



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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January 29, 2019

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Tonya Brooks
[REDACTED]
[REDACTED]

RE: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Brooks:

I am writing in reference to Board of Trustees of the Police and Firemen's Retirement System's (PFRS) denial of your request to cancel any loan obligation owed to your PFRS membership account and waive the amount of accrued interest on the outstanding balance of your pension loan as determined by the Division of Pensions and Benefits (Division). The PFRS Board initially reviewed and denied your request to cancel the loan repayment schedule on your outstanding loan obligation, with accrued interest, at its November 13, 2018 meeting¹. At that time, you acknowledged receipt of the pension loan. On December 18, 2018, you appealed the Board's decision. You assert that while you did take a pension loan, you have no recollection of taking a second pension loan on April 6, 2005. Further, you dispute the accrued interest owed on the outstanding loan obligation. On January 14, 2019, the Board considered your appeal and determined that no material facts are in dispute because you admitted that you did have an outstanding loan balance and the records before the Board confirm that you took several loans, the last of which was on April 6, 2005, and the new loan was added to your outstanding loan balance. Therefore, based

¹ As you were unable to appear before the Board in person, you addressed the Board by telecommunication at the meeting.

upon your admission and the factual record, the Board determined that no material facts were in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PFRS Board at its January 28, 2019 meeting.

The PFRS Board has reviewed your correspondence and the relevant documentation and finds that the laws governing the PFRS do not permit the Board to grant your request to waive the accrued interest charged by the Division on the outstanding balance of your loan obligation.

FINDINGS OF FACT

You were enrolled in the PFRS on December 1, 1997 as a result of your employment as a County Correction Officer with Salem County. You applied for your first pension loan in 2001 and were issued a check on February 14, 2001. Thereafter, you applied for and received loan checks on: September 26, 2001, April 10, 2002, September 25, 2002, July 30, 2003, June 2, 2004 and April 6, 2005. Check number 716672 was issued to you for \$3,470.00 on April 6, 2005. Because you still had an outstanding balance from your prior loans, the new loan for \$3,470.00 was added to your outstanding loan balance to determine the new payment schedule; 32 monthly deductions of \$283.55 for a total of \$9,073.60. Interest was calculated at 4.00% per year², based on a decreasing balance each month. In April 2005, a Certification of Payroll Deductions (Certification) was issued to Salem County for the newly recalculated loan repayment schedule to begin on May 1, 2005. Your employer should have provided you with a copy of the Certification.

In March 2005, you filed an application for Accidental disability retirement requesting a July 1, 2005 retirement date. On April 8, 2005, Salem County certified that your last date of employment would be May 31, 2005. The record indicates that although pension contributions were remitted on your behalf for the months of May and June 2005, no loan payments were remitted for these months, despite the Certification to your employer to deduct loan repayments from your paycheck.

² The interest rate for your loan is set by N.J.S.A. 43:16A-16.1

You amended your retirement date to August 1, 2005 and then September 1, 2005. On June 30, 2005, Salem County submitted a revised Certification of Service and Final Salary amending the date of your separation from employment to July 31, 2005. Salem County submitted another revised Certification of Service and Final Salary amending the date of your separation from employment to August 31, 2005. Loan repayments were remitted for July and August 2005 at \$283.55 per month.

As part of the retirement process, the Division issued you a Quotation of Retirement Benefits on August 9, 2005. On page 2 under the heading "Additional Important Information" the Quotation stated that you had an outstanding loan balance at the time of retirement and that interest is owed until the loan is paid in full.

On August 10, 2005, the PFRS Board denied your application for Accidental disability retirement but granted you Ordinary disability retirement benefits. Once you retired and began receiving a pension, loan deductions were not taken from your pension check. There is no record you inquired about the status of your loan repayment obligation between 2005 and 2017.

On October 10, 2017, the Division notified you that a review of your PFRS membership account revealed that you had an existing loan balance in the amount of \$8,413.54 that was not carried into retirement. No loan payments were deducted from your pension checks. In that letter, you were informed that the Division would begin deducting monthly loan payments in the amount of \$360.33, beginning with your pension check dated November 1, 2017, to satisfy the outstanding obligation including accrued interest. On March 15, 2018, you wrote to the Division's Acting Director, John Megariotis, disputing the obligation. You asserted that a mistake was made and requested that the loan deductions stop and that you be reimbursed for payments taken from your pension check. You also requested documentation confirming your loan obligation³.

³ You indicated that you had contacted Salem County and the Division's Client Service staff regarding this matter.

On August 3, 2018, Michael Kusmierczyk, Supervising Accountant with the Division responded to your letter. He explained that it was the Division's review, and not an audit by Salem County, that revealed your outstanding loan obligation. He also explained that the loan check for \$3,470.00, which you were issued on April 6, 2005, was added to your remaining loan balance to determine a new payment schedule. Mr. Kusmierczyk noted that two loan payments were withheld from your paycheck and remitted to the Division by Salem County in the 3rd quarter of 2005 at the new payment schedule determined after your April 6, 2005 loan. Additionally, Mr. Kusmierczyk provided you with copies of screen prints and documents regarding your loan obligation as well as a worksheet explaining the loan and interest amounts. Finally, he explained that interest accrues on an outstanding loan balance until the loan is fully repaid. In your case, the accrued interest is approximately \$6,181.39 if the loan is repaid based on the current payment schedule. The interest was recalculated at the same rate of 4.00% taking into account interest accrued until your new scheduled loan payoff on February 28, 2021. You were provided with appeal rights to the PFRS Board.

