A.2d 1250 (Pa. 1989)

11. The member is presumed to have been competent at the time she executed the *Application for Retirement*. *Estate of McGovern v. State Employees' Retirement Board*, 517 A.2d 523 (Pa. 1986)

12. Claimant is entitled to receive 51 percent of Decedent's Maximum Single Life Annuity death benefit, which is an amount equal to the contributions and interest less withdrawals and annuity payments. (Findings of Fact, Nos. 1-33)

DISCUSSION

Decedent was first enrolled in PSERS in September 1979. Decedent filed an *Application for Retirement* with PSERS dated December 31, 2011 and received by PSERS on January 11, 2012, retiring from employment effective January 6, 2012. In completing her *Application for Retirement*, Decedent elected the Maximum Single Life Annuity, which gives the member the highest monthly benefit that the member can receive until death. As part of her *Application for Retirement*, Decedent also made a \$20,000.00 partial withdrawal of her contributions and interest. On the *Application for Retirement*, Decedent nominated Claimant as principal beneficiary with distribution of 51%, and her nephew, Thaddey L. Chamberlain, Jr., as principal beneficiary with distribution of 49%. By correspondence dated April 24, 2012 to Decedent at the address listed in her *Application for Retirement*, PSERS confirmed that Decedent in completing her *Application for Retirement* had selected the Maximum Single Life Annuity and elected to withdraw a specific amount of her contributions and interest, and advised Decedent that the terms of her retirement plan would be binding unless Decedent filed the enclosed *Intent to Change the Terms of the Retirement Plan* by May 29, 2012. The April 24, 2012 correspondence informed Decedent that as of the time the correspondence was prepared, the death benefit due her beneficiaries was \$9,812.42. Decedent did not submit an *Intent to Change the Terms of the Retirement Plan* prior to the deadline of May 29, 2012, or at any time prior to her death, and did not contact PSERS for any reason after the date of her retirement and prior to her death.

Decedent died on July 19, 2012, and PSERS determined, based upon Decedent's *Application for Retirement*, that Claimant was due a death benefit of \$2,958.12 and Thaddey L. Chamberlain, Jr. was due a death benefit of \$2,842.12. Claimant claims that Decedent did not

complete the *Application for Retirement*, that it was in actuality completed by her nephew and beneficiary, Thaddey L. Chamberlain, Jr., that Decedent may have “died for this pension . . .,” that Decedent’s pension disappeared, and that Decedent was not competent to handle her own affairs at the time of completion of the *Application for Retirement*. (N.T. 7, 33-34, 35, 38; Appeal and Request for Administrative Hearing)

It is well settled that Claimant bears the burden of establishing the facts necessary to sustain his claim. *See Gierschick v. State Employees’ Retirement Board*, 733 A.2d 29 at 32 (Pa. Cmwlth. 1999); *See also, Wingert v. State Employees’ Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). PSERS is a creature of legislation and its members, therefore, have only those rights created by the retirement benefit statute. *Estate of Rosenstein v. Public School Employees’ Retirement System*, 685 A.2d 624 (Pa. Cmwlth. 1996); *Cosgrove v. State Employees’ Retirement Board*, 665 A.2d 870 (Pa. Cmwlth. 1995). While a member is entitled to a liberal construction of the Retirement Code, the member has only those rights created by the retirement statutes and none beyond. *Burris v. State Employees’ Retirement Board*, 745 A.2d 704 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees’ Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992); *Hughes v. Public School Employees’ Retirement Board*, 662 A.2d 701 (Pa. Cmwlth. 1995), *allocatur denied*, 668 A.2d 1139 (Pa. 1996). The agency must construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa. C.S. §1921(a), (b). Neither the Public School Employees’ Retirement Board (Board) nor PSERS has the authority to grant rights beyond those specifically set forth in the Retirement Code. *Forman v. Public School Employees’ Retirement Board*, 662 A.2d 701 (Pa. Cmwlth. 2001)

