



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Governor

SHEILA Y. OLIVER
Lt. Governor

January 21, 2021

Sent via email to: [REDACTED]

Mr. Edlyn E. Smith
[REDACTED]
[REDACTED]

RE: Dr. Emerson E. Smith, Jr. (deceased)
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Smith:

I am writing in reference to the denial by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) regarding your request to receive, in your capacity as executor of the estate of your father, Dr. Emerson E. Smith, Jr. (Dr. Smith), the survivor's benefit under Option 3 as the result of the passing of your father, who was a TPAF retiree. The Board initially reviewed and denied the request at its November 14, 2019 meeting. At its meeting of October 1, 2020, the Board considered your personal statements and your appeal of the Board's decision as outlined in your December 30, 2019 letter, determined 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 January 14, 2021.

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 benefit payable under Option 3.

FINDINGS OF FACT

According to the records of the Division of Pensions and Benefits (Division), Dr. Smith was enrolled in the TPAF effective September 1, 1969, as a result of his employment as a teacher with the Trenton City Board of Education. Dr. Smith submitted an *Application for Retirement Allowance* dated August 29, 1988, requesting a Service retirement, with an effective date of September 1, 1988 under Option 3, which, upon the member's death, provides a lifetime monthly benefit equal to 50% of the member's monthly retirement allowance to the member's designated beneficiary. On this application, Dr. Smith elected [REDACTED] as his Option 3 pension beneficiary. He designated you and [REDACTED] as co-primary beneficiaries of his TPAF group life insurance benefit. At its meeting of January 5, 1989, the Board approved Dr. Smith's Service retirement effective September 1, 1988, in accordance with his selection of Option 3. In its statement dated August 15, 1990, the Division confirmed Dr. Smith's retirement allowance and indicated the beneficiary of the survivor's benefit, [REDACTED], could not be changed or replaced.

Under Option 3, where the designated beneficiary is entitled to a benefit equivalent to $\frac{1}{2}$ of the amount payable to the retiree, the Division uses actuarial reduction factors developed by the actuary to determine the benefit amounts due the retiree and the beneficiary. These actuarial reduction factors are based on life expectancy and take into account the gender of the recipients. An actuarial reduction is applied to the full maximum benefit allowance as benefits are payable over the lives of two specific individuals. The amount of the actuarial reduction depends on the ages of the retiree and the designated beneficiary at retirement. If the designated beneficiary is several years younger than the retiree, the actuarial reduction would be larger as benefits are presumed to be payable over a longer period of time. Dr. Smith was 61 and [REDACTED] was 46 on Dr. Smith's effective retirement date of September 1, 1988. Based on these ages, the actuarial reduction factor used to determine Dr. Smith's Option 3 benefit amount was .865777. Dr. Smith's maximum benefit allowance was \$2,427.08. Applying the reduction factor,

Dr. Smith's Option 3 monthly benefit amount was determined to be \$2,101.31 (\$2,427.08 x .865777).

By letter dated November 14, 1997, more than nine years after his retirement, Dr. Smith informed the Division that his marital status had changed due to divorce and that he wanted to remove [REDACTED] as his beneficiary.

On December 12, 1997, the Division informed Dr. Smith that his Service retirement benefits under Option 3, which became effective September 1, 1988, were comprised of three components: 1. Monthly Retirement Allowance; 2. Survivor's Benefit; and 3. Group Life Insurance Benefit. Dr. Smith was informed that he had the flexibility to make changes to his designation regarding the Group Life Insurance Benefit; however, he did not have the same flexibility to make changes to his Survivor's Benefit designee. A new *Designation of Beneficiary* form was enclosed for his completion.

On December 18, 1997, Dr. Smith completed a *Designation of Beneficiary* form electing the following:

Group Life Insurance (if applicable):

Primary Beneficiary(ies)

[REDACTED]

Contingent Beneficiary Name(s) –

[REDACTED]

[REDACTED]

[REDACTED]

Last Check Benefit (Retired members –all funds except ABP) and/or Maximum/Option 1 benefit (PERS and TPAF only)

Primary Beneficiary(ies)

[REDACTED]

Contingent Beneficiary Name(s)

████████████████████

████████████████████

████████████████████

On January 22, 1998, Dr. Smith requested a change to his beneficiaries, and a beneficiary form was mailed on January 26, 1998.

