



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

June 3, 2022

Edward J. Florio, Esq.  
Florio Kenny Raval, L.L.P.



RE: Marisa Heluk  
TPAF [REDACTED] (Active Account)  
PERS [REDACTED] (Expired Account)

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Florio:

I am writing in reference to the decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) regarding your appeal of the Board's denial of your client, Marisa Heluk's, request to transfer service credit accrued in her expired Public Employees' Retirement System (PERS) account to her active TPAF account. The Board originally denied Ms. Heluk's request at its meeting of January 6, 2022. You filed a timely appeal of that determination on February 25, 2022. At its meeting of May 5, 2022,<sup>1</sup> the Board affirmed its previous decision, and finding no genuine issue of material fact in dispute, directed the Secretary to draft a Final Administrative Determination. The Board's Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its June 2, 2022 meeting.

## **FINDINGS OF FACT**

The record before the Board establishes that Ms. Heluk established membership in PERS under account # [REDACTED] (Tier 1 Account) on September 1, 2006, based on her employment as a Classroom Assistant with Montvale Board of Education. Ms. Heluk's PERS pension

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

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contributions with this location continued through February 28, 2007. Subsequently, she accepted a position with the County of Bergen on March 1, 2007, and contributions were remitted through September 30, 2007. On July 1, 2009, she accepted a position with Bergen County Improvement Authority (BCIA) as Coordinator of Contractual Projects and contributions with this location continued through September 30, 2010. On October 1, 2010, Ms. Heluk transferred back to Bergen County where she held the title of Executive Assistant, however she did not remain in that position long enough for contributions to be remitted.

On September 1, 2011, Ms. Heluk was enrolled in the TPAF (account # [REDACTED]) as a result of her employment with Fair Lawn BOE as a Guidance Counselor.

On May 21, 2012, Ms. Heluk<sup>2</sup> and Bergen County were notified (Account Expiration Notice) that her PERS account was due to expire on September 30, 2012, two years from the date of her last pension contribution.

On June 12, 2012, Bergen County completed and returned the Employer Certification portion of the May 21, 2012, notice signed by the Certifying Officer, noting that Ms. Heluk resigned and that her last known address was [REDACTED].

On August 29, 2012, James LaBella, Benefit Coordinator, Fair Lawn Board of Education, contacted Ms. Heluk via email in response to an inquiry she made to him regarding interfund transfer. Mr. Labella instructed her to complete the applicant section and sign the form, send the form to her former employer and request that they complete and sign their section and then return it to his attention so that he could forward it to the Division for processing.

On September 4, 2012, Rosemary Freeman, Pension Supervisor, County of Bergen, Department of Administration and Finance, Personnel Division, faxed Ms. Heluk the incomplete interfund transfer form and notified her that she was not at Bergen County long enough for

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<sup>2</sup> The Account Expiration Notice was issued to [REDACTED], Ms. Heluk's address on file with the Division at that time. The Board noted the New Jersey Division of Pensions and Benefits does not retain addresses for active employees.

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pension contributions to be remitted and that her last deduction was with BCIA and to contact them to complete the form. Thereafter, Ms. Heluk reached out to Mr. Labella with concern that the deadline was approaching, however she did not follow through with submitting the Interfund Transfer form, completed in its entirety, prior to the expiration of her PERS account on September 30, 2012.

N.J.A.C. 17:3-7.1(b) provides a TPAF member with the option to interfund transfer a PERS membership to a TPAF membership, provided the *Application for Interfund Transfer* is received within the requisite time frame. In order for the interfund transfer to have occurred, Ms. Heluk would have had to have filed an *Application for Interfund Transfer* with the Division before her PERS account expired on September 30, 2012. However, this did not occur.

On September 21, 2021, the Division received an email from the Governor's Office requesting that we contact Ms. Heluk's husband Adam Silverstein, regarding her request to interfund transfer. After speaking with a counselor on September 30, 2021, Mr. Silverstein emailed Ms. Heluk's formal appeal letter and supporting documentation, which was then forwarded to the Enrollment Section.