The death benefit associated with the Maximum Single Life Annuity as elected by Decedent is equal to the member’s contributions and interest, but reduced by (a) any partial

withdrawal of the member's contributions and interest upon retirement, and (b) the monthly annuity the member had received prior to death. In the event the member elects to withdraw all contributions and interest to the retirement plan upon retirement, there is no death benefit. PSERS determined that at the time of Decedent's death, the death benefit remaining, after Decedent's withdrawal of \$20,000.00 in contributions and interest, and her receipt of a monthly annuity from the time of her retirement to the time of her death, was \$2,958.12 due to Claimant and \$2,842.12 due to Thaddey L. Chamberlain, Jr.

Claimant, however, disagreed with PSERS' reliance upon Decedent's *Application for Retirement*, arguing that at the time it was completed Decedent was not able to handle her own affairs as a result of metastatic breast cancer and the medications prescribed for her illness. Claimant further argued that Decedent's nephew *may* have completed the *Application for Retirement* in Decedent's stead. There is nothing on the face of the *Application for Retirement* that supports Claimant's arguments, and Claimant did not present any evidence that the *Application for Retirement* was not completed by Decedent or that he was even present when the *Application for Retirement* was completed. Moreover, Decedent's nephew did not intervene, was not present at the hearing, and was not subpoenaed by Claimant. Claimant's allegations, therefore, are not supported by the record.

Under Pennsylvania law, Decedent was presumed competent to have executed the *Application for Retirement*. This presumption may only be overcome by evidence of mental incompetence that is "clear, precise and convincing." *Forman*, 778 A.2d 780. The Commonwealth Court specifically articulated the presumption of competency in *Forman* stating:

Under Pennsylvania law, a signed document gives rise to the presumption that it accurately expresses the state of mind of the signing party. The presumption is rebutted where the challenger presents clear and convincing evidence of mental incompetence. Mental incompetence is established through evidence that the

person is unable to understand the nature and consequences of the transaction. A presumption of mental incapacity does not arise merely because the disposition of the property seems unreasonable.

Id. at 780, citing *McGovern v. State Employees' Retirement Board*, 517 A.2d 523, 526 (Pa. 1986). The burden of proving the existence of mental incompetence or undue influence is upon the asserting party. *Estate of Bosico*, 412 A.2d 505 (Pa. 1980); *Weber v. Kline*, 141 A. 721 (Pa. 1928). Claimant did not provide any evidence or testimony to overcome the presumption of Decedent's competency or to establish undue influence by her nephew. As the elections made by Decedent in her *Application for Retirement* were the last designations in writing to the Board by Decedent, those elections are binding on PSERS.

Claimant, through counsel, argued in his brief that "Mr. Casner had appeared pro se at his late wife Kathleen Caner's (sic) retirement benefits hearing. At that time he had very real concerns that his late wife, Kathleen Casner was under undo (sic) influence and duress when she made her designation on her retirement benefits. He did not have counsel at the time of the hearing and once he went to the hearing he realized that counsel was really necessary." (Claimant's February 20, 2015 letter brief) The record, however, is devoid of any indication from Claimant that he "realized that counsel was really necessary." At the start of the hearing, upon questioning from the hearing examiner, Claimant stated that he was "just trying to find out what happened" and that he "had [an attorney] that was going to come; then he supposedly never dealt with PSERS so he backed out. Then the guy that I was dealing with the last day or two, he needed money up front, and I didn't have it." (N.T. 3) PSERS requested a recess shortly after the hearing convened to meet with Claimant and explain PSERS's position to him. (N.T. 8-9) Claimant at no time objected to the hearing proceeding on October 22, 2014. (Transcript, *passim*)

