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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF M.M.
DOCKET NO. 2019-03
CLAIM OF M.M.

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"). We note that neither party filed exceptions to the HEO. The Board finds the HEO appropriate with the following modification:

1. On the cover page, correct the Hearing Date from April 22, 2021 to June 9, 2021.

IT IS HEREBY ORDERED that Claimant's request to reinstate her disability supplement is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 1/13/22

By: 
Christopher SantaMaria, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In re: Account of M [REDACTED] M [REDACTED], : Docket No. 2019-03
Claim of M [REDACTED] M [REDACTED] :

NOTICE

The attached *Opinion and Recommendation* have been submitted to the Public School Employees' Retirement Board (Board) for its consideration. Procedure for exceptions is pursuant to 1 Pa. Code §§35.211 – 35.214. Specifically, any party who wishes to file exceptions to all or part of the *Opinion and Recommendation* to the Board shall file them in the form of a *Brief on Exceptions* within 30 days after service of a copy of this *Opinion and Recommendation*. 1 Pa. Code §35.211. A *Brief Opposing Exceptions* may be filed in response to a *Brief on Exceptions* within twenty days of receipt of the *Brief on Exceptions*. *Id.* *Exceptions* and *Briefs on Exceptions* should be submitted to the attention of Glen R. Grell, Secretary, Public School Employees' Retirement Board, 5 North Fifth Street, Harrisburg, PA 17101, with copies to the opposing party. Failure to file a *Brief on Exceptions* within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.213 shall constitute a waiver of all objections to the *Opinion and Recommendation*.

Michael T. Foerster

Michael T. Foerster
Hearing Examiner

For the Respondent:

M [REDACTED] M [REDACTED]
[REDACTED]

For the Commonwealth:

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Harrisburg, PA 17101

Date of Mailing:

11/5/21

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

In re: Account of M [REDACTED] M [REDACTED], : Docket No. 2019-03
Claim of M [REDACTED] M [REDACTED] :

OPINION & RECOMMENDATION

Michael T. Foerster
Hearing Officer

Hearing Date: April 22, 2021
Hearing Officer: Michael T. Foerster
For the Claimant: M [REDACTED] M [REDACTED]
For PSERS: Cayla B. Jakubowitz, Esquire

HISTORY

This appeal presents to the Public School Employees' Retirement Board ("Board") secondary to the claim filed by M██████M██████ ("Claimant") received April 12, 2019. The Public School Employees' Retirement System ("PSERS") filed an Answer on April 30, 2019. By letters dated April 6, 2021, the Executive Director & Board Secretary, Glenn R. Grell, relayed the appointment of the undersigned, and the Docket Clerk, Julie Vitale, gave details to Claimant about the June 9, 2021 hearing. Per Mr. Grell's letter, the undersigned was, *inter alia*, to conduct a hearing and compose an opinion and recommendation for the Board.

That hearing occurred on June 9, 2021. PSERS requested briefs. Claimant filed her post-hearing brief on August 12, 2021. PSERS filed its brief on September 13, 2021. The final brief was due September 23, 2021; however, Claimant did not file the reply brief. Thus, the record closed and the matter is now ripe for disposition.

FINDINGS OF FACT

1. Claimant worked for the School District of [REDACTED] ("District") until April, 2013, and was a member of PSERS. Notes of Testimony ("N.T.") page ("p.") 29, line ("L.") 5-7; *see also* Exhibit PSERS-21.

2. Claimant worked as a short-term and long-term substitute teacher prior to leaving work in April 2013. N.T. p. 30, L. 2-6.

3. On March 12, 2014, Claimant attended a PSERS disability retirement counseling session. Exhibit PSERS-1; N.T. p. 31, L. 16 - p. 32, L. 1; p. 65, L. 19-21.

4. A disability retirement counseling session is a time when a PSERS retirement counselor will meet with a member, discuss retirement estimates, explain the disability retirement process, and assist the member with completing an *Application for Disability Retirement*. (PSERS-1); N.T. p. 64, L. 7-14.

5. At Claimant's March 12, 2014 disability retirement counseling session, a PSERS retirement counselor reviewed every item on the *Disability Retirement Counseling Checklist* with Claimant, including the renewal process for a short term disability: "If subject to periodic renewal, *Application to Reapply for Disability Retirement* (PSRS-1238) must be completed by your physician and returned to PSERS by the date stated on the application." (PSERS-1); N.T. p. 32; L. 2-5; p. 64, L. 20-p. 65, L. 5.

6. On March 12, 2014, Claimant submitted an *Application for Disability Retirement* to PSERS. (PSERS-2); N.T. p. 33, L. 21-24; p. 67, L. 16-18.

7. Through her *Application for Disability Retirement*, Claimant selected a customized option with a 77% benefit to her survivor annuitant. Exhibit PSERS-2 p. 2; N.T. p. 98, L. 13-18.

