



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

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www.nj.gov/treasury/pensions

June 22, 2023

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Law Offices of Feeley & LaRocca
John D. Feeley, Esquire

[REDACTED]

Re: Jennifer Frisco
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Feeley:

At its meeting on May 17, 2023, the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered the appeal of your client, Jennifer Frisco, concerning her request to apply for Accidental Disability retirement benefits under L. 2020, c. [REDACTED]. The Board had originally denied Ms. Frisco's request to apply for Accidental Disability retirement benefits under [REDACTED] at its meeting of April 19, 2023. You filed a timely appeal of the Board's decision on Ms. Frisco's behalf on May 1, 2023.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied her request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of June 21, 2023.

FINDINGS OF FACT

The Board made the following factual findings.

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By way of background, L. 2010, c. 1 and 3, and L. 2011, c. 78 created, respectively, Tier 4 membership¹ and Tier 5 membership² in the PERS and the Teachers' Pension and Annuity Fund (TPAF). Ordinary or Accidental Disability retirement is not available to members enrolled in Tier 4 or Tier 5 of the PERS or the TPAF. As an alternative benefit, Tier 4 and 5 actively contributing members of the PERS or TPAF are eligible for employer-paid long-term disability insurance coverage.

The record before the Board establishes that Ms. Frisco was enrolled in the PERS on March 1, 2016, as a result of her employment as a County Correction Officer with Essex County and thus established a PERS Tier 5 membership account.

On November 22, 2022, you sent a letter to the Division of Pensions and Benefits (Division) to confirm that you were retained to represent Ms. Frisco in her efforts to file an Accidental Disability retirement application pursuant to [REDACTED]. In your appeal, you note that when Ms. Frisco attempted to apply for Accidental Disability through the Member Benefit Online System she received a notice that informed her she was not eligible for this type of benefit.

By letter dated November 23, 2022, Dawn Lewis, Supervisor-Disability, of the Division's Retirement Bureau informed you that Ms. Frisco is currently enrolled in the PERS as a Tier 5 member and is not eligible to apply for any disability retirement benefit. You appealed the decision and requested a hearing in the Office of Administrative Law.

The Board considered Ms. Frisco's request to apply for Accidental Disability retirement benefits at its meeting of April 19, 2023. At the meeting, the Board found that she is not eligible for an Accidental Disability retirement benefit because she is a PERS Tier 5 member. On or about May 1, 2023, you filed a timely appeal of the Board's decision and requested that the matter be transferred to the Office of Administrative Law as a contested case.

¹ Enrolled after May 21, 2010, and before June 28, 2011.

² Enrolled on or after June 28, 2011.

At its meeting on May 17, 2023, the Board considered Ms. Frisco's appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied her request for an administrative hearing.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

Ordinary or Accidental Disability retirement is not available to members enrolled in Tier 4 and 5 of the PERS or the TPAF. The eligibility criteria for Disability retirement benefits are outlined in N.J.S.A. 43:15A-43(a), which states, in pertinent part:

a. A member who has not attained age 65 shall, upon the application of the head of the department in which he is employed or upon his own application or the application of one acting in his behalf, be retired by the board of trustees, if said employee is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties, on an accidental disability allowance. A traumatic event occurring during voluntary performance of regular or assigned duties at a place of employment before or after required hours of employment which is not in violation of any valid work rule of the employer or otherwise prohibited by the employer shall be deemed as occurring during the performance of regular or assigned duties.

...

No person who becomes a member of the retirement system on or after the effective date [May 21, 2010] of [P.L.2010, c.3](#) shall be eligible for retirement pursuant to this section.

[(Emphasis added)].

Based on the plain language of the statute as applied to the facts in the record, the Board determined that Ms. Frisco is not eligible for Accidental Disability retirement benefits. Ms. Frisco was properly enrolled in the PERS as a Tier 5 member on March 1, 2016.

The Board also relied on N.J.A.C. 17:2-6.7, which states, in pertinent part:

(a) A member enrolled in the System before May 21, 2010, for whom an application for an accidental disability retirement allowance has been filed, will be retired on an ordinary disability retirement benefit if the Board finds that:

1. The applicant was considered a member at the time of filing the application for a disability retirement allowance or is covered by the provisions of [N.J.A.C. 17:2-6.15](#);
2. The member is physically or mentally incapacitated for the performance of duty at the time the member terminates employment as a result of the disabling condition identified on the Accidental Disability retirement application, and should be retired;
3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of the member's regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

[(Emphasis added)].

██████████ amended the eligibility criteria for Accidental Disability and Accidental Death benefits for the Police and Firemen's Retirement System, State Police Retirement System, and law enforcement officers, firefighters, and emergency medical responders in the PERS when related to the ██████████ during the Public Health Emergency declared by the Governor in ██████████ as extended.

Although ██████████ expanded the circumstances under which a PERS member holding an eligible title may be granted an Accidental Disability retirement, it did not extend to those members already ineligible to file for Accidental Disability retirement, i.e. Tier 4 and Tier 5 members, the right to do so.

Contributing Tier 5 PERS members are eligible for employer-paid long-term disability insurance coverage. Therefore, if Ms. Frisco is currently contributing, the only benefit for which she could file is employer-paid long-term disability insurance coverage. The long-term disability insurance is administered for the PERS by Prudential.

Most Tier 4 and 5 members hired on or after May 21, 2010, become eligible for long-term disability insurance coverage after one year of continuous employment in a PERS or TPAF-covered position. However, members who are age 60 or older at the time of enrollment must

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provide satisfactory evidence of insurability before they are eligible for this coverage. A member on an official leave of absence without pay will remain eligible for the disability insurance coverage for up to six months, provided that satisfactory evidence is presented to the Division of Pensions & Benefits that the leave of absence is due to illness and that the member was not actively engaged in any gainful occupation during the leave of absence.

The process of applying for long-term disability begins by completing the *Long-Term Disability Insurance Application*. Ms. Frisco can download and print the application from the New Jersey Division of Pensions and Benefits website at: www.nj.gov/treasuy/pensions. Additional information regarding Long-Term Disability for PERS and TPAF Tiers 4 and 5 can be found in [Fact Sheet #85](#).

As noted above, the Board has considered your personal statements, written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

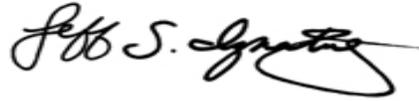
You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jeff S. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-12/SD

C: D. Lewis (ET)

Jennifer Frisco (via regular mail)

Essex County
Andreia Marketos, Certifying Officer [REDACTED]