



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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ELIZABETH MAHER MUOIO  
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JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

August 4, 2023

Sent via email to [REDACTED]

Brad Haber  
[REDACTED]

RE: Michelle Haber  
TPAF# [REDACTED]

Dear Mr. Haber:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees ("Board") of the Teachers' Pension and Annuity Fund ("TPAF") regarding your June 21, 2023 request to appeal the Board's November 10, 2021 denial of your request to change the beneficiary designation of Michelle Haber, after the regulatory period to file an appeal expired.

At its meeting of July 13, 2023, the Board reviewed your written submissions and accompanying documentation and denied your request based on the statutes and regulations governing the TPAF. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. The Board's Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its August 3, 2023 meeting.

## **FINDINGS OF FACT**

At its meeting of November 10, 2021, the Board considered your request to change the beneficiary designation of the monthly benefit payable upon the death of Michelle Haber from [REDACTED] to yourself. The Board upheld the Division's administrative determination dated July 22, 2021, and denied your request to change the beneficiary designation of the monthly

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benefit payable upon the death of Michelle Haber because the pension option and beneficiary designation are irrevocable once a member's retirement is beyond the due and payable date.

The record establishes that on April 17, 2008, Michelle Haber submitted an *Application for Retirement Allowance* requesting a July 1, 2008 Early retirement under Option B<sup>1</sup> and designated [REDACTED], as her pension beneficiary.

Ms. Haber attached a letter with her retirement application, which stated the following: "This is my application for Retirement. Included are birth certificates for myself and [REDACTED] (as beneficiary)."

A *Quotation of Retirement Benefits*, dated May 28, 2008 was mailed to Ms. Haber that reflected her Option B selection and included the following:

Once you retire, **you cannot change your payment method option**. If you choose payment method options A, B, C, D, 2, 3, or 4, **under no circumstances can you change your beneficiary selection** once you retire, even if your beneficiary dies before you. You have the right to withdraw, cancel, or change your application for retirement at any time before the later of 30 days after your retirement date or 30 days after the Board of Trustees approves your retirement.

[Emphasis in the original.]

The 30-day period refers to when a retirement becomes due and payable. N.J.A.C.17:3-6.2 states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

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<sup>1</sup> For Option 2, A, or B, if a member names a beneficiary who is not their spouse, Internal Revenue Service Regulations restrict the age of the beneficiary. For Option B, the age difference between Ms. Haber and a beneficiary who is not her spouse can be no more than 19 years. Consequently, Ms. Haber would be precluded from designating you as an Option B beneficiary, as there is an age difference of nearly 21 years between you and Ms. Haber.

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At its meeting of June 5, 2008, the Board approved Ms. Haber's July 1, 2008 Early retirement under Option B, and a letter was sent on that same date memorializing its decision.

The letter included the following:

In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.

Therefore, Ms. Haber's July 1, 2008 Early retirement under Option B became due and payable on July 31, 2008, at which point she was precluded from changing her retirement option selection in accordance with N.J.A.C. 17:3-6.1, which states, in pertinent part:

...

**(d)** A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:3-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a pension beneficiary, that beneficiary cannot be changed.

...

The Board's November 22, 2021 letter outlined the basis for the Board's determination and included the following procedure to file an appeal:

If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

There is no record in Ms. Haber's membership account that indicates you filed an appeal of the Board's November 10, 2021 decision or contacted the Division after receipt of the letter dated

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November 22, 2021. Then, over 19 months after the Board's determination letter became final, by letter dated June 21, 2023, you requested to schedule an appearance before the Board.

On June 26, 2023, the Assistant Board Secretary responded to your request. The Assistant Board Secretary indicated that you had 45 days from the November 22, 2021, letter to appeal the Board's decision. Further, the Assistant Board Secretary indicated that no such appeal was received in the Board Office within the prescribed 45-day time limit, but that the Board would consider your email of June 21, 2023 as a late appeal.

To support your claim (that you should be designated as beneficiary), you provided as evidence a *Designation of Beneficiary* form that was submitted through the Member Benefit Online System (MBOS) on April 17, 2022, which lists [REDACTED] as pension beneficiary but contains your social security number. You further claim that your mother, Ms. Haber, was cognitively impaired when she submitted her retirement application in 2008 and due to her declining mental state was unable to understand the information and instructions in the "Application for Retirement Allowance" booklet.

The records establish that Ms. Haber's *Designation of Beneficiary* has been updated on the MBOS 10 times since she retired in 2008. Robert Krencicki, Assistant Director of the Division's Information Technology and Administrative Services, confirmed that the information in the social security field is inputted by the user. The change to the information in the social security field was entered by the MBOS user on April 17, 2022, several months after the Board's November 10, 2021 determination. Furthermore, your claim that Ms. Haber was experiencing cognitive decline and was unable to understand her pension designation in 2008 was not brought before the Board when it considered your request to change the beneficiary designation in 2021. Again, there is no record on file that you submitted a written appeal to the Board within the requisite 45-day period. Nevertheless, the matter was presented to the Board at its July 13, 2023 meeting as a request to appeal the Board's denial to change Ms. Haber's beneficiary designation after the regulatory period to file an appeal expired and for a hearing before the Office of Administrative Law. On July 13, 2023, the Board considered your statements as well as your submissions and denied your request for reconsideration.

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The Board voted to deny your request for a hearing, finding there are no disputed facts in the matter, and because the 45-day period for filing such an appeal had long expired.

This Final Administrative Determination will serve to inform you that the Board has denied your request for an administrative hearing and serves as formal notice of the Board's final agency action.

### **CONCLUSIONS OF LAW**

The Board considered the relevant regulation N.J.A.C. 17:3-1-1.7(a)1, which provides the following:

1. "If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final."

[Emphasis added.]

You were informed in the November 22, 2021 letter that you were required to file an appeal of the Board's decision within 45 days of the date of the written communication. The record shows that you did not appeal the Board's determination within the required time frame. Based upon the law, you had until January 6, 2022 to submit a written statement appealing the Board's determination. However, the record indicates that no such request was made until your email dated June 21, 2023. Further, there are no equitable arguments in favor of allowing you to appeal the Board's November 10, 2021 decision. By operation of law, determination of the Board on November 10, 2021, was the final administrative action in this matter.

The Board finds that the statutory and regulation language above is clear and unambiguous. 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 in this matter on the basis of the retirement system's enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this

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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, 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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Saretta Dudley", enclosed in a light blue rectangular box.

Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-2 E. Pierson (ET)

c: Jeffrey Padgett, DAG (ET)