

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

<b>IN THE MATTER OF</b>	)	<b>INDIANA TEACHERS'</b>
<b>Patricia slack,</b>	)	<b>RETIREMENT FUND</b>
	)	
<b>Petitioner,</b>	)	<b>Respondent.</b>
	)	

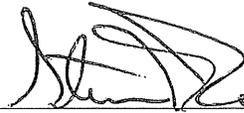
**FINAL ORDER**

The Board of Trustees ("Board") of the Indiana Public Retirement System ("INPRS") is the ultimate authority in administrative appeals brought by members of the Teacher's Retirement Fund ("TRF") under IC 4-21.5-3-28. In the Statement of Board Governance, 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 ALJ entered a Decision and Order on Motion for Summary Judgment ("Order") in this matter on June 11, 2015, granting INPRS' motion for summary judgment.
2. Copies of the Decision and Order have been served upon the parties.
3. 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 the Decision and Order on Motion for Summary Judgment of the Administrative Law Judge is hereby **AFFIRMED**.

DATED July 20, 2015.



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

## CERTIFICATE OF SERVICE

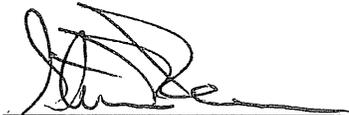
I hereby certify that I served a copy of this document on the following persons, by US Postal Service first-class mail on the 20<sup>th</sup> day of July, 2015.

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INDIANA PUBLIC  
RETIREMENT SYSTEM

BEFORE AN ADMINISTRATIVE LAW JUDGE  
OF THE INDIANA PUBLIC RETIREMENT SYSTEM

IN THE MATTER OF ) TEACHERS' RETIREMENT FUND  
PATRICIA SLACK, )  
 )  
Petitioner. )

DECISION AND ORDER ON MOTION FOR SUMMARY JUDGMENT

Patricia Slack, Petitioner, filed an administrative appeal of the Indiana Public Retirement System's ("INPRS") determination that she is not entitled to receive a retroactive increase in benefits from the date of her husband's death, rather than for a period of six (6) months prior to [REDACTED], the month and year Petitioner submitted a Change Form<sup>1</sup> to INPRS. Having carefully consider the arguments and information presented, and being duly advised in the premises, the Administrative Law Judge recommends that the agency enter the following order:

Findings of Undisputed Material Fact

1. Upon retirement, Petitioner elected pension option B-1 from the Indiana Teachers' Retirement Fund ("TRF"), a survivor option that provided Petitioner a 100% survivor benefit. Petitioner listed her [REDACTED] as her survivor beneficiary.
2. Petitioner began receiving a pension that began with her retirement on [REDACTED], a pension that continues to date ("Original Benefit").
3. [REDACTED] was also a member of INPRS and retired from TPS on [REDACTED]. [REDACTED] also elected pension option B-1, a survivor option that provided [REDACTED] a 100% survivor benefit. [REDACTED] listed Petitioner as his survivor beneficiary.
4. [REDACTED] passed away on [REDACTED].
5. Petitioner provided INPRS with notice of [REDACTED] death in [REDACTED] when Petitioner submitted a Death Report so that Petitioner would be entitled to receipt of survivor benefits as [REDACTED] beneficiary. Petitioner began receiving the survivor benefits from [REDACTED] pension in a timely fashion.

<sup>1</sup> Petitioner requested her benefit option be changed from B-1, a survivor option with a 100% survivor benefit to option [REDACTED]

