



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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January 28, 2020

ELIZABETH MAHER MUOIO  
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*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

The Law Offices of Lauren Sandy  
Lauren Sandy, Esquire



RE: Robert Nagle (deceased)



Dear Ms. Sandy:

I am writing in reference to the denial by the Board of Trustees of the State Police Retirement System (SPRS) of your client, Regina Nagle, surviving widow of the late Robert Nagle. You are requesting to amend the retired survivor death benefit Ms. Nagle is receiving pursuant to N.J.S.A. 53:5A-27 to an Accidental death in the line of duty benefit as provided under N.J.S.A. 53:5A-14. The SPRS Board initially reviewed and denied the request at its November 26, 2019 meeting as the Board determined there are no material facts in dispute.

Thereafter, the Board directed the Board Secretary, in consultation with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law. The Board finds that the statutes and relevant case laws governing the SPRS do not permit the Board to grant Ms. Nagle's request. Findings of Fact and Conclusions of Law, as outlined below, were approved by the SPRS Board at its meeting of January 28, 2020.

## **FINDINGS OF FACT**

Robert Nagle originally established membership in the Public Employees' Retirement System (PERS) on August 1, 1974. He later transferred his PERS membership to the Police and Firemen's Retirement System (PFRS). He remained in the PFRS until April 1997 when he then

transferred from the PFRS to the SPRS. On September 15, 2006, the Division of Pensions and Benefits (Division) received Mr. Nagle's *Application for Retirement Allowance* wherein he requested a Special retirement effective November 1, 2006<sup>1</sup>. The New Jersey State Police completed a Certification of Service and Final Salary indicating that the date on which Mr. Nagle's service terminated was November 1, 2006.

At its meeting of January 24, 2007, the SPRS Board approved Mr. Nagle's Special retirement effective November 1, 2006. A statement of retirement allowance was issued to Mr. Nagle which confirmed his retirement allowance and provided a summary of his insurance and survivor benefits. Mr. Nagle received 145 monthly retirement checks through December 1, 2018 for a total of \$833,068.31.

Mr. Nagle passed away on November 26, 2018. Upon his death, his widow, Ms. Nagle, began receiving a monthly survivor benefit in the amount of \$3,0954.18 pursuant to N.J.S.A. 53:5A-27<sup>2</sup> which will continue for life or until she remarries.

On July 29, 2019, approximately thirteen years after Mr. Nagle's effective date of his Special retirement, and eight months subsequent to his death, the New Jersey State Police requested that Ms. Nagle be permitted to change Mr. Nagle's pension status from a Special retirement to an Accidental death in the line of duty benefit as provided under N.J.S.A. 53:5A-14. The request was subsequent to the passage of Chapter 157, PL 2019 and the New Jersey State Police provided information that his death was related to his participation with the cleanup and recovery duties associated with the September 11, 2001 attacks. By letter dated July 30, 2019,

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<sup>1</sup> Mr. Nagle also filed an application for Accidental disability retirement benefits. His application for Accidental disability retirement was denied at its meeting on March 28, 2007; however, the Board indicated that he would continue to collect Special retirement benefits.

<sup>2</sup> Ms. Nagle was not the recipient of Mr. Nagle's SPRS Group Life Insurance benefit as a divorce decree between Mr. Nagle and his previous spouse stipulated the beneficiary designation of said benefit to which the Division adhered.

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the Division denied that request. Ms. Nagle was copied on that denial and the letter provided appeal rights to the SPRS Board. On August 9, 2019, the SPRS Board received your letter on behalf of Ms. Nagle requesting that the survivor benefit Ms. Nagle receives per statute be changed to an Accidental death in the line of duty benefit as provided under N.J.S.A. 53:5A-14. You also assert that Mr. Nagle's death was directly related to his exposure from 9/11 and therefore, Ms. Nagle is entitled to Accidental death in the line of duty benefit as provided under N.J.S.A. 53:5A-14.

On September 11, 2019, you were notified that at its meeting on September 24, 2019 the SPRS Board would consider Ms. Nagle's request to amend the survivor benefit she is currently receiving to an Accidental death in the line of duty benefit. At the SPRS meeting on September 24, 2019, the SPRS Board considered your statements along with the relevant documents and denied Ms. Nagle's request, in accordance with N.J.S.A. 53:5A-14 which requires that the death of the SPRS member must occur while in active service. The Board's denial was memorialized in a letter dated October 2, 2019.

By letter dated November 13, 2019, you appealed the Board's denial. At its meeting on November 28, 2019, the Board found that because Mr. Nagle was retired and was receiving Special retirement benefits he is not eligible for Accidental death in the line of duty benefits. Therefore, the Board voted to issue a Final Administrative Determination as there are no material issues of fact in dispute. This Final Administrative Determination serves as formal notice of the Board's denial.

#### **CONCLUSIONS OF LAW**

As an active member Mr. Nagle applied for and was granted a Special retirement benefit. At that point his status was no longer an active participant, but Mr. Nagle was a retiree of SPRS. As a matter of law, the Board denied your request in accordance with N.J.S.A. 53:5A-14 which

requires that the death of the SPRS member must occur while the member is in active service. Because Mr. Nagle was retired and receiving Special retirement benefits he is not eligible for Accidental death in the line of duty benefits. Following a review of the documentation, the Board denied your request in accordance with the pertinent authority and corresponding regulations.

