

**IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2010-CA-01224**

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

**APPELLANTS**

**v.**

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

**APPELLEES**

**APPEAL FROM THE FIRST JUDICIAL DISTRICT OF THE  
CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI**

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**BRIEF OF THE APPELLEE,  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI**

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**ORAL ARGUMENT NOT REQUESTED**

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**STATEMENT REGARDING ORAL ARGUMENT**

The Public Employees Retirement System of Mississippi, Appellee herein, respectfully submits that there exists sufficient authority on point to resolve the issues presented in this case. Moreover, the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

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## **STATEMENT OF THE ISSUES**

The Public Employees' Retirement System of Mississippi submits that there is only one issue presented in the current appeal:

- I. WHETHER THE CIRCUIT JUDGE WAS CORRECT IN HIS DETERMINATION THAT THERE WAS NO LEGAL BASIS FOR RECOVERY AGAINST THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI

## **STATEMENT OF THE CASE**

### **A. Nature of the case, course of proceedings, and disposition.**

Plaintiffs Richard Manley Peterson, as Executor of the Estate of Cornelia B. Peterson, Richard Manley Peterson, Individually, and Jason Andrew Peterson, filed suit on February 18, 2004, in the Chancery Court of the First Judicial District of Hinds County. R. 4-10. An Answer was filed by the Public Employees' Retirement System of Mississippi (hereinafter "PERS") and the case was transferred to Hinds County Circuit Court by Agreed Order dated June 14, 2004. R. 11-15, 21-22. Defendant Thomas Calvin Peterson (hereinafter "Calvin") answered on May 19, 2005. R. 37-39.

Plaintiffs filed a Motion for Summary Judgment on May 15, 2008, to which each defendant filed a response. R. 47-51, 67-89, 91-99. Attorneys for all parties stipulated on the record that there were no genuine issues of material fact and the issue was purely legal, making summary judgment an appropriate remedy. *Id.* After having heard argument of counsel and carefully considering the matter, Circuit Judge W. Swan Yerger made the following Findings of Fact:

Cornelia B. Peterson (hereinafter "Cornelia") was a member of PERS, who became unable to manage her own affairs at some time prior to July 30, 1996. Calvin, one of her sons, petitioned the Probate Court of Sumter, Alabama to become her conservator and guardian and was issued Letters of Guardianship by that court on that date (Sumter County Probate Cause No. 5519). Calvin signed applications for disability retirement with PERS for his mother as follows:

1. On August 26, 1997, Calvin signed an application for disability retirement, designating himself as beneficiary, and exercising "Option 4A." On that day, PERS received by fax copies of the Order Granting Petition for Conservatorship and Guardianship.

2. On September 18, 1997, Calvin signed a Disability Retirement Application for his mother, naming himself as beneficiary and electing "Option 2." On that day PERS received certified

copies of the Order Granting Petition for Conservatorship and Guardianship and Letters of Conservatorship and Guardianship.

3. On October 10, 1997, Calvin signed a Disability Retirement Application for his mother, naming himself as Beneficiary and selecting "Option 4A."

"Option 4A", as set forth in Section 25-11-115, *Miss. Code Ann. (1972)*, allows the death beneficiary to receive, for life, 50% of the member's reduced monthly benefit. Pursuant to that option, the member receives a reduced benefit, so that the beneficiary can receive a benefit following the member's death.

On October 16, 1997, Cornelia was approved for disability retirement benefits. By correspondence dated November 17, 1997, Cornelia was advised that the benefit option cannot be changed after the first retirement check is cashed. The first check for \$1,084.46 was issued on approximately December 1, 1997. Cornelia died on February 21, 2002. On April 1, 2002, Calvin began receiving checks as her beneficiary. Through September 3, 2008, Calvin had received a total of \$56,399.97.

Subsequently, Calvin was removed as guardian and conservator for Cornelia. By letter to PERS, dated March 21, 2000, Cornelia requested removal of Calvin as her beneficiary and the substitution of Jason Peterson, another son, as beneficiary. PERS replied by letters dated March 24, 2000, and May 12, 2000, that she could not change her beneficiary after receiving her first benefit payment. R. 112-114.

The Circuit Judge concluded that Cornelia's attempt to change the selection of her retirement beneficiary before her death was barred by §25-11-115 of the Miss. Code of 1972, as amended, and that the decision of PERS, as to Cornelia's retirement account, was consistent with the statute. R. 114-115.

**B. Statement of the Facts**

During her lifetime, Cornelia was a member of PERS by virtue of her employment with the Mississippi Department of Human Services. R. 4-10. On July 30, 1996, the Probate Court of Sumter County, Alabama appointed Calvin, one of her three sons, Conservator and Guardian over the person and property of Cornelia. Letters of Conservatorship and Guardianship were issued to him that day. Id.