6. In [REDACTED] Petitioner contacted INPRS to inquire about her survivor beneficiary since [REDACTED] INPRS provided Petitioner with a change form and requested a copy of [REDACTED] death certificate. This was the first time INPRS received notice that Petitioner's designated beneficiary had died<sup>2</sup>.
7. INPRS received the Change Form from Petitioner on [REDACTED] ("Change Form"). In the Change Form, Petitioner requested her pension be changed to option [REDACTED].
8. After INPRS received the Change Form, INPRS adjusted Petitioner's benefits, in accordance with IC § 5-10.2-4-7.2(c), based on the change from option B-1 to option [REDACTED]. As a result of the adjustment, Petitioner's benefits increased from [REDACTED] to [REDACTED] for the check issued on [REDACTED] ("Increased Benefit").
9. In [REDACTED]<sup>3</sup> Petitioner requested INPRS review the effective date of the Increased Benefit. Petitioner requested the Increased Benefit be made effective the month [REDACTED] passed away—[REDACTED] rather than the month she submitted the Change Form—[REDACTED].
10. INPRS reviewed Petitioner's request and determined that Petitioner was entitled to six (6) months of retroactive Benefit Change. As a result, INPRS issued payment in the amount of [REDACTED] which represented the difference between the Original Benefit and the Benefit Increase.
11. INPRS advised Petitioner of its decision that she was entitled to only six (6) months of retroactive the Increased Benefit amount via certified mail on or about [REDACTED] ("December 1 Decision").
12. Petitioner acknowledges she did not file a Change Form immediately after [REDACTED] death and that Change Form was not filed until [REDACTED].
13. Petitioner asserts INPRS has a duty to notify members about the members' options following the death of [REDACTED].
14. Petitioner believes this obligation was triggered by the submission of [REDACTED] death report pursuant to which she began receiving survivor benefits. Petitioner believes the entry of [REDACTED] social security number should have alerted INPRS that Petitioner's

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<sup>2</sup> As stated in paragraph 5 INPRS did receive a Death Report after [REDACTED] death and began to timely pay survivor benefits to Petitioner.

<sup>3</sup> The Affidavit of [REDACTED] indicates Petitioner began inquiring about the effective date of the change to her benefit amount after her survivor died in [REDACTED]. The undersigned assumes that the inquiry began in [REDACTED].

beneficiary died and that INPRS should have then notified Petitioner of her options following the death of her designated beneficiary.

15. On or about [REDACTED] INPRS received Petitioner's request for administrative review of the December 1 Decision.
16. Any Conclusion of Law that should be deemed a Finding of Undisputed Material Fact is hereby adopted as such.

### Conclusions of Law

1. Summary judgment is proper if the designated evidentiary material demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56.
2. INPRS is the administrator of Indiana Teachers Retirement Fund.
3. INPRS' interpretation of its statutory obligations in administering the various pension plans is entitled to great weight. *NRDC v. Biorefining*, 15 N.E.3d 555, 561 (Ind. 2014); *Board of Zoning Appeals v. Kempf*, 656 N.E.2d 1201, 1203 (Ind. Ct. App. 1995) (An agency's decision is presumptively correct due to its expertise in matters within its purview); *Parkview Hosp., Inc. v. Roese*, 750 N.E.2d 384, 389 (Ind. Ct. App. 2001) (An agency is granted considerable deference when construing its own statutes and regulations as long as the construction is not clearly erroneous or inconsistent.).
4. The issue to be decided in this matter is whether Petitioner, Patricia Slack, is entitled to the Increased Benefit amount retroactive to [REDACTED] rather than for the six (6) month period immediately prior to [REDACTED].
5. Once Petitioner began retirement, her survivor benefits were governed by choices Petitioner made at the time of her retirement. IC § 5-10.2-4-7. At retirement, Petitioner selected the 100% joint and survivor pension payment option in accordance with IC § 5-10.2-4-7.

6. IC § 5-10.2-4-7 provides, in pertinent part:

(1) Joint and Survivor Option.

- A. The member receives a decreased retirement benefit during the member's lifetime, and there is a benefit payable after the member's death to a designated beneficiary during the lifetime of the beneficiary, which benefit equals, at the option of the member, either full decreased retirement benefit or two-thirds (2/3) or one-half (1/2) of that benefit.
- B. If the member dies before retirement, the designated beneficiary may receive only the amount credited to the member in the annuity savings account unless the designated beneficiary is entitled to survivor benefits under IC 5-10.2-3.
- C. If the designated beneficiary dies before the member retires, the selection is automatically canceled and the member may make a new beneficiary election and may elect a different form of benefit under this subsection.

7. Any change to a member's designated beneficiary will amend the member's monthly benefit calculation. IC § 5-10.2-4-7.2. *Oglesby v. AT&T Corp.*, 527 F.Supp.2d 528 (D. Tex. 2006) (Joint and survivorship options are based on actuarial determinations that consider both the member and the member's designated beneficiary's life expectancy).

8. IC § 5-10.2-4-7.2 governs changes to beneficiary designations and provides, in pertinent part, that if a member's designated beneficiary dies after the member has begun receiving benefit:

**A member . . . may elect to:**

- (1) Change the member's designated beneficiary or form of benefit under section 7(b) of this chapter; and
- (2) Receive an actuarially adjusted and recalculated benefit for the remainder of:
  - (A) The member's life; or
  - (B) The member's life and the life of the newly designated beneficiary.

