

**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**RICHARD MANLEY PETERSON**  
**Executor of the Estate of**  
**Cornelia Barnett Peterson, Deceased,**  
**RICHARD MANLEY PETERSON,**  
**Individually; and JASON ANDREW PETERSON**

**APPELLANTS**

**V.**

**NO. 2010-CA-01224-COA**

**THOMAS CALVIN PETERSON and The**  
**PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
**OF MISSISSIPPI**

**APPELLEES**

**REBUTTAL BRIEF OF APPELLANTS**

## **REBUTTAL ARGUMENT**

A. PERS has argued the following:

1. It was justified in relying on the guardianship papers presented by Thomas Calvin Peterson, and acted properly in making payments to him after Mrs. Peterson's death.
2. The beneficiary could not be changed after the first check was paid, even though Mrs. Peterson was still under a conservatorship at that time (she was "restored to reason" in 1999) and was powerless to turn down the payments.
3. Thomas Calvin Peterson was in fact disqualified, as found by the Court.
4. Cornelia Peterson must be deemed to have chosen "no beneficiary." (No authority cited for this proposition).
5. Code Section 25-11-117.1, which specifically applies to situations in which a beneficiary is disqualified, does not apply.

PERS has argued it was justified in making payments to Thomas Calvin Peterson, but then argues he was disqualified and therefore there was no recipient.

B. Appellants argue the following:

Cornelia Peterson made a timely "4A" election and never changed it. Unfortunately, the named beneficiary was disqualified, as the Circuit Court found below. A statute, Section 25-11-117.1, *Miss. Code Ann.*, was adopted specifically to deal with this contingency. It specifies the categories of contingent recipients who receive benefits when they named beneficiary dies, or is "otherwise disqualified."

PERS argues that because Calvin Peterson was disqualified “ab initio” the account “must be viewed as one in which no beneficiary was selected.” They cite no case, statute or regulation to support this broad assertion.

In grasping for many straws to hang on to Mrs. Peterson’s account, PERS argues that, under Code Section 25-11-115(2), she could not change her option selected after receipt of her first check. Aside from the reasons set out in Appellant’s Brief, we must look also to this obvious fact: Mrs. Peterson never elected any option other than “4A” and never sought to change it.

Finally, PERS retreats to the cliché that it must be granted deference in its interpretation of state statutes within its purview. This is true, but it is also true that an agency cannot corrupt the plain meaning and intent of a legislative enactment, *See Young v. Mississippi State Tax Commission*, 635 So.2d 869, 873 (Miss. 1994); *Grant Center Hospital of Mississippi, Inc.*, 528 So.2d 804,808 (Miss. 1988).

### C. CONCLUSION

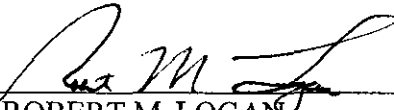
PERS must not forget it has obligations other than to hold on to funds. It is a trustee for the benefit of “Officers and employees in the state services and their beneficiaries.” Section 25-11-101, *Miss. Code Ann. (1972)* [emphasis added]. It is controlled by the state legislature, which has elaborately expressed its intent in Code Section 25-11-117.1 that payments not lapse upon the death or disqualification of a beneficiary, but that proper persons be substituted.

WHEREFORE, Appellants pray that this Court will reverse and render the Circuit Court’s judgment and order PERS to pay over to the estate of Cornelia Peterson, in Newton County Chancery Court, the payments that would have been made after it ceased paying Thomas

Calvin Peterson, and grant judgment to Appellants for all of the moneys wrongfully paid to Thomas Calvin Peterson.

Respectfully submitted,

RICHARD MANLEY PETERSON, ET AL,  
Appellants

BY:   
ROBERT M. LOGAN  
Attorney for Appellants

**CERTIFICATE OF SERVICE**

I, ROBERT M. LOGAN, attorney for Plaintiff/Appellants, do hereby certify that I have this date caused to be delivered, via U. S. Mail, a true and correct copy of the above and foregoing *Rebuttal Brief of Appellants* to the following:

Honorable Swan Yerger  
Circuit Judge  
P. O. Box 327  
Jackson, MS 39205-0327

Honorable Larry Yarbrough  
P. O. Box 22883  
Jackson, MS 39225-2883

Honorable Peter Cleveland  
Special Assistant Attorney General  
P. O. Box 220  
Jackson, MS 39205

THIS the 18<sup>th</sup> day of April, 2011.

  
ROBERT M. LOGAN