



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

March 21, 2019

Linda Allen  
[REDACTED]  
[REDACTED]

RE: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Allen:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) in which it denied your request to waive the accrued interest owed on your outstanding pension loan balance as determined by the Division of Pensions and Benefits (Division). The Board initially reviewed and denied your request to waive, reduce or adjust the accrued interest assessed on your outstanding loan balance at its meeting of October 17, 2019. You appealed the Board's decision via letter dated November 15, 2019. In your appeal, you agreed to repay the principal of the original loan, but argued that you should not be liable for the accrued interest beyond the original term of the loan. At its meeting of January 16, 2019, the Board considered your appeal of that decision 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 PERS Board at its March 20, 2019 meeting.

The Board has reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law governing the PERS do not permit the Board to waive the accrued interest on the outstanding loan balance.

### **FINDINGS OF FACT**

The record establishes that you were enrolled in the PERS in July 1974 as a result of your employment with the Township of West Milford. Prior to your retirement, which became effective December 1, 2004, you took a pension loan against your PERS account in the amount of \$2,100.00, which was added to your then-existing loan balance. The Division issued a new payment schedule, reflecting the updated loan totals and new loan deductions. The loan deductions were scheduled to begin on April 1, 2004, for a total of 52 payments in the amount of \$334.91, for a total amount of \$17,415.32. Prior to your retirement, loan deductions were taken from your paychecks in the amount of \$334.91, beginning April 1, 2004 through November 30, 2004. Loan deductions stopped as of your retirement date, and therefore at the time of your retirement you had an outstanding loan balance of \$13,685.99, which was required to be repaid with interest.<sup>1</sup> Loan payment deductions should have continued with your first monthly retirement payment; however, this did not occur.

On September 14, 2017, the Division notified you via letter that a review of your PERS account revealed that your pension loan balance was never satisfied as required by N.J.S.A. 43:15A-34.<sup>2</sup> Therefore, the Division established a repayment schedule with payments being deducted from your monthly retirement allowance to satisfy the outstanding obligation with applicable interest. Starting with your check dated October 1, 2017, a payment of \$891.83 was deducted from your retirement allowance. On November 7, 2017, you requested that the accrued interest be waived in its entirety, or in the alternative, to reduce your monthly payment due to financial hardship. On November 25, 2017, the Division wrote to you advising that the Division could not waive the interest, but agreed to reduce your monthly loan payment to \$334.91, the

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<sup>1</sup> The Board noted that prior to your retirement, you had requested that the Division provide your lender with a "pension contribution balance." A letter was sent on September 9, 2003, advising that you had a pension loan balance of \$17,782.01.

<sup>2</sup> Additionally, all pension loans are subject to the Internal Revenue Code (IRS) I.R.C. § 72(p).

same monthly payment you had been making on your outstanding loan prior to your retirement. This monthly payment will continue to be deducted through your check dated August 1, 2023, to satisfy the outstanding loan obligation. The obligation also includes accrued interest of approximately \$11,724.21. An interest rate of 4.00% was used to determine the amount of interest and the interest period is from December 1, 2004 through July 21, 2023. N.J.S.A. 43:15A-34.

Based on the facts as outlined above, the Board denied your request to waive the accrued interest on you outstanding loan balance.

Thereafter, you appealed the Board's determination. You have agreed to "pay the amount of [your] original loan," but argue that the Board's determination that interest accrued on the outstanding balance of your loan is unfair and you should not be held responsible for those charges. At its meeting on January 16, 2019, the Board determined that there were 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 constitutes the Board's Final Administrative Determination.

#### **CONCLUSIONS OF LAW**

N.J.S.A. 43:15A-34 governs the repayment of a PERS member's pension loan and states in part that "[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof." After the enactment of Chapter 92, the State Treasurer sets "a commercially reasonable rate" on January 1 of each calendar year. Ibid. Further:

Loans shall be made to a member from the member's aggregate contributions. The interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

[N.J.S.A. 43:15A-34.]

N.J.S.A. 43:15A-34.1 governs the payment of loans carried into the member's retirement:

In the case of any member who retires without repaying the full amount so borrowed, the Division of Pensions and Benefits shall deduct from the retirement benefit payments the same monthly amount which was deducted from the compensation of the member immediately preceding retirement until the balance of the amount borrowed together with the interest is repaid. In the case of a pensioner who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the pensioner either in the form of monthly payments due to his beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

The PERS is a "qualified governmental defined benefit plan pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service." N.J.S.A. 43:3C-18(a). The Director of the Division is "authorized to modify the provisions of the [PERS], when a modification is required to maintain the qualified status of the [PERS] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS)." N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding \$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then 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).

There is no dispute that you took several loans from your PERS account. There is further no dispute that, at the time of your last loan prior to your retirement, you had an existing loan

balance which was added to the previous loan balance. At that time, the Division created a new payment schedule. There is also no dispute that your multiple loans were being repaid through payroll deductions and that the payroll deductions were taken (under the amended schedule) from April 1, 2004 through your retirement. Accordingly, you did not work long enough after taking the final loan in order to make the requisite 52 payments at \$334.91 in order to repay your loan prior to retirement. The Board acknowledges that your loan payments were not carried into retirement and automatically deducted from your pension checks by the Division. The Board could find record of you contacting the Division in order to repay your loan after your retirement.

The PERS Board is also aware that the issue of the repayment of loans in retirement implicates more than just your loan. Because the PERS is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the PERS's failure to comply with all the requirements of the IRC could result in the IRS determining that the PERS would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the PERS tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the plan is subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

In your appeal, you assert that the interest that accrued is not the result of your error. While the Board acknowledges that the Division did not withhold loan repayments from your pension check, you were aware that you had an outstanding loan balance prior to your retirement and never made an inquiry of the Division about the status of the loan. Per N.J.S.A. 43:15A-34 and N.J.S.A. 43:15A-34.1, interest accrues on any unpaid loan balance. Because loan payments were not made or taken from your pension checks, the balance of your loan did not decrease,

and your loan was not fully repaid as contemplated by the loan repayment schedule. Therefore, per the statutory requirements that govern the loan there is additional interest that accrued on your loan that must be repaid.

While the Board noted that your loan was not carried into retirement and no deductions were made from your monthly retirement benefit, N.J.S.A. 43:15A-54, provides for the correction of errors, stating, in pertinent part:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

While the Board noted your arguments, it has no authority to grant your request to reduce or refund the amount of accrued interest charged on your loan because doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 43:15A-34 and N.J.S.A. 43:15A-34.1, IRC Section 72(p), and the State's Closing Agreement with the IRS, which could result in the PERS no longer being considered a tax-qualified plan, which would affect the entire State, all employers in the PERS, and every member and retiree.

As noted above, the PERS Board has considered your written submissions and because this matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system'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 Public Employees' Retirement System.

Linda Allen  
March 21, 2019  
Page 7

You have the right, if you wish 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

Sincerely,



Mary Ellen Rathbun, Acting Secretary  
Board of Trustees  
Public Employees' Retirement System

G-10

C: D. Dinkler (ET); C. Chianese (ET); M. Kusmierczyk (ET)