On August 26, 1997, Calvin presented the Order Granting Petition for Conservatorship and Guardianship to PERS and signed an application for disability retirement on behalf of Cornelia. R. 79, 82-85 He designated himself as beneficiary and exercised Option 4A. Id. Option 4A provides for reduced retirement benefits to a designee as set forth in §25-11-115(1) of the Miss. Code of 1972, as amended.

On September 18, 1997, Calvin presented the above order and the Letters of Conservatorship and Guardianship to PERS and signed another application for disability retirement on behalf of Cornelia. R. 80. He designated himself as beneficiary and exercised Option 2. Id.

On October 10, 1997, Calvin signed another application for disability retirement on behalf of Cornelia. R. 81. He designated himself as beneficiary and exercised Option 4A. Id.

On October 16, 1997, Cornelia was approved for disability retirement benefits. R. 88. She was advised by letter dated November 17, 1997 that the benefit option cannot be changed once the first retirement check is negotiated. R. 86-87.

The Probate Court of Sumter County, Alabama removed Calvin as Conservator and Guardian of Cornelia and subsequently, the Conservatorship and Guardianship for her was terminated. R. 97-98.



Subsequently, Cornelia sought to change her beneficiary designation. R. 73, 74-76, 77-85. On three occasions, PERS wrote Cornelia or her counsel and explained that the named beneficiary may not be changed after retirement except in very limited circumstances. *Id.* Specifically, §25-11-115(2) of the Miss. Code states: “No change in the option selected shall be permitted after the member’s death or after the member has received his first retirement check as provided in subsections (3) and (4) of this section and in Section 25-11-127.” Subsections (3) and (4) involve marriage and Section 25-11-127 involves re-employment. These exceptions have no application here.

The total of the contributions Cornelia made to PERS was \$36,381.92. R. 89. Through September 3, 2008, Calvin received a total of \$56,399.97. Transcript, Ex. D-13.

Cornelia died on February 21, 2002. R. 5.

### **SUMMARY OF THE ARGUMENT**

Calvin, as the duly appointed Conservator and Guardian of Cornelia, obtained disability retirement benefits on her behalf. He designated himself as her beneficiary. Subsequently, she sought to change the beneficiary designation. PERS had no choice but to follow the statutory mandate prohibiting a change found in §25-11-115 and denied her request. This decision is consistent with the statute.

### **ARGUMENT**

#### **A. STANDARD OF REVIEW**

Although matters of law are generally reviewed de novo, this Court affords great deference to an agency’s interpretation of its own rules and the statutes governing its operation. Bd. of Supervisors of Harrison County v. Waste Mgmt. of Miss., Inc., 759 So. 2d 397, 400 (Miss. 2000); Miss. State Tax Comm’n v. Mask, 667 So. 2d 1313, 1314 (Miss. 1995). “An agency’s interpretation

of the statute it is to enforce 'is given controlling weight unless it is manifestly contrary to the statute.'" Manufab, Inc. v. Miss. State Tax Comm'n, 808 So.2d 947, 950 (Miss. 2002) (quoting Miss. Dep't of Env'tl. Quality v. Weems, 653 So. 2d 266, 273 (Miss. 1995)).

"When reviewing orders of a state agency, the trial court and this Court are limited by the arbitrary and capricious standard." Mask, 667 So. 2d at 1314. The appellate court reviewing the decision of an administrative agency must only determine: "whether or not the order of the administrative agency (1) was unsupported by substantial evidence, (2) was arbitrary and capricious, (3) was beyond the power of administrative agency to make, or (4) violated some statutory or constitutional right of the complaining party." Electronic Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So. 2d 1192, 1202 (Miss. 2003). "The appellate court may not reweigh the facts, nor may it substitute its judgment for that of the agency." Id. "A holding which is supported by substantial evidence cannot be arbitrary and capricious." McDerment v. Miss. Real Estate Comm'n, 748 So.2d 114, 119 (Miss. 1999). Evidence affording "a substantial basis of fact from which the fact in issue can be reasonably inferred" falls under the definition of substantial evidence. Electronic Data Sys. Corp., 853 So. 2d at 1203. Moreover, "[d]ecisions which one could consider to be 'fairly debatable' are not arbitrary or capricious." Id.

**B. THE CIRCUIT JUDGE WAS CORRECT IN HIS DETERMINATION THAT THERE WAS NO LEGAL BASIS FOR RECOVERY AGAINST THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI.**

PERS acted properly when it was presented with the Order Granting Petition for Conservatorship and Guardianship and the Letters of Conservatorship and Guardianship. These gave Calvin the authority to file the Application for Disability Retirement on Cornelia's behalf.

