



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

November 17, 2020

Sent via email to: [REDACTED]

Ms. Tishara Landi
[REDACTED]
[REDACTED]

RE: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Landi:

I am writing in reference to the denial by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) with regard to your request that the deemed distribution of your outstanding loan balance be reversed.

The Board initially reviewed and denied this request at its July 9, 2020 meeting. At its meeting of October 1, 2020, the Board considered your appeal of that decision as outlined in your August 11, 2020 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 November 12, 2020.

The Board has reviewed your written submissions and the relevant documentation accompanying your appeal and finds that the statutes and regulations and relevant case law governing the TPAF do not permit the Board to grant your request to reverse the deemed distribution.

FINDINGS OF FACT

According to the records of the Division, you were enrolled in the TPAF on September 1, 2000, as a result of your employment as a teacher with Camden's Promise Charter School. Thereafter, you transferred to Knowledge A to Z Charter School on September 1, 2013. On July 1, 2016, you

transferred back to Camden's Promise Charter School. Subsequently, you transferred to Camden City Board of Education (BOE).

On May 23, 2018, you borrowed against your TPAF account and were issued a check in the amount of \$32,045.00. The repayment schedule for this loan was certified to begin on July 1, 2018, with 58 monthly payments of \$667.97 for a total repayment amount of \$38,742.26.

The record before the Board establishes that in the third quarter of 2018, you were credited with working for two months, July and August; however, instead of receiving two monthly payments of \$667.97, for a total of \$1,335.94, only one and a half months' payments were made in the third quarter of 2018, totaling \$1,001.97. At the time you left employment with Camden's Promise Charter School in mid-August 2018, the outstanding loan balance remaining on the account was \$37,740.29.

On or about March 1, 2019, the Division sent you a form advising you that you had been identified as having an unpaid loan balance for three months or longer. Your outstanding loan balance as of the date of the notice was \$33,267.87. Pursuant to Internal Revenue Service (IRS) regulations, you were advised the outstanding loan balance must be satisfied in full by May 23, 2023. You were also provided with a form on which you could elect to pay off the loan in a lump sum or through monthly payments. The letter indicated that you must respond within 30 days of receipt of the notification. You have advised that, although the letter was addressed to the address the Division had on file for you, you did not receive this notification.

On April 27, 2019, the Division wrote to you (at the same address on file) to inform you that because the Division did not receive a response within 30 days of the initial notice, your outstanding loan balance has been declared a distribution from your TPAF account and would be reported to the IRS.

On May 6, 2019, you wrote to the Division requesting to reverse the deemed distribution and asserted that you should not be penalized because your employer, Camden City BOE, erred in completing your transfer. You provided a copy of the *Report of Transfer/Multiple Enrollment Form*

with your section completed along with email exchanges dated between September 21, 2018 and February 21, 2019 between you and Debora Yax of Camden City BOE.

On May 10, 2019, the Division received the *Application for Interfund Transfer* from Camden City BOE which appears to have been completed in 2018. The Division has no record of receipt of the *Application for Interfund Transfer* until May 10, 2019.

On June 17, 2019, the Division sent a letter to Camden City BOE stating that the *Application for Interfund Transfer* could not be processed because Part II of the form was incomplete.

On August 27, 2019, the Division sent a letter to Camden City BOE stating that the *Application for Interfund Transfer* could not be processed as the form received was the incorrect form for a member attempting to transfer within the TPAF system.

On February 1, 2020, a corrected *Application for Interfund Transfer* was processed and the loan deductions were scheduled to begin at Camden City BOE on February 1, 2020 for 39 monthly payments of \$856.24 for a total of \$33,393.36.

By letter dated February 3, 2020, you wrote to Donna Woods, Supervising Pension Benefits Specialist, Loan/Withdrawal Section, and asserted that you should not be held responsible for a deemed distribution due to the alleged negligence of Camden City BOE and the Division. You asserted that, given the error of Camden City BOE and the Division, the Division should reverse its decision deeming your outstanding loan balance a deemed distribution. By letter dated February 26, 2020, Ms. Wood advised that the Division was unable to reverse its prior decision due to IRS regulations. You subsequently filed a timely appeal of that decision to the Board.

CONCLUSIONS OF LAW

The Board denied your request to reverse its determination that your outstanding loan balance be considered a deemed distribution.

The pension funds are "qualified governmental defined benefit plans" under Internal Revenue Code (IRC) Section 401(a) and federal tax law requires that pension loans comply with IRC Section

72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within five years of issuance. If a member fails to repay the pension loan within the five-year period the loan becomes a "deemed distribution" taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1). The Division's Director is required to maintain the Plans' qualified status and may adopt Plan modifications to ensure compliance. N.J.S.A. 43:3C-18. Failure of the TPAF to comply with the IRC could result in plan disqualification, meaning the TPAF could lose its tax-qualified status. While the Board noted your original arguments, and those in your appeal letter, and does not dispute that you may not have received the letter advising that your outstanding loan balance could become a deemed distribution if not repaid within the five-year period required by the IRS, the Board has no authority to grant your request to reverse the deemed distribution, as doing so could void the TPAF's tax-qualified status and cause harm to the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008).

There is no dispute that you took a loan from your TPAF account in July 2018, and that you started repaying the loan through payroll deductions. Repayments ceased when you separated from payroll and deductions were not taken from your payroll check for more than three months. The billing letter sent to you on or after March 1, 2019 stipulated that failure to respond within 30 days of the receipt of this notification will automatically result in the unpaid loan balance being declared a distribution and reported to the IRS. No response was received and therefore the loan was declared a distribution by letter dated April 27, 2019.

As noted above, the Board has considered your written submissions and all relevant documentation and 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 TPAF'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 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

Sincerely,



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

G-1/as

c: DAG Amy Chung (ET)
D. Wood (ET)