On January 31, 1998, Dr. Smith completed the *Designation of Beneficiary* form electing the following:

Group Life Insurance (if applicable):

Primary Beneficiary(ies)

████████████████████

Contingent Beneficiary Name(s) –

████████████████████

Last Check Benefit (Retired members –all funds except ABP) and/or Maximum/Option 1 benefit (PERS and TPAF only)

Primary Beneficiary(ies)

████████████████████

Contingent Beneficiary Name(s)

████████████████████

By letter dated April 1, 2013, Dr. Smith requested a change in beneficiary from ██████████

████████████████████

On April 24, 2013, the Division sent a letter to Dr. Smith indicating that he may nominate a beneficiary or beneficiaries to receive the benefits payable upon his passing as a retired member of the TPAF. Those two benefits were: Group Life Insurance and Survivor's Benefit. Dr. Smith was advised that only ██████████ may receive the Survivor's Benefit under Option 3. However,

he was further advised he could designate a beneficiary or beneficiaries to receive the Last Check Benefit in the event that [REDACTED] predeceases him (meaning there would be no Option 3 beneficiary) and to complete sections 5, 6, and 7 on the provided *Designation of Beneficiary* form and return it to the Division.

On October 17, 2014, the Division received a letter from Dr. Smith. This letter included a letter signed by Julia S. Savage, Esq. and addressed to [REDACTED] regarding a Property Settlement Agreement with a provision regarding the Survivor's Benefit component of Dr. Smith's pension and a completed *Designation of Beneficiary* form dated October 11, 2014.

By letter dated October 21, 2014, the Division informed Dr. Smith that the *Designation of Beneficiary* form was not acceptable as it was unclear who Dr. Smith was designating as the contingent beneficiary of his Group Life Insurance Benefit and Last Check Benefit. The letter also stated that at the time of Dr. Smith's retirement he chose an option that allowed him to designate [REDACTED] to receive a Survivor's Benefit equal to 50% of his monthly retirement allowance upon his passing and that no one other than [REDACTED] was entitled to receive this Survivor's Benefit. The letter further advised that if [REDACTED] wishes to waive her right to the Survivor's Benefit, she may do so during the claims process (after Dr. Smith passes away and the amount of the Survivor's Benefit is quoted to her by the Division). However, if she did waive her right to the Survivor's Benefit, no one else would be entitled to receive it as the benefit is non-transferable.

Dr. Smith submitted a *Retired Member Designation of Beneficiary* that was not dated.

On July 17, 2017, the Division responded to Dr. Smith stating that the designation could not be accepted as Dr. Smith named the same person as both primary and contingent beneficiary under the pension benefit section. A contingent beneficiary receives payment only after all the primary beneficiaries are deceased. A new change of beneficiary form was provided and Dr. Smith was advised that until a new designation was received, his last acceptable nomination (i.e., the January 31, 1998 form) would be honored.

On August 17, 2017, the Division received *Retired Member Designation of Beneficiary* forms from Dr. Smith dated June 20, 2017, July 20, 2017, and August 8, 2017. The forms dated June 20, 2017 and July 20, 2017 were deemed not acceptable by the Division and the form dated August 8, 2017 was not signed.

On June 27, 2019, the Division was informed of the passing of Dr. Smith and a letter was sent to you notifying you that you were entitled to the Group Life Insurance Benefit in the amount of \$5,444.62 and should complete the provided *Retired Beneficiary Verification Form* and return it to the Division. Also on June 27, 2019, a letter was sent to [REDACTED] notifying her that she was entitled to a monthly benefit and to complete the provided *Retired Beneficiary Verification Form* and return it to the Division.

