

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION



Fax Cover Sheet

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Date OCT 12, 2023 Number of pages 11 (including cover page)

To:

Name Matthew G. Jacobs / Board Services Unit
Coordinator
Company California Public Employees Retirement System
Telephone Fx 916-795-3972

From:

Name Jill Paolini
Company Respondent OAH No. 2023020334
Telephone [REDACTED]

Comments Attached Petition for Reconsideration
dated 10.12.23

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OCT 12, 2023
Jill Padlini

Petition for Reconsideration

Thank you for hearing my case and for your thoughtful consideration but I feel there are more compelling things to consider that have not yet been addressed. The reason I continue to appeal is because the actual issue has yet to be addressed, denied, or explained in code. I lay out the history simply to explain how we got here, not to present the history as the main issue. There is a significant difference between history and the main issue. Yet, a lot of the questions posed to me by PERS center around the history; a lot of the arguments center around the history; a lot of the decisions center around the history but the history is not the issue. The history dates back to 2012 and the issue began in 2020.

I understand that I can't just decide to change my mind to UMA after 8 years. That is not the basis for my appeal. I am appealing because PERS didn't correct an error to my paperwork in 2012 and PERS is now asking me to aid in correcting that error. I was only notified of the error in 2020. I was only asked to make a correction in 2020. I was only provided with new information in 2020. I was only told that PERS should have handled this matter differently from the beginning in 2020.

The issue is: I am being asked to correct an oversight that PERS didn't detect for 8 years and, if detected from the beginning, would have resulted in a different decision by me. Now, with this new information that I should have received in 2012, I am making a decision in a way I would have at that time. I am the one appealing and the reason for my appeal is because I am being asked to fill out a change form because of a PERS error and one of the options is UMA. Yet, I am not being allowed to check that box on the form PERS sent to me. If I am not allowed to choose an option on the form presented to me then I'm not sure why I am being sent this form with that option and why PERS is insisting that they chose the option for me.

HISTORY (2012) Again, this is not being presented in response to the issue but as context.

My ex-husband handed me papers that I needed to fill out in order to separate our assets and create my own account because of our divorce. Until this was separated, he was paying me directly. And although he had been timely about the payments to this point, I was trying to be considerate about how long this would continue and what would happen if the payments did not continue as they had been.

My confusion about the wording of the forms and the process has been outlined extensively. In addition, I made a phone call to PERS prior to my second submission of the form to separate assets. (The first submission was returned to me because of a timing error on my part). This call is documented in the PERS phone log with a note saying I was confused about the form. (March 2012.)

The paperwork my husband handed me didn't come with a booklet (PUB 44) or any explanation so it made no sense to me that there were a bunch of options. This is when I made the phone call to PERS and was told there was a booklet that would be mailed to me. (same as above referenced March 2012 call)

This packet was still confusing and didn't offer any clarification that I understood nor notified me that there was a difference in compensation depending on my choice. I believe there was an estimation form included.

I knew that I would be receiving \$3257 as outlined in the divorce papers so I didn't see how any one choice could make a difference. I had been filling out so many forms as we separated our other assets and the financial forms typically asked for a beneficiary. Choosing a beneficiary seemed like the logical choice to make. I thought it was customary to include a beneficiary for financial paperwork. There was nothing in the paperwork stating that making this choice would cause a deduction in my benefit amount. (I notice that the current change form spells this out more directly). I also didn't find it necessary to fill out the estimate form because I was already told how much I would receive through the divorce and it was the amount I had been getting so far.

Nowhere in the paperwork was it explained that I would receive a lesser amount by choosing any of the options. Had it stated that my full benefit amount would be reduced by 20% or by \$800 by choosing the option I chose, I would not have chosen that option.

Everything still didn't make sense to me so I tried to make another phone call to PERS for more information. In hindsight, this is the phone call that could have clarified the amounts for each choice or pointed me in the right direction to receive that information. However, these calls were never answered. I called repeatedly for three weeks and each time got a message that said, "We are unable to take your call at this time. Please call back later." It is clear, now, that getting ahold of someone at that time would have provided additional help that could have been offered if only I could have connected with PERS then. I began to become concerned about the time frame. I felt pressure because I was at the mercy of my ex-husband continuing to pay me for my monthly survival. I decided to submit with a best guess. I figured if I didn't get it right I would be contacted to correct any errors but my intention was to get it right.