8. In completing her *Application for Disability Retirement*, Claimant reviewed and

certified she understood that:

Each year, effective with my retirement date, I will receive a renewal application unless approved for a long term disability. If this form is not completed and returned to PSERS by the requested date, my monthly disability retirement benefit will be suspended. Continued failure to return the form will result in the forfeiture of all rights to the disability retirement benefit in excess of any early or normal retirement annuity to which I am entitled.

Exhibit PSERS-2, p. 6; N.T. p. 34, L. 14-16; p. 35, L. 2-13; p. 68, L. 2-23.

9. Once PSERS receives an *Application for Disability Retirement* and other documentation, staff will review the documentation for completeness, place it in a file, and pass the file to a PSERS medical examiner for review and recommendation. N.T. p. 61, L. 24 - p. 62, L. 2; p. 69, L. 24 - p. 70, L. 6.

10. The medical examiner can recommend approving the application, denying the application, or requesting additional information. N.T. p. 62, L. 3-8.

11. If a medical examiner recommends approving the application, they can recommend a long-term or a short-term grant of disability. N.T. p. 62, L. 9-16.

12. A long-term grant of disability is used when a member is disabled from a condition that is not expected to improve. N.T. p. 63, L. 14-16.

13. When a member is granted a disability retirement on a short-term basis, the member will need to have their physician complete and send back to PSERS renewal documentation to show continued disability. N.T. p. 62, L. 24 - p. 63, L. 9.

14. After Claimant submitted her *Application for Disability Retirement*, PSERS followed its normal business process of passing her file to a PSERS medical examiner for review and recommendation. N.T. p. 61, L. 24 - p. 62, L. 2; p. 69, L. 24 - p. 70, L. 6.

15. After reviewing her file, the PSERS medical examiner recommended that Claimant's request for a disability retirement be approved for one year. N.T. p. 70, L. 4-6.

16. Based on the recommendation of the PSERS medical examiner, by letter dated March 17, 2014, PSERS informed Claimant that her disability retirement benefit was approved on a short-term basis, for one year, and indicated that an *Application to Reapply for Renewal of Disability Retirement* would need to be completed by Claimant's physician and returned to PSERS by her renewal date of April 2015. Exhibit PSERS-3; N.T. p. 71, L. 7-13, 22-p. 72, L. 1.

17. Because PSERS granted Claimant's disability retirement for one year, she was required to file a renewal application and establish continued disability to receive a disability supplement beyond her renewal date, the period through which her disability retirement had been approved. N.T. p. 72, L. 2-24.

18. Claimant applied for a renewal of disability benefits in 2015, 2016, and 2017, and each year she was approved for one year based on the recommendation of the PSERS medical examiner. Exhibits PSERS-4, -5, -6; N.T. p. 36, L. 16-18; p. 73, L. 15 - p. 74, L. 2; p. 74, L. 24-p. 75, L. 8; p. 77, L. 6-14; p. 78, L. 18 -p. 79, L. 2.

19. In each approval letter, PSERS reminded Claimant that she would need to return an *Application to Reapply for Renewal of Disability* in the following year. Exhibits PSERS-4, -5, -6.

20. As a disability annuitant under normal retirement age, Claimant was also required to file an *Annual Earnings Statement for Disability Benefits* with PSERS each year. N.T. p. 73, L. 1-8.

21. Disability annuitants have an annual earnings limitation, which is the difference between the member's last fiscal year salary and their gross disability benefit. N.T. p. 81, L. 2-12.

22. If a disability annuitant's earnings exceed the annual earnings limitation, PSERS will collect the excess earnings, but will not collect more than the amount of the disability

supplement. N.T. p. 81, L. 13-16; p. 85, L. 22-p. 86, L. 1; p. 89, L. 2-3.

23. Claimant reported no earnings in her 2014 *Annual Earnings Statement*, reported earnings of \$1,010.00 in her 2015 *Annual Earnings Statement*, reported earnings of \$20,187.71 in her 2016 *Annual Earnings Statement*, and reported earnings of \$39,635.82 in her 2017 *Annual Earnings Statement*. PSERS-7, -8, -9, -11; N.T. p. 40, L. 16-25; p. 42, L. 8-10; p. 43, L. 13-21; p. 88, L. 14-19.

24. Claimant's wages in 2016 rose above her earnings limitation, and therefore, she was required to pay back \$5,652.22, which Claimant paid back to PSERS through a deduction on her monthly annuity. PSERS-9, -10; N.T. p. 83, L. 19-21; p. 85, L. 5-21; p. 86, L. 5-10.

25. Claimant's wages in 2017 again rose above her earnings limitation, this time to the point where she was required to pay back the full amount of her annual disability supplement, or \$7,642.32. PSERS-11, -12; N.T. p. 87, L. 5-7; p. 88, L. 14-24.

