

**BEFORE THE EXECUTIVE DIRECTOR
OF THE INDIANA PUBLIC RETIREMENT SYSTEM**

IN THE MATTER OF)	INDIANA PUBLIC RETIREMENT SYSTEM
AND)	
ALORIS BARNETT,)	
)	
Petitioner,)	Respondent.

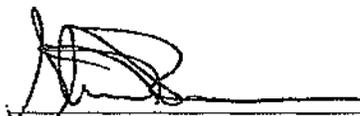
FINAL ORDER

The Board of Trustees ("Board") of the Indiana Public Retirement System ("INPRS") is the ultimate authority in administrative appeals brought by 1977 Fund members under IC 4-21.5-3-28 and 35 IAC 2-5-5(a)(7). Pursuant to 35 IAC 1.2-1-2, the Board delegates to the Executive Director the authority to conduct a final authority proceeding, or a review of decision points by the administrative law judge (ALJ), to issue a final order in this matter.

1. The Administrative Law Judge (ALJ) issued a Summary Judgment ("Order") in this matter on March 16, 2012. The Petitioner's motion for summary Judgment is denied and the INPRS' motion for summary judgment is granted. The petitioner is ordered to pay INPRS [REDACTED]
2. Copies of the Order have been delivered to the parties.
3. On March 26, 2012, Petitioner filed with the final authority Petitioner's Objections to the Administrative Law Judge's Order.
4. Pursuant to IC 4-21.5-3-29(d)(2) and Indiana Trial Rule 4.17(B)(2), it has been more than fifteen (15) days since the ALJ served the Order upon the parties.

NOW THEREFORE the Order of the Administrative Law Judge is affirmed.

DATED April 24, 2012



Steve Russo, Executive Director
Indiana Public Retirement System
One North Capitol, Suite 001
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I certify that on the 24th day of April, 2012, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

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**BEFORE AN ADMINISTRATIVE LAW JUDGE
OF THE INDIANA PUBLIC RETIREMENT SYSTEM**

IN THE MATTER OF
ALORIS BARNETT,

Petitioner.

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INDIANA PUBLIC EMPLOYEES'
RETIREMENT FUND

RECEIVED

MAR 20 2012

SUMMARY JUDGMENT

**INDIANA PUBLIC
RETIREMENT SYSTEM**

I. Procedural History

Aloris Barnett ("Barnett") was a member of the Indiana Public Retirement System ("INPRS"), by virtue of working for Indianapolis Public Schools and the State of Indiana.¹ On February 14, 2011, INPRS notified Barnett that she had received [REDACTED] to which Barnett was not entitled. INPRS demanded to be repaid. On April 20, 2011, INPRS issued an initial determination in which it again demanded repayment of [REDACTED]. On May 4, 2011, Barnett appealed timely from INPRS's initial determination.

INPRS and Barnett each moved for summary judgment. There is no dispute as to any material fact.

As noted above, INPRS initially demanded repayment of [REDACTED]. This included pension benefit payments, as well as payment of funds contributed by Barnett and her employers – an Annuity Savings Account of \$ [REDACTED]. In a document filed on November 30, 2011, INPRS ceased its demand for repayment of the Annuity Savings Account. In the same filing, INPRS ceased its demand for pension benefit payments made to Barnett after she retired and before she reemployed – \$ [REDACTED] paid to Barnett during the summer of 2007. Thus, INPRS's demand changed as follows:

\$ [REDACTED]	Initial INPRS Demand
- \$ [REDACTED]	Annuity Savings Account
- \$ [REDACTED]	Pension Benefit Payments made before Barnett reemployed
<hr/>	
\$ [REDACTED]	Pension Benefit Payments made after Barnett reemployed

Thus, INPRS now demands repayment of \$ [REDACTED] ("DISPUTED AMOUNT") in pension benefit payments made to Barnett from September 2007 through December 2010.