Contrary to Plaintiffs' assertions, PERS neither failed nor refused to acknowledge Cornelia's request to change the beneficiary of her account. While PERS did not honor the request to change beneficiaries, it explained that it was unable to do so on three occasions. By letters dated March 24, 2000 and May 12, 2000, PERS wrote Cornelia, and on August 15, 2003, it wrote her counsel. In each of these letters, PERS explained that the named beneficiary may not be changed after retirement except in very limited circumstances. The exceptions have no application here.

PERS' reason for not honoring the request was based upon §25-11-115 of the Mississippi Code of 1972, as amended. This code provision sets forth the various methods retirement benefits can be paid and provides six options a member can select. Subsection (2) of this code section specifically states: "No change in the option selected shall be permitted after the member's death or after the member has received his first retirement check except as provided in subsections (3) and (4) of this section and in Section 25-11-127." Subsections (3) and (4) involve marriage and Section 25-11-127 involves re-employment. These exceptions have no application here.

By correspondence dated November 17, 1997, Cornelia was advised that her first check would be issued on December 1, 1997. She was further advised: **You may NOT change your option election after you have cashed this FIRST retirement check.**" (Emphasis original).

Cornelia was sent a statement dated February 19, 1998, which stated her benefit amounts, and correspondence from the Executive Director which states in part that "[n]o change may be made in selection of option except as provided in §25-11-115." Thus, Cornelia was repeatedly advised that her selection of retirement options was an irrevocable decision which could not be changed. When PERS received her request to change beneficiaries, it had no choice but to follow the statutory mandate prohibiting a change found in §25-11-115. Accordingly, this decision is consistent with the statute.

The case of *Davis v. Public Employees' Retirement System*, 750 So.2d 1225 (Miss. 1999) is instructive in interpreting the meaning of §25-11-115(2). In that case, the spouse of a deceased former state employee attempted to change the benefit option selected by the employee after his death. PERS denial of the request was affirmed. On appeal, the Mississippi Supreme Court explained that when applying statutes to specific factual situations, "there is no occasion to resort to rules of statutory interpretation where the language used by the legislature is plain, unambiguous and conveys a clear and definite meaning." *Id.* at 1233 (citation omitted). The Court found that "the plain meaning of Section 25-11-115(2) prohibits a change in the benefits option selected after the death of Mr. Davis or after Mr. Davis received and cashed the first benefits check under the maximum option." *Id.* This Court should rule likewise and affirm the decision below.

The statutes governing PERS were altered effective July 1, 2000, with the inclusion of §25-11-115.2, which deals in part with benefit payments to representative payees. Subsection (2) of this code provision states in pertinent part: "The system's obligations to a benefit recipient shall be discharged when it makes a correct payment to a representative payee on the benefit recipient's behalf." Further, the system is not liable for theft or misuse when benefits are properly paid based upon available information. Accordingly, PERS' obligation to Cornelia was discharged when it paid benefits to Calvin. It should not be found liable for his subsequent acts after it acted properly.

Plaintiffs can find no refuge in their argument that no Mississippi court authorized the actions of the Conservator. PERS was required to give full faith and credit to the Alabama decree. See Constitution of the United States, Article VI, §1.

In the ruling on the claim against Calvin, the Circuit Judge found that he "is disqualified *ab initio* as a beneficiary." Plaintiffs' argument that §25-11-117.1 applies and controls the distribution of future benefits fails for two reasons. First, with the finding of disqualification *ab initio* of Calvin,

Cornelia's retirement account must be viewed as one in which no beneficiary was selected. Thus, this code provision does not apply since it deals with situations where a beneficiary has been designated and the designated beneficiary dies or is disqualified. This code provision has the further limitation that it applies "at the time such benefits become payable."

Second, the suggestion that this code provision applies presupposes that benefits are payable. According to §25-11-115(1), additional benefits over and above what has been paid would be payable only if Cornelia's total retirement payments did not equal her total contributions. The total of the contributions Cornelia made to PERS is \$36,381.92. Through September 3, 2008, Calvin received a total of \$56,399.97. Since her retirement payments exceeded her total contributions, no additional benefits are payable.


### **CONCLUSION**

Based on the foregoing arguments and authorities, the Public Employees' Retirement System of Mississippi respectfully requests that this Court affirm the Circuit Court order in this case.

RESPECTFULLY SUBMITTED this the 15<sup>th</sup> day of March, 2011.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
OF MISSISSIPPI, Appellee

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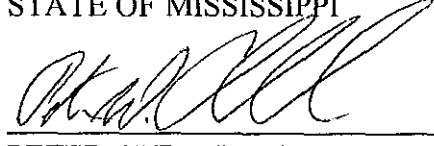
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