



PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

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*

September 23, 2019

Richard Rasczyk  
[REDACTED]

RE: Karen Rasczyk (Deceased)  
[REDACTED]

Dear Mr. Rasczyk:

**FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) denying your request to return Ms. Rasczyk's accumulated pension contributions to you and your brother, Robert Rasczyk (Robert), rather than Ms. Rasczyk's designated beneficiary.<sup>1</sup> The Board originally denied your request at its meeting of April 17, 2019. You filed an appeal and requested reconsideration, advancing for the first time the argument that the named beneficiary should receive only a fraction of the accumulated pension contributions as outlined in the divorce agreement. At its meeting of August 21, 2019, the Board reconsidered your request, but nevertheless affirmed its prior decision. Thereafter, the Board determined that there are no material facts in dispute and found that there is no need for an administrative hearing. Accordingly, the Board directed the Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusion of Law, which were presented and approved by the PERS Board at its September 18, 2019 meeting.

The PERS Board has considered your personal statements, reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law

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<sup>1</sup> For the sake of clarity, and because of the common surname, the member will be referred to as "Ms. Rasczyk"; you and your brother will be referred to as "Richard" and "Robert," respectively; the member's former spouse will be referred to as "Mr. Rasczyk."

governing the PERS do not permit the Board to grant your request to distribute the return of Ms. Rasczyk's pension contributions to you and Robert.

The record before the Board establishes that Ms. Rasczyk enrolled in the PERS on July 1, 1997, as a result of her employment with Essex County College. Ms. Rasczyk completed her PERS enrollment application on or about June 22, 2000,<sup>2</sup> and listed her then-husband, Mr. Rasczyk as Primary Beneficiary for her Group Life Insurance and the Return of Accumulated Deductions from her PERS account. You and Robert were listed as Contingent Beneficiaries. On or about July 7, 2004, Ms. Rasczyk's attorney submitted to the Division of Pensions and Benefits (Division) a copy of a Qualified Domestic Relations Order, which ordered that, should she become eligible to receive a pension benefit during her lifetime, a certain portion of her allowance would be paid to Mr. Rasczyk.

Ms. Rasczyk passed away on September 21, 2018. Essex County College submitted a Death Claim Certification on September 24, 2018. As a result of N.J.S.A. 3B:3-14, which effectually revoked Ms. Rasczyk's previous beneficiary designation of Mr. Rasczyk as the Group Life Insurance beneficiary, a life insurance benefit in the amount of \$79,115.94 was paid to you and Robert as contingent beneficiaries. The return of Ms. Rasczyk's accumulated pension deductions was paid to Mr. Rasczyk, as per her original designation on her PERS enrollment beneficiary form.

On or about December 18, 2018, the Division sent you a summary of survivor benefits based on Ms. Rasczyk's designations. This included the Group Life Insurance, but not the return of pension contributions. On or about December 26, 2018, you wrote to the Division to contest the payment of the return of contributions to Mr. Rasczyk, asserting that the revocation statute applied to the return of pension contributions. The Division replied to you on or about December 28, 2018, advising that the revocation statute was not applicable to the return of pension contributions.

You appealed the Division's determination to the Board on or about February 5, 2019. You noted the divorce agreement and only argued that it did not require the return of pension contributions to Mr. Rasczyk. The agreement requires that in the event Ms. Rasczyk begins to receive a retirement

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<sup>2</sup> The employer became liable for a delinquent enrollment.

allowance that the Division withhold a coverture fraction and provide that benefit to Mr. Rasczyk. Paragraph 4 of the agreement provided that if Ms. Rasczyk was eligible to withdraw her contributions, and requested to do the same, Mr. Rasczyk would have been entitled to receive the portion of the pension contributions as detailed in the coverture fraction paragraph listed above.

The Board considered your appeal at its meeting of April 17, 2019 and determined that the Division correctly processed the return of pension contributions to Mr. Rasczyk. You filed an appeal of the Board's decision and requested that the Board consider distributing the return of pension contributions to Mr. Rasczyk by the coverture fraction listed in the agreement. At its meeting of August 21, 2019, the Board reaffirmed its original determination, and considered your request to distribute a portion of the pension contributions as listed in the divorce agreement. However, as noted above, the agreement only pertains to a request by Ms. Rasczyk to withdraw her pension contributions during her lifetime, and has no effect on her selected pension beneficiary for that benefit. The Board also found that there were no genuine issues of material fact in dispute and therefore determined there was no need for an administrative hearing. Instead, the Board directed the Board Secretary to draft a final administrative determination which was presented to the Board at its September 18, 2019 meeting.

#### **CONCLUSIONS OF LAW**

Under the PERS, death benefits, other than accidental death benefits, are governed according to N.J.S.A. 43:15A-48, which states, in pertinent part:

c. Upon the receipt of proper proofs of the death of a member in service...there shall be paid to such member's beneficiary:

- (1) The member's accumulated deductions at the time of death together with regular interest; and
- (2) An amount equal to one and one-half times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service.

Accordingly, the Division paid the return of accumulated deductions as per subsection 1 to the named beneficiary on file at the time of Ms. Rasczyk's death.

You appealed the Division's determination to pay the return of Ms. Rasczyk's accumulated pension contributions to Mr. Rasczyk. In your appeal, you asserted that because Ms. Rasczyk had divorced Mr. Rasczyk in 2004, N.J.S.A. 3B:3-14 operates to revoke Ms. Rasczyk's designation of Mr. Rasczyk as the beneficiary of the return of accumulated deductions, similar to the revocation of her designation of him as the recipient of the Group Life Insurance benefit.

The Division and Board have consistently interpreted the statute consistent with N.J.S.A. 3B:1-1, which defines a "Governing instrument" to include a "pension, profit-sharing, retirement or similar benefit plan." As cited above, N.J.S.A. 43:15A-48, distinguishes between the annuity ("the actuarial equivalent of [a member's] accumulated deductions together with regular interest") and the pension benefit.

The Board also considered your argument that the divorce agreement requires the distribution of the pension contributions based on the coverture fraction listed therein. Paragraph 4 specifically refers to the return of pension contributions and states:

In the event the Participant becomes eligible to receive, and requests a withdrawal of employee contributions to Plan for an reason, the Alternate Payee is to be paid a portion of such contributions, in an amount to be computed by multiplying the total amount of the contributions being refunded by the coverture fraction provided in Section 2 above and Fifty Percent (50%).

There is no dispute that Ms. Rasczyk did not request the return of her pension contributions. Thus, this term of the settlement agreement is not relevant to the issue before the Board.

Accordingly, the Board has denied your request for the return of Ms. Rasczyk's accumulated pension deductions to you and Robert. The Board also denied your request to apportion the return of pension contributions pursuant to the coverture fraction as detailed above.

As noted above, the Board has considered your personal statements and has reviewed the written submissions 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

Richard Rasczyk  
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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  
Phone: (609) 292-4822

Sincerely,

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

Jeff Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-10/JSI

C: E. Pierson (ET); DAG Amy Chung (ET); DAG Robert Kelly (ET)

Robert Rasczyk