¹ Effective July 1, 2011, the Teachers' Retirement Fund and the Public Employees' Retirement Fund merged to form the Indiana Public Retirement System.

II. Undisputed Facts

Barnett worked for Indianapolis Public Schools ("IPS") from 1987 through 1991. Barnett Exhibit 1, page 1. She then worked for the State of Indiana from 1994 through May 2007. Id. Barnett was eligible to retire when she turned age 60 on May 21, 2007. Id.

Barnett's retirement began on June 1, 2007. INPRS Exhibit A-2. On the "Application for Retirement Benefits" form, there were four paragraphs listed under the heading, "Important Information." Id. (underline in original). The first of the four paragraphs warned that, if the member reemployed in an INPRS-covered position less than 90 days after retirement, "your benefit will be stopped and you will be considered as not having retired." Id. Barnett placed information in 14 spaces on the same page as this warning. Id.

On August 20, 2007, less than 90 days after retiring, Barnett took an INPRS-covered job with IPS. Barnett Exhibit 3. Nonetheless, Barnett continued to receive pension benefit payments for three years -- through December 2010. INPRS Exhibit A-14.

III. Conclusions of Law

Barnett argues that equity and estoppel prevent INPRS from collecting repayment of the pension benefits improperly paid to Barnett. Alternatively, Barnett argues that a statutory amendment effective a year after Barnett's retirement should apply and thereby relieve her of the need to repay pension benefits she received from July 2008 through December 2010.

Summary judgment is proper "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(c).

As of 2007, a member could not continue to collect pension benefits if she became reemployed within 90 days of her retirement. Indiana Code Section 5-10.2-4-8(c) provided as follows:

If a member who is receiving retirement benefits is reemployed in a position covered by this article not more than ninety (90) days after the member's retirement, the member's retirement benefits shall stop, the member shall begin making contributions as required by I.C. 5-10.2-3-2, and employer contributions shall be made throughout the period of reemployment.

Barnett reemployed in an INPRS-covered position less than 90 days after retiring. Upon Barnett's taking an INPRS-covered position with IPS in 2007, Barnett's pension benefit payments should have stopped. However, the payments did not stop. Barnett continued to receive pension benefit payments through December 2010.

First, equitable estoppel does not apply against government entities. U.S. Outdoor Advertising Co. v. Ind. Dep't. of Transp., 714 N.E.2d 1244, 1259 (Ind. Ct. App. 1999). Estoppel does not prevent INPRS from pursuing the overpayment of pension benefits to Barnett.

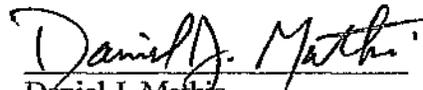
Second, Barnett argues that a 2008 amendment to the relevant statute should be applied to Barnett's retirement and reemployment. As quoted above, Indiana Code Section 5-10.2-4-8(c) prevented members from continuing to receive pension benefit payments if the member reemployed in an INPRS-covered position less than 90 days after retiring. This provision applied at the time of Barnett's retirement and at the time of her reemployment. A year later, effective July 1, 2008, this subsection was amended to prevent the continued payment of pension benefits only if the member reemployed less than 30 days after retirement. Under this language, Barnett would have been entitled to continue receiving pension benefit payments, even after reemploying with IPS.

However, the General Assembly did not include any language evidencing an intent to have the 2008 amendment apply to members who had already retired and reemployed. Under Barnett's argument, the 2008 amendment would apply to all members who retired and reemployed, regardless of what year they did so. It would be absurd to construe the 2008 amendment in this manner, in the absence of language specifically applying the amendment to previous retirements.

IV. Conclusion

Barnett's motion for summary judgment is DENIED. INPRS's motion for summary judgment is GRANTED. Barnett is ordered to pay INPRS \$ [REDACTED]

ORDERED on March 16, 2012.


Daniel J. Mathis
Administrative Law Judge
Indiana Public Retirement System

Copies sent by U.S. mail to:

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