(Emphasis added).

9. Pursuant to IC 5-10.2-4-7.2 it is undisputed that Petitioner was eligible to change her designated beneficiary and to change her benefit form.
10. Since pensions and survivor benefits are based on life expectancy INPRS must follow specific procedures to ensure the various plans it administers are adequately funded.
11. It is undisputed that INPRS received a Death Notice for [REDACTED] which triggered Petitioner's receipt of survivor benefits as [REDACTED] designated beneficiary. Petitioner acknowledges she did not submit a Change Form following the death of her designated beneficiary.
12. The INPRS software or processing system in place in [REDACTED] (and currently in place) is not designed to link members who are also spouses and/or designated members of another member. Thus, notifying INPRS that you are entitled to a survivor benefit due to the death of [REDACTED] does not trigger INPRS to know you are also a member and may be eligible to increased benefits as a member. Petitioner was required to notify INPRS of the death of her designated beneficiary and to identify the name of a new beneficiary or elect to change her pension options, or both.
13. Petitioner finds the fact the INPRS system does not have the ability to tie together deceased members to another account as a spouse and/or designated beneficiary to be "disappointing and unacceptable". There is no statutory provision that allows INPRS to automatically change a member's designated beneficiary or benefit form. To allow INPRS to make such changes could render a member's wishes null and void if INPRS selects an option the member would not have chosen. Since such elections are irrevocable, a member could not alter an option chosen by INPRS. To require INPRS to make such elections is not a valid option.
14. INPRS is a qualified governmental plan pursuant to section 401 of the Internal Revenue Code ("IRC"). As a qualified governmental retirement plan INPRS receives federal tax-favored status. In order to maintain its tax-favored status INPRS must follow all applicable IRC provisions and any accompanying Treasury Regulations. Treasury Regulation § 1.401-1(a)(2) requires that a qualified plan be administered in accordance with its terms. Since the applicable statutory provisions do not allow INPRS to make alternative elections on behalf of a member, if INPRS made such an election, the plan may lose its tax-favored status.
15. However, applying Petitioner's suggested obligation on INPRS (1) places a duty on INPRS not outlined in the statute; and (2) would treat those members who are also the spouses and/or designated beneficiary of another member differently from those spouses and/or designated beneficiaries who are not also member. Treas.

Reg. 1.401-1(a)(3)(vi) specifies that qualified plans cannot treat classes of employees differently with respect to contributions or benefits. Thus, if INPRS were to utilize the system proposed by Petitioner and notify members who are also spouses and/or designated beneficiaries, but not provide notice to all other designated beneficiaries, INPRS may jeopardize the plan tax-favored status.

16. INPRS recognized that the Indiana General Assembly never addressed the retroactivity of any payments if there is a delay in applying for a beneficiary or option change once a member's designated beneficiary dies. Nor has the INPRS Board of Trustees promulgated a rule to address the issue and there is no precedent established via a Final Order issued to pursuant to the Indiana Administrative Orders and Procedures Act.
17. INPRS looked to other areas of Indiana pension law where retroactive benefits may be allowed for guidance. Indiana pension law prohibits the retroactive payment of pension benefits for more than six (6) months from the date the application is received unless the member's mental capacity or a serious illness or injury rendered the member unable to apply for retirement. (*see*, e.g. IC 5-10.2-4-1(d)).
18. Recognizing that laws should be construed liberally in a manner that favors beneficiaries, INPRS paid Petitioner the Increased Benefit amount for the six (6) month period immediately prior to the receipt of the Change Form on or about [REDACTED]
19. Any Finding of Undisputed Material Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

Based on the Findings of Undisputed Material Fact and the Conclusions of Law stated above, INPRS Motion for Summary Judgment is hereby GRANTED. Petitioner, Patricia Lambert Slack, is not entitled to receive any additional retroactive Increased Benefit.

  
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Kay Fleming, Administrative Law Judge  
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[PROCEDURES FOR REVIEW ON FOLLOWING PAGE]

## PROCEDURES FOR REVIEW

The administrative law judge is not the ultimate authority in this case, but was designated by INPRS to hear this proceeding pursuant to IC § 4-21-5-3-9(a). The order issued in this matter becomes a final order when affirmed under IC § 4-21.5-3-29, which provides, in pertinent part:

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

- (1) affirming;
- (2) modifying; or
- (3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) to preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described in section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.