I had already submitted the same paperwork (this was my first submission) at an earlier date and it was returned to me because of a timeline issue. My thought was this new paperwork would also be returned or I would be contacted if it was incorrect. It seemed like my only recourse at the time because PERS wasn't answering my phone calls.

This did not happen because my paperwork was accepted as correct. Then I was told that the amount I was to receive was \$800 less than I had been told and had expected. There was no reason given for the difference. The word "max" had been used in a line choice of UMA but I had no idea what that meant. The latest denial referred to "highest possible amount". Either way, I was already going to receive \$3257 so that word was irrelevant to me.

As you can see, I was making every effort to get information and make good decisions. I was relying on PERS to do their part in communicating, reviewing and processing my paperwork.

There did end up being an error in the paperwork because of my confusion in trying to fill it out. As per Ms. Fogel's message dated October 5, 2020; and per Ms. Hench's testimony in the hearing, that paperwork should have been kicked back to me in 2012 and I should have been given a chance to correct the error at that time. A correction that I would have been more than capable of making within the 30 day time frame.

To recap, it wasn't until 8 years later when I initiated a conversation with Ms. Fogel that this error came to light. Ms. Fogel followed up afterwards saying that I had marked two conflicting boxes for a beneficiary and that error had resulted in a \$800 deduction in my benefits. All of this time I had thought that my ex-husband had lied to me about the amount I was to receive and that PERS had given me the correctly calculated amount. I historically had a hard time contacting PERS for information so I didn't see that route solving anything. I asked my ex-husband about the difference and he was not helpful. I did have the option to clarify this with PERS but my sincere belief was that my ex-husband lied to me about the amount I was to receive and that didn't seem to be an issue PERS could help me with.

I was counting on guidance from PERS to be able to make the right decision for myself. Frankly, the paperwork is so confusing and complicated, I don't see how a logical decision can be made without this guidance. I was counting on my paperwork being returned if there was an error or a phone call placed to me for clarification. This step would have corrected this issue right away.

ISSUE (2020)This brings us to the point of the actual issue. It wasn't until October 5, 2020 that the issue was presented to me.

Origination. Message sent from Ms. Fogel, October 5, 2020

“This is one thing I was going to reach out to CP. Looks like you chose option 2W, but then you also chose option 4 with multiple lifetime beneficiary. At the time of the keying, the team member whom keyed it should have rejected it due to 2 options being chosen. Let me reach out to them.” (Exhibit A)

I am being asked to aid in making a correction that by PERS’ own admission should have been asked of me in 2012. The 8 year time lapse was created by PERS because of the time it took to identify the problem. I had no control or knowledge of the need to make this correction until 2020. I am being asked to now be involved in an issue that I had not been aware of previously. I did not become aware of this issue until it was discovered and pointed out to me. At this time I was asked to rechoose and resubmit through a change form.

The week prior to October 14, 2020, in a phone call with Ms. Fogel, she mentioned that choosing a beneficiary resulted in a \$800 difference in my payment. It was at this time that it all made sense to me and I asked if I could appeal. She told me she would email me the change forms and suggested I include a note about what I wanted to do. The email with the change form mentioned that I should correct the change form as to how “I had intentionally wanted.” My original intent had always been to receive the amount we agreed to in the divorce. I had no reason to desire anything less as this was my only form of income. I declined to take alimony in addition to the \$3257 because this amount seemed sufficient.

I was shocked when Ms. Fogel mentioned the \$800 because I hadn’t realized that PERS had any knowledge that my ex-husband had lied to me. This is when it actually became clear what had happened: That my retirement amount had been reduced by that initial selection, and not due to my ex-husband’s negligence or dishonesty. This is when I decided to appeal. I was being asked to clear up the confusion by submitting a corrected change form. That is when it seemed logical to make the change as to how I originally intended. Ms. Fogel’s letter (dated October 14, 2020) (Exhibit C) seemed to encourage me to do that. The letter stated, “We are allowing a one time change to the option you had intentionally wanted which was the multiple lifetime benefit option.” This was not an option that I had originally wanted but was an uninformed choice. My intention was always to receive the amount I had been promised in my divorce settlement. I didn’t want to fill out the form falsely again so I returned the change form indicating the UMA option. I do not understand the opposition now and I don’t know why I am not being allowed to correct the error that PERS is asking me to correct.

Currently my option is in the system as one of my sons as beneficiary even though that was not my clear option. This is the error being referred to by Ms Fogel. (PERS keying error, Exhibit A, Exhibit C).