Claimant's appeal was filed on February 27, 2014, at which time Claimant requested an administrative hearing on the issue of Decedent's death benefit. On August 21, 2014, the docket clerk notified Claimant of the scheduling of the October hearing and provided contact information for the Pennsylvania Lawyer Referral Service to aid him in finding counsel. Claimant had nearly eight months from the time he filed his appeal to the date of the hearing to obtain legal counsel. When Claimant appeared at the October 22, 2014 administrative hearing, he acknowledged that he was aware he could have an attorney represent him, yet proceeded without counsel. (N.T. 3-4) Claimant had the opportunity to be heard, to cross-examine witnesses, and to make a closing statement for the record. While it is true that Claimant is a *pro se* litigant, he demonstrated sufficient understanding of what he needed to do to file an appeal and was provided with ample time and instructions on how to obtain counsel. Claimant mentioned several contacts with attorneys prior to the hearing in this matter, but did not retain counsel for the hearing. Instead, Claimant retained counsel *after* the administrative hearing was held in this matter, and demanded that a second hearing be scheduled with no showing of material facts, argument or authority, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, to support reopening of the record. Claimant presented no evidence during the hearing to support his allegations that Decedent did not complete the *Application for Retirement* and/or was subject to undue influence by her nephew, and/or that Decedent was incompetent to handle her own affairs at the time she completed the *Application for Retirement*. Furthermore, Claimant alleged no new information or changes in fact or law since the time of the administrative hearing in this matter to support his demand for a new hearing.

The right to representation by counsel at an administrative hearing before an agency is not unlimited. According to the Administrative Agency Law, any party *may* be represented by counsel at an administrative hearing. 2 Pa.C.S. § 502 (emphasis added); *Webb v. Workers' Comp. Appeal Bd. (Am. Cancer Soc'y)*, No. 2456 C.D. 2010 (Pa.Cmwlth. May 19, 2011) ("Although Section 502 of the Administrative Agency Act, 2 Pa. C.S. § 502, permits parties to be represented before administrative agencies, Section 502 does not guarantee representation.") An individual may, however, proceed in an administrative hearing without counsel; and the individual bears the responsibility to secure counsel if he or she desires to be represented. *Shenk v. State Real Estate Commission*, 527 A.2d 629, 631 (Pa. Cmwlth., 1987). When an individual appears at a hearing *pro se*, the appearance may be considered a voluntary waiver of the right to counsel in an administrative proceeding. *Novak v. Commonwealth, Insurance Dept.*, 525 A.2d 1258, (Pa. Cmwlth., 1987). Given that Claimant had ample opportunity to secure legal representation prior to the hearing, attended the hearing *pro se*, and effectively waived his right to counsel at the hearing, Claimant is not entitled to a new evidentiary hearing in this matter.

Claimant has failed to sustain his burden of proving that Decedent's *Application for Retirement* was the result of fraud or undue influence by her nephew and beneficiary, Thaddey L. Chamberlain, Jr., or that Decedent was incompetent to handle her affairs at the time of completion of the *Application for Retirement*. Furthermore, Claimant is not entitled to a new evidentiary hearing in this matter. Accordingly, the following recommendation will be made to the Board:

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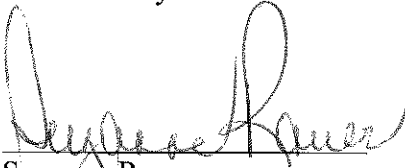
COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERB
EXECUTIVE OFFICE

In Re: : **Docket No. 2014-04**
Account of Kathleen Casner (D) :
Claim of Terry Casner :

RECOMMENDATION

AND NOW, this 12th day of June, 2015, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Examiner for the Public School Employees' Retirement System recommends that 51 percent of Decedent's death benefits pursuant to the Maximum Single Life Annuity, as elected by Decedent in the Decedent's December 31, 2011 *Application for Retirement*, which was received by PSERS on January 11, 2012, shall be payable to Claimant.



Suzanne Rauer
Hearing Officer

For Claimant: Joseph J. Dixon, Esquire
126 State Street
Harrisburg, PA 17101

For PSERS: Jennifer A. Mills, Esquire, Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
5 North 5th St.
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Docket Clerk: Sandra Kurtz, Appeal Docket Clerk
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
5 N. 5th St.
Harrisburg, PA 17101

Date of Mailing: June 12, 2015