In response, on October 1, 2021, Nikki Munko, Supervising Pensions Benefits Specialist, Enrollment Section, informed Ms. Heluk that her *Application for Interfund Transfer* was received on September 21, 2021, her PERS membership account # [REDACTED] expired on September 30, 2012 and the option to transfer this account expired on September 30, 2012. She noted that Interfund transfers are optional transactions, and ultimately, the member's responsibility. In addition, she noted the application was incomplete, as it was missing the signature of the Certifying Officer's Supervisor and that had it been received prior to the expiration of her account, it would not be processed. She stated that in addition to the expiration letter, Ms. Heluk had access to the Members' Benefits Online System (MBOS) where she is able to access both her TPAF and PERS accounts and would have the ability to verify if an interfund transfer was

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processed. Finally, she stated that a review of the record reflected there were no telephone calls or emails to the Division regarding her interfund transfer until September 10, 2021. Ms. Munko's administrative denial letter was forwarded to the Board as part of her appeal.

At its meeting of January 6, 2022, the Board affirmed the administrative determination of the Division set forth in its letter dated October 1, 2021, and denied the request of Ms. Heluk to transfer service credit from her expired PERS account to her active TPAF account. By letter dated February 25, 2022, you filed a timely appeal of the Board's decision. At its meeting of May 5, 2022, the Board considered your appeal and request for a hearing. The Board ultimately found that no genuine issue of material fact was in dispute and therefore directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of June 2, 2022.

#### **CONCLUSIONS OF LAW**

The issue before the Board is whether Ms. Heluk is eligible to Intrafund service credit from her expired Tier 1 PERS account into her active Tier 5 TPAF account. As noted above, the last contribution to Ms. Heluk's PERS account was on September 30, 2010, at which time her PERS membership reflected 2 years and 11 months of PERS service credit. There was no record of activity in Ms. Heluk's PERS account after September 30, 2010.

N.J.S.A. 43:15A-7(e) states: "Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years." Pursuant to N.J.S.A. 43:15A-7(e), PERS membership shall cease after more than two consecutive years of inactivity. Thus, because more than two years had passed after her last PERS contributions, Ms. Heluk no longer had the option to resume contributions to her expired PERS membership account or Interfund her prior PERS service credit from that account to her active TPAF membership account.

In addition, N.J.A.C. 17:3-7.1 states in pertinent part:

(b) [A] member is eligible to transfer membership from another State-administered defined benefit retirement system, provided the membership

has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

1. A member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another, must file an "Application for Interfund Transfer." This application will terminate membership in the former system when approved. (Emphasis added)

...

5. The member is not eligible to transfer service credit if any of the following conditions apply:

- ii. The member has credit in the present system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by *N.J.S.A. 43:15A-14*. *N.J.S.A. 43:15A-14* provides that a member of the PERS at the time of enrollment in the TPAF may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS three or less years from the date of enrollment in the TPAF. The member must apply to transfer this service no more than two years from the date of the last contribution in the PERS, or the member's PERS account has not expired due to the provisions of *N.J.S.A. 43:15A-8*. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service;

- iii. The account has expired (it has been more than two years from the date of the last contribution, and the member is not vested, nor has the member's account remained active due to the provisions of *N.J.S.A. 18A:66-8*).

In this case, Ms. Heluk was aware that her last contribution to her PERS membership account [REDACTED] was September 30, 2010, as indicated by her acknowledgement of receipt of the Account Expiration Notice<sup>3</sup> and subsequent actions to obtain an *Application for Interfund Transfer*, before the account expired. However, the form was never completed in its entirety and returned to the Division prior to the expiration of her account.

You assert that Ms. Heluk could not have been aware that another signature was necessary. Nevertheless, the form clearly says that two signatures are required. In fact, to date

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<sup>3</sup> The second Account Expiration Notice was mailed to [REDACTED].

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the Division does not have a completed *Application for Interfund Transfer* form. Ms. Heluk did not return to PERS covered employment or exercise her Interfund transfer option and her PERS membership account expired on September 30, 2012 in accordance with N.J.S.A. 43:15A-7(e). Therefore, the Board found that Ms. Heluk is not eligible to Interfund transfer service credit from her expired PERS membership account to her active TPAF membership account.

As noted above, the Board has reviewed all relevant documentation and written submissions, and 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 without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, to appeal this final administrative determination 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,



Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-2/SD

c: N. Munko (ET)  
DAG Jeffrey Padgett (ET)  
Marisa Heluk (sent via email to: [REDACTED])

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