To summarize, the change form was sent to me by PERS to clear up an error by a PERS employee incorrectly keying in the information from my form rather than returning the form to me for correction. This error was not detected in 2012 nor was it fixed in 2012. Additionally, I did not initiate the request for a change. I am responding to PERS’ request for me to correct their error. The only dispute is whether I change it to what PERS has decided or whether I change it to what I wanted and had always intended. I don’t understand why PERS made this choice for me in 2012 and I don’t understand why PERS is insisting on that option for me now.

RESPONSE TO “REASONABLE PERSON IN A SIMILAR SITUATION”

While this again goes back to addressing history and not the issue. I feel I should explain since it was included in the denial. While the word reasonable is subjective, reasonable as to a person similar to me adds more context. For someone to be in a similar position as me they would:

- Not be a PERS employee thus not having easy access to information, phone numbers, contacts within the PERS system. Although this information is technically accessible, it is not easy to physically or intellectually access nor to easily make contact within the department as it might be for an employee who works with other PERS employees day in and day out. My ex-husband was the PERS employee.

- Be going through a divorce after being married for almost 30 years and making major financial decisions by herself for the first time.
- Have an ex-husband who was not helpful when trying to access any information or gain guidance from him.
- Have experienced PERS being unhelpful and inaccessible despite numerous attempts to seek help and guidance.
- Have received no explanation of the dollar amount for the benefits before, during or after (until 2020) with regards to the different options to choose from.
- Have a history of PERS being inaccessible as experienced in 2012
- Have no knowledge of the uncaught error until 8 years later and been unable to act upon the error without knowledge of it.
- Be trying to determine if the difference in benefits was due to a calculation error by PERS or a miscalculation or lie by their ex-husband. I argue that a person would reasonably believe it was the latter.

I feel that any reasonable person who was not able to contact PERS for important information, or understand complicated instructions and who was not provided monetary information or justification would be confused and subject to making a similar error when submitting this paperwork. I also believe that any reasonable person would expect that her paperwork would be reviewed and rejected if incorrect and that she would have an opportunity to respond and correct such errors before 8 years had lapsed. I believe all of these instances make it clear that I was being reasonable under the circumstances.

RESPONSE TO WHY I DIDN'T QUESTION WHY I WAS RECEIVING \$800 LESS A MONTH OR \$10,000 LESS A YEAR

While this again goes back to addressing history and not the issue, I feel I should explain since it was included in the denial.

It wasn't until 8 years later when I initiated a conversation with Ms. Fogel that the error came to light. In that conversation, Ms. Fogel pointed out that I had marked two conflicting boxes for a beneficiary and that error had resulted in a \$800 deduction in my benefits. As mentioned, I had no success contacting PERS for information so I didn't go that route. However, I did ask my ex-husband about the difference and he was not helpful.

I didn't inquire as to why I was receiving nearly \$10,000 less per year because I thought my husband had lied or miscalculated the amount and that PERS had calculated a correct amount and there was not \$10,000 more available to me. Therefore this didn't seem to be an issue that PERS could help me with.

RESPONSE TO NOT SUBMITTING FOR A CHANGE WITHIN 30 DAYS

While this again goes back to addressing history and not the issue, I feel I should explain since it was included in the denial.

I understand that the policy states that there is a 30-day window and that a person cannot change their mind at a later date. This is not the case here. This case is different because there was an error by PERS when a form that was filled out incorrectly was not returned for correction in a timely manner. I am not suddenly changing my mind. New information has been presented to me and I am being asked by PERS to change the form based on this new information. I couldn't have made the correction in the first 30 days because I wasn't made aware of the error within 30 days. Instead of contacting me to inquire about the error, PERS made a choice for me. A choice I would not have made.

If I had received the information that I am receiving now, either by my attempts to reach PERS by phone (2012) or by the form being kicked back to me by PERS for correction(2012), then I would have made a

more informed decision and realize that the full amount promised to me in the divorce papers equated to the amount of the UMA.

The request to change at this time is coming from PERS. I am trying to comply. PERS is asking me to re-choose. I elect to re-choose the UMA. There is not a discrepancy on whether or not I can make a change. PERS is requesting me to make a change because of their error when it was keyed in improperly and then undetected for 8 years. I know it is possible to make a change after 30 days because PERS is asking me to do so and has sent me the paperwork in which to do so. Deborah's letter also states that I am being allowed to make a one time change. This change is being asked of me in 2020. Had it been asked of me in 2012, I would have made the change then.