N.J.S.A. 53:5A-14 states, in pertinent part:

a. Upon the death of a member in active service as a result of:

(1) an accident met in the actual performance of duty at some definite time and place, or

(2) service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the Division of State Police within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. (1) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to the surviving spouse a pension of 70% of final compensation or of adjusted final compensation, as appropriate, for the use of that spouse and children of the deceased, to continue for as long as the person qualifies as a "surviving spouse" for the purposes of this act. If there is no surviving spouse or in case the spouse dies, 70% of final compensation or of adjusted final compensation, as the case may be, will be payable to the member's surviving child or surviving children in equal shares.

...

N.J.S.A. 53:5A-3 contains the following pertinent definitions:

...

b. "Annuity" means payments for life derived from the aggregate contributions of a member.

...

g. "Creditable service" means service rendered for which credit is allowed on the basis of contributions made by the member or the State.

...

m. "Member" means any full-time, commissioned officer, non-commissioned officer or trooper of the Division of State Police of the Department of Law and Public Safety of the State of New Jersey enrolled in the retirement system established by this act.

n. "Pension" means payment for life derived from contributions by the State.

...

q. "Retirant" means any former member receiving a retirement allowance as provided by this act.

r. "Retirement allowance" means the pension plus the annuity.

...

N.J.S.A. 53:5A-15.1 states, in pertinent part:

For the purposes of sections 12 d., 13 d., and 14 e. a member of the State Police Retirement System shall be deemed to be an active member for a period of no more than 93 days while on official leave of absence without pay when such leave is due to any reason other than illness, and for a period of not more than 1 year in the event of an official leave (a) to fulfill a residency requirement for an advanced degree, or (b) as a full-time student at an institution of higher education, and (1) while he is disabled due to sickness or injury arising out of or in the course of his employment as a member to whom this chapter applies, is not engaged in any gainful occupation, and is receiving or entitled to receive periodic benefits (including any commutation of, or substitute for, such benefits) for loss of time on account of such disability under or by reason of workmen's compensation law, occupational disease law or similar legislation and has not retired or terminated his membership; or (2) for a period of no more than 2 years while on an official leave of absence without pay if satisfactory evidence is presented to the retirement system that such leave of absence without pay is due to the

member's personal illness other than an illness to which (1)  
above applies.

...

Further, N.J.A.C. 17:5-5.7(a)(1) states, in pertinent part:

(a) A member, for whom an application for accidental disability retirement allowance has been filed by the member, by the member's employer or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the Board finds that:

1. The applicant was considered a member in service at the time of filing the application for a disability retirement allowance. A member in service means that the member or the employer was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance. It may also mean that the member was on an approved leave of absence, paid or unpaid, or suspension, paid or unpaid, at the time of filing the application for a disability retirement allowance, and it has not been more than the time frames permitted by N.J.S.A. 53:5A-15.1 for active membership since the member's last contribution to the retirement system. If the member had pending litigation for wrongful termination filed against the employer, the member has 30 days from the date the litigation is resolved to file for disability retirement in order to be considered a "member in service";

...

N.J.A.C. 17:5-5.2 states, in pertinent part:

(a) A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or one month after the date of the retirement, whichever is later.

...

N.J.A.C. 17:5-5.3(a) states, in pertinent part:

(a) Except as provided by N.J.A.C. 17:5-5.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

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The language of N.J.S.A. 53:5A-14 is clear on its face that an Accidental death benefit is only available to those members who are in “active service” at the time of death and had not yet retired. First, Mr. Nagle was retired at the time of his death on November 26, 2018 and no longer a “member in service”, as defined in N.J.A.C. 17:5-5.7(a)(1), as he and his employer were not making pension contributions to the SPRS at that time. Mr. Nagle was a “retirant” as defined by N.J.S.A. 53:5A-3 because he received a retirement benefit, which stood as approved by the Board under N.J.A.C. 17:5-5.3(a), and which he collected for almost 13 years. Second, although N.J.S.A. 53:5A-14 does not specifically define “active service,” N.J.S.A. 53:5A-3 defines “creditable service” as “service rendered for which credit is allowed on the basis of contributions made by the member or the State.” Mr. Nagle was not in active service, as he was not engaged in full-time service as a member of the SPRS, but retired at the time of his death; therefore, he is not eligible for an Accidental death in the line of duty. See Rogow v. Bd. of Trs. Police and Firemen’s Retirement System, 460 N.J. Super. 542 (App. Div. 2019) (PFRS member who retired on Accidental Disability retirement not eligible for accidental death benefits because he was not an “active member” at the time of his death as required under N.J.S.A. 43:16A-10); See also Carlson v. Bd. of Trs., Police and Firemen’s Ret. Sys., A-5228-17-T3 (decided May 22, 2019). There is nothing in the legislative history of N.J.S.A. 53:5A-14 to warrant rejecting the ordinary meaning of “active service” or conclude that the Legislature intended to permit payment of Accidental death benefits to a SPRS member who had retired and was receiving a retirement allowance at the time of his death. See Rogow, 460 N.J. Super. at 556-559.

In your appeal, you argue that the recently enacted legislation, P.L. 2019, Chapter 157 provides for a retiree to amend a previously approved application to an Accidental disability retirement on a prospective basis. You claim that based upon Chapter 157, Ms. Nagle, the beneficiary of the pension benefit should be allowed to amend the retirement benefit to an

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Accidental death in the line of duty benefit, as provided under N.J.S.A. 53:5A-14. The Board disagrees with your assertion as Chapter 157 does not permit an amendment to an Accidental death in the line of duty benefit, as provided under N.J.S.A. 53:5A-14, nor does it permit a beneficiary to amend a previously approved retirement application.

As noted above, the SPRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the SPRS Board is 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 State Police Retirement System.

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.

Sincerely,



Mary Ellen Rathbun, Secretary  
Board of Trustees  
State Police Retirement System

G-2/MER

C: Regina Nagle  
DAG Amy Chung (ET)