On July 8, 2019, the Division received a letter from you contesting any and all beneficiaries' claims along with supporting documentation, certified court copies of the Final Decree from the Circuit Court of the County of Fauquier, Virginia dated March 12, 1999 and a letter from attorney, Julia S. Savage, dated February 4, 2010, to [REDACTED].

On July 17, 2019, the Division sent a letter to you informing you to submit the entire, signed Property Settlement in order to continue processing this claim. Subsequently, the Division received a copy of your letter dated July 8, 2019 with the entire Property Settlement and Separation Agreement and Stipulation and the Formal Assignment with Power of Attorney dated January 30, 1999.

By letter dated July 25, 2019, the Division informed you that the last acceptable beneficiary designation completed by Dr. Smith was dated January 31, 1998. At that time, you were listed as the sole beneficiary for the Group Life Insurance totaling \$10,889.25. With regard to the Survivor's Benefit, the Option 3 beneficiary listed on the *Application for Retirement Allowance* was [REDACTED]. That beneficiary designation was irrevocable once the member was due and payable and can only be paid to [REDACTED] for the rest of her life. Once [REDACTED] passes away,

the Survivor's Benefit will cease and cannot be transferred to anyone else. Provided was a copy of Dr. Smith's *Application for Retirement Allowance*, his final retirement letter and Fact Sheet #5.

On July 26, 2019, a revised letter was sent to you informing you that you were entitled to the Group Life Insurance Benefit in the amount of \$10,889.25 and indicating that there was no Survivor's Benefit payable to you.

On August 9, 2019, the Division received a letter from you stating that you are still contesting on behalf of Dr. Smith, as you asserted it was not his will or desire for [REDACTED] [REDACTED]) to receive the Option 3 Survivor's Benefit.

On August 12, 2019, the Division administratively denied your request to contest the Option 3 payment to [REDACTED] and reiterated that the Option 3 beneficiary is irrevocable once the member is due and payable and can only be paid to [REDACTED] for the rest of her life. Once [REDACTED] passes away, the Survivor's Benefit will cease and cannot be transferred to anyone else. You were provided with the procedure to appeal the Division's denial, which you did by way of letters dated August 19, 2019 and August 23, 2019 in which you included supplemental information.

On October 10, 2019, you were notified that the Board would consider your appeal at its meeting on November 14, 2019. At that meeting, the Board denied your request that the Option 3 Survivor's Benefit designated for [REDACTED] be paid to you as executor of Dr. Smith's estate. On January 3, 2020, the Division received your appeal letter of December 30, 2019, wherein you disagreed with the Board's determination and requested an administrative hearing. At its meeting of October 1, 2020, the Board denied your request for a hearing in the Office of Administrative Law and directed the Board Secretary to issue a Final Administrative Determination. At its meeting of January 14, 2021, the Board noted your personal statements. This Final Administrative Determination serves as a formal notice of the Board's denial.

CONCLUSIONS OF LAW

After careful consideration, the Board denied your request that the Option 3 Survivor's Benefit designated for [REDACTED] be paid to you as executor of Dr. Smith's estate. The Board's determination was based upon the reasons set forth in the letter dated November 22, 2019, as well as the provisions of N.J.S.A. 18A:66-47, N.J.A.C. 17:3-6.2 and N.J.A.C. 17:3-6.3(a).

N.J.S.A. 18A:66-47 states in pertinent part:

At the time of retirement a member shall receive benefits in a retirement allowance payable throughout life, or the member may on retirement elect to receive the actuarial equivalent of the member's retirement allowance, in a lesser retirement allowance payable throughout life, with the provision that:

Option 3. Upon the member's death, one-half of the member's retirement allowance shall be continued throughout the life of and paid to such person as the member shall nominate by written designation duly acknowledged and filed with the retirement system at the time of retirement.

Ibid. (emphasis added).

Further, 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.