CONCLUSION

If I had received the information that I am receiving now, either by my attempts to reach PERS by phone or by the form being kicked back to me by PERS for correction, then I would have made an more informed decision and realize that the full amount promised in the divorce papers equated to the amount of the UMA.

The request to change at this time is coming from PERS and I am trying to comply. I am requesting to make the change and fill out the change form as I would have had the error been caught sooner. However I am being requested to fill out the form and being told how to fill it out, even if it is not what I want. PERS has sent me a change form and asked me to check a different box on the form. This form has the UMA option included. I checked that box when I filled out and submitted the change form.

The new information that I received:

1. My form to create a separate account was filled out incorrectly and not returned to me in the first place.
2. My payment amount had been reduced by \$800 because of the error.

What I am requesting is the opportunity to make the change to what I would have selected(full amount) had I been notified right away that there was an error and the paperwork returned to me as it should have been per PERS policy/procedure.

The idea for this change was initiated by the discovery of the original error by PERS. In addition, new information was provided to me about the original options. This was all new information to me. Had I been told this new information any time in the past 8 yrs, I would have initiated it at that time. I have been asked to submit a change form with this new information. I am now trying to submit this form as if I had this information from the beginning. These are the avenues I tried to obtain this information prior to submitting for separation:

1. From my ex-husband(2012)
2. From PERS by phone stating that I was confused (2012)
3. Trying to decipher the booklet (PUB44) that was subsequently mailed(2012)
4. Repeatedly calling after receiving the booklet and before submitting for separation to get some kind of understanding how to fill out the forms.(2012)
5. Questioning my ex-husband about the difference in the amount that I received.(2012)

None of these steps helped me at all. It wasn't until 2020 that I received helpful information.

Nothing about my financial situation has changed. More income in 2012 would have benefitted me as it would now. It is not a better financial decision for my children to receive a beneficiary payout when I die since they are already set up financially. I would have never made a decision that benefits no one.

My two sons were both in good colleges and headed toward successful careers (which they now have) and have no financial need. I don't believe my ex-husband chose the beneficiary option for this same reason. They both would like to see me correct this error in my financial favor. (Exhibit B)

I had been very trusting in the divorce process with my ex-husband drawing up the papers. We finalized our divorce without a lawyer or a mediator. I had no reason to doubt what he was telling me but when I was notified that I was getting a lesser amount from PERS, I figured he had lied to me and that was the cause of the different amount. I thought I had to accept what PERS was offering me. I didn't understand that there was a calculation formula for each choice. I thought there was one calculation formula and it was the same across each option. My divorce papers didn't indicate my settlement could vary depending on how I chose to proceed. It said I would receive \$3257.

Finally, I would like to address each of the subsections of Government Code 20160 directly:

Subsection 1 requires that I seek a correction within a reasonable time after discovery of the right to make the correction. As stated in the proposed decision (dated June 21, 2023), in August 2012, I believed the error to be the fault of my ex-husband's misreporting of my portion of his retirement, and not the fault of CalPERS. It was only in October 2020 that I was notified that the error stemmed from my mistake in completing the initial form. Once notified, I immediately submitted the required Option Election/Life Option Beneficiary Change Form.

Subsection 2 requires that the error be "the result of mistake, inadvertence, surprise, or excusable neglect." Again, referring back to the proposed decision, I sought help from CalPERS and from my ex-husband in filling out the form, but received none. Evidence of neglect is further witnessed in CalPERS' misplacement of my Option Election/Life Option Beneficiary Change Form in October 2020.

Lastly, subsection 3 stipulates that the correction should not bestow upon me a "status, right, or obligation not otherwise available under this part." The option of selecting an unmodified allowance was indeed available to me when I initially completed the form. If CalPERS had correctly processed my form by rejecting it due to my error, this issue would have been promptly rectified.

In light of these considerations, I respectfully request that my situation be evaluated once again, taking into account the circumstances surrounding my case and the provisions of Government Code 20160. I believe that the spirit of the law and the principles of fairness align with my request for correction.

I respectfully request the following:

- That my request for Option Change be granted;
- That my future benefits be calculated under the Unmodified Allowance option;
- That all retroactive benefits be paid under this option from my effective retirement date of September 2011; and
- Any other or further relief deemed necessary or proper.

Additionally, If PERS is asking me to submit a change form and only check the box that they allow me to check and that is not the box I want to check, then I am not sure how we resolve this issue. I have been denied this request to make this change many times now but I am wondering how this (PERS) error gets corrected if not by me and if not by PERS.