On September 28, 2018, the Division notified you that your appeal to cease loan deductions and refund payments taken was scheduled to be considered by the PFRS Board at its meeting on November 5, 2018. You contacted the Division and requested permission to appear before the Board via telephone. The Division made arrangements for you to address the Board by telecommunication at the meeting.

On November 5, 2018, when you addressed the Board, you admitted that you took pension loans and that you did take a loan prior to retirement. The Board considered your statements and all relevant documentation and denied your request to direct the Division to stop the loan repayment schedule. The Board determined that the records before them, along with your admissions, confirmed that you had an existing loan balance at retirement. The basis of the Board's decision was set forth in its letter dated November 13, 2018.

Thereafter, you appealed the Board's determination. In your appeal you now assert that you did not take a second loan. The Board considered your appeal at its meeting of January 14, 2019. In considering your appeal, it was unclear to the Board what loan you were referencing to as your second loan, as the information before the Board revealed that you took seven pension loans. Assuming you were referring to the last loan for which a check was issued on April 6, 2005, the Board notes that you previously admitted taking the loan in your statements on November 5, 2018. Further, this new loan was added to an already outstanding loan balance, which was not repaid. Therefore, the Board determined that there were no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

N.J.S.A. 43:16A-16.1 permits a member to take a loan in

an amount equal to not more than 50% of the amount of his aggregate contributions, but not less than \$50.00; provided that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from salary, not in excess of 25% of the member's salary, made at the time the salary is paid to the member.

...

Loans shall be made to a member from his aggregate contributions....

[N.J.S.A. 43:16A-16.1.]

Further, "[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof. N.J.S.A. 43:16A-16.1. After the enactment of Chapter 92, the State Treasurer sets "a commercially reasonable rate" on January 1 of each calendar year. Ibid. Additionally, N.J.S.A. 43:16A-16.2 states:

In the case of any member who retires without repaying the full amount so borrowed, the Division of Pensions and Benefits shall deduct from the retirement benefit payments the same monthly

amount which was deducted from the compensation of the member immediately preceding retirement until the balance of the amount borrowed together with the interest is repaid. In the case of a pensioner who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the pensioner either in the form of monthly payments due to his beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

The PFRS is a “qualified governmental defined benefit plan[] pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service.” N.J.S.A. 43:3C-18(a). The Director of the Division is “authorized to modify the provisions of the [PFRS], when a modification is required to maintain the qualified status of the [PFRS] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS).” N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding \$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then the loan becomes a “deemed distribution” taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1).

There is no dispute that you took several loans from your PFRS account. There is no dispute that you had an existing loan balance when you took the last loan on April 6, 2005. There is also no dispute that your multiple loans were being repaid through payroll deductions and that the payroll deductions were taken in the 3rd quarter of 2005, at \$283.55, as certified by the Division

after your April 6, 2005 loan. There is also no dispute that prior your retirement you were notified that you had an outstanding loan balance and that repayment ceased when you retired and deductions were not taken from your pension check. The Board acknowledges that your loan payments were not carried into retirement and automatically deducted from your pension checks by the Division. When the Division realized your loan was not being repaid, you received a letter, and the Division implemented a modified repayment schedule to repay your loan.

The PFRS Board is also aware that the issue of the repayment of loans in retirement implicates more than just your loan. Because the PFRS is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the PFRS's failure to comply with all the requirements of the IRC could result in the IRS determining that the PFRS would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the PFRS tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the plan is subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

You assert that the interest that accrued is not a result of your error. While the Board acknowledges that the Division did not withhold loan repayments from your pension check, you were informed that you had an outstanding loan balance prior to your retirement and never made an inquiry of the Division about the status of the loan. Per N.J.S.A. 43:16A-16.1, interest accrues on any unpaid loan balance. Because loan payments were not made or taken from your pension checks, the balance of your loan did not decrease, and your loan was not fully repaid as contemplated by the loan repayment schedule. Therefore, per the statutory requirements that

govern the loan, N.J.S.A. 43:16A-16.1 and N.J.S.A. 43:16A-16.2, there is additional interest that accrued on your loan that must be repaid.

The PFRS Board also relies on its ability to correct errors pursuant to N.J.S.A. 43:16A-18, which states, in pertinent part:

Should any change or error in the records result in any member or person receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the retirement system shall correct such error, and as far as practicable, shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. The actuarial equivalent of any shortage in required contributions at the time of retirement on account of misstatement of age, leave of absence, or clerical error, shall be deducted from the retirement allowance otherwise payable.

While the Board noted your original arguments, and those in your appeal letter, the Board has no authority to grant your request to reduce or refund the amount of accrued interest charged on your loan because doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 43:16A-16.1, IRC Section 72(p), and the State's Closing Agreement with the IRS, which could result in the PFRS no longer being considered a tax-qualified plan, which would affect the entire State, all employers in the PFRS, and every member and retiree.

As noted above, the PFRS Board has considered your personal statements and your written submissions and because this matter does not entail any disputed questions of fact, the PFRS Board was 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 Police and Firemen's Retirement System.

Tonya Brooks
Page 9
January 29, 2019

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,

A handwritten signature in black ink that reads "Mary Ellen Rathbun". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Mary Ellen Rathbun, Secretary
Board of Trustees
Police and Firemen's Retirement System

G-3/MER

C: DAG Schimmel (ET); DAG Amy Chung (ET); |