In addition, N.J.A.C. 17:3-6.3 states in pertinent part:

[A] member shall have the right to withdraw, cancel, or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

The record before the Board establishes that on August 29, 1988, Dr. Smith applied for a Service retirement effective September 1, 1988. At that time, Dr. Smith selected [REDACTED] ([REDACTED]) as his pension beneficiary under Option 3. The Board approved his application at its meeting of January 5, 1989. The letter indicating the Board's approval, dated January 5, 1989, advised Dr. Smith that he would have 30 days after the effective date of his retirement or the date

of Board approval, whichever is later (that is, until February 5, 1989), to make any changes to his retirement application. Dr. Smith requested to remove [REDACTED] ([REDACTED]) as his pension beneficiary on November 14, 1997, more than eight years beyond the regulatory time frame to change his retirement.

Dr. Smith elected to receive the actuarial equivalent of his retirement allowance, in a lesser amount throughout his life, with the provision that [REDACTED], upon his death, receive a Survivor's Benefit until her death. Once a pension beneficiary has been designated and the retirement becomes due and payable, that beneficiary cannot be changed. If the named pension beneficiary predeceases the member, the statute does not permit the retiree to name another pension beneficiary for the Option 3 benefit nor does the retiree's monthly benefit increase.

In your appeal, you asserted that [REDACTED] waived any rights to Dr. Smith's pension benefit in the Property Settlement and Separation Agreement. The Board reviewed the Property Settlement and Separation Agreement in which [REDACTED] agreed to waive any interest in her right to receive Survivor's Benefits from Dr. Smith's pension. As stated previously, the Board has no authority to amend Dr. Smith's retirement option after his Service retirement became due and payable in February 1989. Cf. Jablonski v. Bd. of Trs., Teachers' Pension & Annuity Fund, 2013 N.J. Super. Unpub. LEXIS 710, at *6 (App. Div. Apr. 1, 2013) (affirming denial of retiree's request to change his retirement after selecting Option 3; instructions "unequivocally inform an applicant that once having made a beneficiary selection, 'it cannot be changed'").

The Board further concludes that no "showing of good cause, reasonable grounds, and reasonable diligence has been made" to reopen Dr. Smith's retirement. Steinmann v. State, Dep't of Treasury, Div. of Pensions, 116 N.J. 564, 573 (1989); see In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006) ("The power to reopen proceedings may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law.") (quotation omitted). As

noted above, N.J.S.A. 18A-66:47 requires the Option 3 beneficiary to be designated at the time of retirement, so that the necessary actuarial reduction can be made. No further changes are possible, even if the beneficiary dies before the retiree. Jablonski, 2013 N.J. Super. Unpub. LEXIS 710, at *6. In addition, while Dr. Smith tried during his lifetime to change his pension beneficiary at the Division level, he never brought this issue before the Board nor argued that the equities required a change. This is in stark contrast to the appellant in Van Orden, who “initially selected a retirement allowance option that provided the maximum benefit for him and no death benefit for his wife,” “was then ordered by the Family Part, pendente lite, to change his selection to provide a death benefit for his wife and to designate her as beneficiary under his retirement plan,” and wanted “to undo the court-mandated selection and reinstate his original personal choice [after his wife relinquished any interest she may have had in his pension].” 383 N.J. Super. at 421-22. Dr. Smith’s original personal choice at the time of his retirement was to designate [REDACTED] as his beneficiary; he apparently changed his mind post-retirement after his divorce. Dr. Smith had every opportunity to make the arguments that you have made (30 years after his retirement became due and payable), but did not do so. This is not good cause, reasonable grounds to reopen a retirement after death, or reasonable diligence. In addition, in order to waive the Survivor’s Benefit, [REDACTED] would have to waive it when it was actually payable, i.e. after Dr. Smith’s death. Even if she had waived the benefit, no one else would be entitled to the benefit.

Finally, the Board notes that Dr. Smith’s estate has no right to a Survivor’s Benefit.

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

Mr. Edlyn E. Smith
January 21, 2021
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Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in cursive script that reads "Angelina Scales".

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

G-2/AS

c: DAG Amy Chung (ET)
E. Pierson (ET)