



State of New Jersey

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

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February 17, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to [REDACTED]

James Katz, Esq.
Law Offices of Spear Wilderman



RE: Ivelisse Gonzalez (deceased)
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Katz:

I am writing in reference to the denial by the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) of request of your client, the late Ivelisse Gonzalez (hereinafter Ms. Gonzalez or the Estate), to apply for Long Term Disability (LTD) benefits through Prudential. The Board originally denied Ms. Gonzalez's request at its meeting of October 20, 2021. You filed a timely appeal of that determination on December 21, 2021. At its meeting of January 19, 2022,¹ the Board denied your request for reconsideration and found no genuine issue of material fact in dispute. The Board directed the undersigned to draft Findings of Fact and Conclusions of Law as outlined below, which were presented to and approved by the PERS Board at its February 16, 2022, meeting.

FINDINGS OF FACT

The Board made the following findings of fact.

Ms. Gonzalez was enrolled in the PERS on October 1, 2018, as a result of her employment with the Camden County Board of Chosen Freeholders (Camden County) as a Clerk and established

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

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membership in PERS, Tier 5, under account [REDACTED]. Ms. Gonzalez remained with this employer and pension contributions were remitted by this location until December 31, 2020.

Ms. Gonzalez [REDACTED] and applied for [REDACTED] through Camden County. By letter dated [REDACTED], Camden County approved Ms. Gonzalez's leave of absence request for the period [REDACTED]. [REDACTED], Camden County notified Ms. Gonzalez that her leave from employment was approaching a violation of their Limits on Leave Policy #301. Camden County acknowledged receipt of the medical documentation Ms. Gonzalez provided, [REDACTED], stating that she was unable to return to work. Although she was in violation of the Limits on Leave Policy #301 on [REDACTED], Camden County granted Ms. Gonzalez an accommodation to continue on leave of absence until [REDACTED].

Ms. Gonzalez, with the assistance of Linda VanFossen, Certifying Officer applied for LTD through Prudential on [REDACTED]. By letter dated, [REDACTED], Tontalane M. Franklin, Senior Disability Claims Manager, Prudential, denied the request, stating that upon review it was determined that benefits are not payable under the terms of the Group Policy. Ms. Gonzalez was also notified of this determination under separate cover.

On August 3, 2021, Ms. VanFossen wrote to the Division of Pensions and Benefits (Division) to appeal Prudential's decision to deny LTD for Ms. Gonzalez. On September 28, 2021, you wrote to the Division and provided supplemental information filed by CWA Local 1014 on behalf of Ms. Gonzalez, as additional support for her appeal. In response to this request, an administrative denial letter was issued on September 29, 2021, from Kate Ozol of the Division's Disability Review Unit, advising that a review of Ms. Gonzalez's membership file indicated that she was not eligible to file for LTD. This determination was based on the fact that Ms. Gonzalez submitted her application [REDACTED], after her six-month leave of absence had expired. Unfortunately, Ms. Gonzalez passed away on October 3, 2021.

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Ms. Gonzalez' request was considered by the Board at its meeting of October 20, 2021. After careful consideration, the Board denied the request in accord with N.J.S.A. 43:15A-42.1(e). This appeal followed.

CONCLUSIONS OF LAW

After careful consideration, the Board affirmed the administrative determination of the Division that Ms. Gonzalez was no longer eligible to apply for LTD at the time her application was submitted, because she was no longer considered in active service after 6 months of her leave of absence under the plain language of the statute governing LTD benefits. In making its determination, the Board relied on N.J.S.A. 43:15A-42.1(e), which states in pertinent part:

(e) A member shall be deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than six months while on official leave of absence without pay if satisfactory evidence is presented to the Division of Pensions and Benefits that such leave of absence without pay is due to illness and that the member was not actively engaged in any gainful occupation during such period of leave of absence without pay.

[(emphasis added).]

There is no dispute that Ms. Gonzalez's approved leave of absence extended beyond the six months as detailed under the statute, and that coverage for disability benefit insurance provisions expires after six months. Therefore, Ms. Gonzalez was not eligible to apply for LTD after her six-month eligibility period as a matter of law.

In your appeal, you assert that the Division's Fact Sheet relating to LTD, while clearly not controlling over the statute, is ambiguous and may be interpreted to deem Ms. Gonzalez eligible for LTD benefits under her membership Tier. Not so. In fact, Fact Sheet # 85 states that "[A] member on an official leave of absence without pay will remain eligible for the disability insurance

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coverage for up to six months...² Thus, once the 6 month period ended, Ms. Gonzalez was no longer eligible to receive LTD benefits.,

Finally, while your argument is entirely reliant on an alleged ambiguity in Fact Sheet #85, you do not dispute the clear statutory language in N.J.S.A. 43:15A-42.1(e), which provides that a member is “deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than six months while on official leave of absence without pay” if the member can establish to the satisfaction of the Division that the leave of absence is due to the member’s [REDACTED]. (Emphasis supplied). The Fact Sheet mirrors the statutory language, and both provide that members are no longer considered active members eligible to apply for LTD after 6 months on leave of absence. Unfortunately, Ms. Gonzalez did not apply for LTD during the first six months of her leave, and therefore was not eligible for LTD benefits under the clear and unambiguous statutory language quoted above.

You suggest that because one must be disabled for six months before being eligible for payment, and eligibility of those on approved leaves of absence ends at six months, then it would be impossible for someone on an approved leave of absence to qualify for LTD. As a general proposition, this is not true. And in this case, Ms. Gonzalez appears to have been disabled in excess of six months during the first six months of her leave, that is, before her eligibility to apply for LTD expired.

As noted above, the Board has considered your written submission 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 hearing. Accordingly, this

² [fact85.pdf \(state.nj.us\)](#) (last accessed February 8, 2022).

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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You also 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

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-12/JSI
c: K. Ozol (ET); D. Lewis (ET)