



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

October 4, 2019

Ms. Stephanie Sexton

RE: Michael Sexton (deceased)

Dear Ms. Sexton:

I am writing in reference to the denial by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) of your request for the conversion of the group life insurance of your late husband, Michael Sexton. The Board initially reviewed and denied the request at its June 6, 2019 meeting. At its meeting of September 12, 2019, the Board considered your appeal of that decision as outlined in your August 5, 2019 letter and determined that there are no material facts in dispute and directed the Board Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the Board at its meeting of October 3, 2019.

The Board has reviewed your written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the TPAF do not permit the Board to grant you the conversion of Mr. Sexton's group life insurance.

FINDINGS OF FACT

Michael Sexton was enrolled in the TPAF effective March 1, 2008, as a result of his employment as a teacher with Middlesex County Vocational School. The Division received Mr. Sexton's *Application for Disability Retirement* through the Member Benefits Online System (MBOS) on March 22, 2018, requesting an Ordinary Disability retirement, with an effective date of October 1, 2018 under Option 2. On or about April 16, 2018, Mr. Sexton submitted an application to The

Stephanie Sexton
Re: Michael Sexton
October 4, 2019
Page 2

Prudential Insurance Company of America (Prudential) enclosed with a check in the amount of \$608.00 to convert his group life insurance to an individual policy. On May 7, 2018, the Division received notification that Mr. Sexton had passed away, as an active member of TPAF, on May 3, 2018. By letter dated May 25, 2018, the Division outlined the benefits payable to you, as Mr. Sexton's designated pension beneficiary. Because Mr. Sexton died after he filed for Ordinary Disability retirement benefits, but before the retirement was approved, the Division informed you that you had the option to receive payment of benefits based on either the Active Status or the Retired Status of the member, in accordance with P.L. 1995, c. 221. Under the Active Status option, the death benefit payable to you was calculated as though Mr. Sexton were an active member in all respects at the time of his death. The benefits included the payment of a group life insurance benefit of \$238,700.00, plus the refund of Mr. Sexton's TPAF pension contributions plus interest, totaling \$51,217.02.

Under the Retired Status option, you were eligible to receive a group life insurance benefit of \$29,837.50, plus a lifetime monthly benefit of \$1,741.01 as the Option 2 beneficiary. You chose the Retired Status option, which the Board approved at its meeting of July 11, 2018.

By letter dated July 11, 2018, you were notified by Prudential that the application for conversion submitted by Mr. Sexton had been denied. By way of letters dated November 26, 2018 and November 27, 2018 to Prudential and the Division respectively, you appealed the denial of the conversion. In its response dated December 7, 2018, the Division confirmed that a converted policy does not become effective until 31 days after a member ceases employment. See Fact Sheet #13. You were provided with the procedure to appeal the administrative determination, which you did by way of letter, dated December 24, 2018.

On March 7, 2019, you were notified that the Board would consider your appeal at its meeting on April 4, 2019. Subsequent to the notification, the Division received a letter or representation, from Stuart J. Alterman, Esq. At the request of Mr. Alterman, the matter was twice adjourned, until the Board's June 6, 2019 meeting.

At said meeting, the Board considered the Supplemental Submission, dated May 23, 2019 from Arthur J. Murray, Esq. of Alterman & Associates, your statements and all documentation in the record. After careful review, the Board denied your request to convert Michael Sexton's group life insurance. On September 12, the Board reviewed your August 5, 2019 letter in which you appealed the Board's determination and informed the Board you are now representing yourself. The Board denied a hearing in the Office of Administrative Law (OAL).

CONCLUSIONS OF LAW

After careful consideration, the Board denied your request to convert the group life insurance on behalf of your late husband, Michael Sexton. The Board's determination was based upon the reasons set forth in the letter, dated June 24, 2019, as well as the provisions of N.J.A.C. 17:3-3.8, which state in pertinent part:

(b) If a member is covered by group life insurance during employment, the coverage ceases 31 days subsequent to the member's termination date from employment, regardless of the cause of termination. A member can convert the life insurance at the member's expense as set forth in N.J.S.A. 18A:66-179. The converted individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period.

Mr. Sexton's application (indicating a retirement date of October 1, 2018) was received in the Division on March 22, 2018. As indicated in your letters dated November 26, 2018 and August 5, 2019, he chose this date as he hoped to briefly return to work in the fall of 2018 to train his replacement as a favor to the school and in support of his students.

The record indicates pension contributions were remitted by Middlesex County Vocational School (MCVS) through March 31, 2018. MCVS certified that Mr. Sexton was on a leave of absence without pay at the time of his passing, thereby still an active employee (who intended to return in the fall), thus precluding the effectuation of the converted policy for which he applied. Conversely, because there was a pending retirement application at the time of Mr. Sexton's passing, you were

given the choice of selecting the benefits payable under either Active or Retired Status options. See Barone v. Bd. of Trs., Teachers' Pension & Annuity Fund, No. A-1268-04T1, 2006 N.J. Super. Unpub. LEXIS 208, at *15 (App. Div. Mar. 20, 2006) ("While the members retained their status as active employees, their conversion rights did not ripen, since such rights arise only in the period after active employment ceases or retirement occurs."); see also In re Adoption of N.J.A.C. 17:2-3.8, 458 N.J. Super. 326, 331 (App. Div. 2019) (beneficiary of member of Public Employees' Retirement System who "merely applied for [conversion] insurance protection and submitted a premium check to protect the 'conversion privilege,' [and] died while a retirement application was pending," cannot choose Retired Status option and make claim against converted individual insurance policy).

You have also requested that the Board change Mr. Sexton's effective retirement date to April 1, 2018 as doing so would effectuate the converted policy as he passed away on May 3, 2018. However, the TPAF administrative regulations do not allow a retroactive retirement date as N.J.A.C. 17:3-6.1 states in pertinent part:

(a) Applications for retirement must be made over the Internet, using the online forms required by the Fund through a member's secure account established through the Member Benefits Online System (MBOS). Such forms must be completed in all respects and filed with the Division on or before the requested date of retirement. Applications for retirement can be filed no more than one year in advance, except that a member whose TPAF-eligible employment has ended may file for deferred retirement at any time after the employment has ended. A member's retirement application becomes effective on the first of the month following receipt of the application unless a future date is requested.

...

(Emphasis added)

The Board finds that the regulatory language above is clear and unambiguous. Thus, the Board is without authority to grant your request to convert Michael Sexton's group life insurance or to change his retirement date. As noted above, the Board has reviewed your written submissions. However, the Board cannot grant you relief. Because this matter does not entail any disputed

Stephanie Sexton
Re: Michael Sexton
October 4, 2019
Page 5

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 TPAF's enabling statutes and regulations and without the need for a hearing in the OAL. Accordingly, this 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 determination 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
Phone: (609) 292-4822

Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-2/as

C: DAG Amy Chung (ET)
E. Pierson/J. Slomko (ET)