My two sons were both in good colleges and headed toward successful careers (which they now have) and have no financial need. I don't believe my ex-husband chose the beneficiary option for this same reason. They both would like to see me correct this error in my financial favor. (Exhibit B)

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I respectfully request the following:

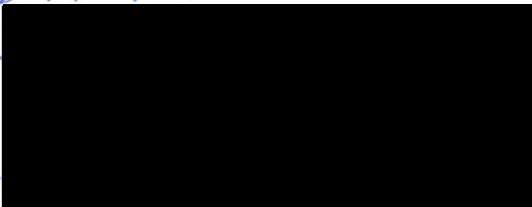
- That my request for Option Change be granted;
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Additionally, If PERS is asking me to submit a change form and only check the box that they allow me to check and that is not the box I want to check, then I am not sure how we resolve this issue. I have been denied this request to make this change many times now but I am wondering how this (PERS) error gets corrected if not by me and if not by PERS.

Jill Paolini


Ref. No. 2022-0444

Jill Paolini



FX 916-795-3972

Exhibit A




Perfect. For your account. You have your own non member account as your account was a separation of accounts therefore you got your own service credit and contributions. Your allowance will subside once you pass and not your ex spouse. If you left a lifetime allowance to any of your kids then they would continue to some payment until their death. Looks like you chose option 2W leaving Nic with a lifetime allowance.

OCT 5, 2020 AT 3:00 PM

Great thanks. I don't have both of my kids down for allowance?if not I should change that.

OCT 5, 2020 AT 3:17 PM



That is one thing I was going to reach out to CP. Looks like you chose option 2w, but then you also chose option 4 with multiple lifetime beneficiaries. At the time of keying, the team member whom keyed it should have rejected it due to 2 options being chosen. Let me reach out to them.

Exhibit B

Sent: Mon, Aug 7, 2023 at 3:17 PM

Subject: CalPers Appeal letter

Dear CalPers Appeals Board,

I'm writing on behalf of my mother, Jill Paolini's pending appeal. As one of the potential beneficiaries, my preference is for her to be able to use the money as she wishes. I have great financial stability primarily due to the fact that my parents paid for my college education. In return I wish that mother's financial stability be the top priority for this appeal decision.

I would also like to attest that every conversation I've had with her regarding this confirms that despite doing the proper research she had no understanding of the choice she originally made. She did not simply have a change of heart as the only catalyst for her wanting to change the payout was when she was notified it was filled out incorrectly.

Thank you for your consideration,

Andrew Paolini

Co-signed Nic Paolini

Exhibit C

On Wed, Oct 14, 2020 at 4:32 PM, Fogal, Deborah

<Deborah.Fogal@calpers.ca.gov> wrote:

Good Afternoon Jill,

Per our conversation today, I have attached the Option change form you will need to complete and return a notarized copy. I have also attached a copy of your application you submitted back in 2012.

Your current retirement allowance was calculated using your son Nicholas as your lifetime beneficiary under the Option 2W. You filled out the Option Multiple lifetime beneficiaries but did not check the Multiple lifetime beneficiary form so your application was keyed as the Option 2W (which was checked). Your application should have been rejected at the time, due to information not coinciding with the option you marked, and you should have been able to correct your option back in 2012. Since the error is on the part of CalPERS we are allowing you a one time to change your option to the option you had intentionally wanted, which was the Multiple Lifetime Beneficiary option. I asked about the other question regarding possibly choosing another option, but that was denied.

With the change from the Option 2w to the Multiple Lifetime Beneficiaries (listing your 2 sons for the benefit) there will be an reduction to your allowance. That reduction is in the approximate amount of \$3.72. Below is the breakdown of the difference:

Difference between the "paying" Option 2W base (\$2,872.52) and MLB estimate (\$2,868.80) is only \$3.72¢.

Total overpayment (from 12/16/2011 – 10/31/2020) = \$419.13.

(Ovp = less than 15%.)

Since this was a CalPERS error our 3-year statute will apply. You will only be responsible to pay back \$3.72 X 36 months, which will be an estimate amount of \$133.92. Since the overpayment amount is less than 15%, this will be taken from your issued warrant where the adjustment is applied.

Once you have the completed Option change form, you can e-mail back to me at this e-mail.

If you have any additional questions, feel free to reach out to me.

Have a great day!

Deborah

Deborah R. Fogal
Manager | Retirement Benefit Services Division - Unit 414

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