26. PSERS is currently in the process of recuperating Claimant's excess earnings from 2017 through a deduction on her monthly disability annuity payment. N.T. p. 89, L. 4-9.

27. By letter dated February 1, 2018, PSERS informed Claimant that she needed to submit a completed *Application to Reapply for Renewal of Disability Benefits* ("2018 Renewal Application") by her renewal date of April 30, 2018, and enclosed a blank copy of the 2018 Renewal Application for that purpose. PSERS-13; N.T. p. 89, L. 25- p. 90, L. 9.

28. By letter dated March 4, 2018, PSERS reminded Claimant that she needed to submit her 2018 *Renewal Application* by April 30, 2018, provided her an additional blank copy of the required form, and cautioned that if she did not return the completed form by the deadline, her monthly benefit would be suspended. PSERS-14; N.T. p. 90, L. 21 -p. 91, L. 20.

29. By letter dated April 2, 2018, PSERS sent Claimant a final reminder to submit her

2018 *Renewal Application*, provided her another blank copy of the required form, and once again warned that if she did not return the completed form by April 30, 2018, her monthly benefit would be suspended. PSERS-15; N.T. p. 92, L. 6-p. 93, L. 1.

30. Claimant did not submit the 2018 *Renewal Application* by the April 30, 2018 deadline. N.T. p. 93, L. 10-13.

31. Claimant did not otherwise contact PSERS prior to the April 30, 2018 deadline regarding her renewal application. N.T. p. 93, L. 14-17.

32. Because Claimant did not submit her 2018 *Renewal Application* by the April 30, 2018 deadline, by letter dated May 4, 2018, PSERS notified Claimant that her monthly pension payments had been suspended, but provided her with an additional 90 days, until July 31, 2018, to submit her 2018 *Renewal Application*. PSERS-16; N.T. p. 93, L. 20 - p. 94, L. 14.

33. In its May 4, 2018 letter, PSERS notified Claimant that, if she did not submit her 2018 *Renewal Application* by the final July 31, 2018 deadline, her disability supplement would be terminated and she would be automatically converted to an early retirement. PSERS-16; N.T. p. 94, L. 3-10.

34. Claimant did not submit the 2018 *Renewal Application* by the July 31, 2018 deadline. N.T. p. 95, L. 18-20.

35. Claimant did not otherwise contact PSERS prior to the July 31, 2018 deadline regarding her renewal application. N.T. p. 95, L. 21-24.

36. Claimant chose not to file her 2018 *Renewal Application* by the April 30, 2018 deadline, or the July 31, 2018 extended deadline, because she did not want to reapply for a continued disability retirement. N.T. p. 12, L. 18-20; p. 14, L. 2-7; p. 36, L. 4, 13-15; p. 37, L. 7-9; p. 48, L. 8-10.

37. Because Claimant did not submit a 2018 *Renewal Application*, PSERS stopped her disability supplement effective May 1, 2018, the day after her April 30, 2018 renewal date. N.T. p. 97, L. 6-23.

38. By letter dated August 8, 2018, PSERS informed Claimant that because she failed to submit her 2018 *Renewal Application*, PSERS stopped her disability supplement and converted her to a regular (early or normal) retirement benefit effective May 1, 2018, and that if she desired to change her retirement plan, she needed to do so by November 6, 2018. PSERS-17; N.T. p. 96, L. 11-22.

39. When PSERS stops a disability supplement, PSERS automatically converts the annuitant to an early retirement benefit so as to avoid the possibility of creating a financial hardship, but provides the annuitant 90 days to make any changes to their retirement benefit. PSERS-17; N.T. p. 97; L. 14-17.

40. PSERS uses the annuitant's option selection from their original *Application for Disability Retirement* to convert the annuitant's benefit. PSERS-2; N.T. p. 98, L. 9 - p. 99, L. 3.

41. An annuitant can change their retirement benefit within the 90-day period by changing their retirement option, withdrawing contributions and interest, or vesting their retirement benefit for a later date. PSERS-20; N.T. p. 100, 18-p. 101, L. 2.

42. An annuitant can change retirement options by submitting either the *Options for Converting to Regular Retirement* or an *Application for Retirement* to PSERS, both of which PSERS provided to Claimant, along with retirement estimates, with the August 8, 2018 letter. PSERS-20; N.T. p. 99, L. 4-p. 100, L. 10.

43. Within the August 8, 2018 letter, PSERS provided Claimant with appeal rights regarding the termination of her disability supplement. PSERS cautioned Claimant; however, that

filing an appeal “will not delay or postpone the deadline to file an Options for Converting to Regular Retirement (PSRS-4135) form.” PSERS-17; N.T. p. 102, L. 3-11.

44. By letter dated August 14, 2018, PSERS showed the following information *inter alia*: that Claimant accrued 6.70 years of credited service, had a with a final average salary of \$23,295.61, had TD membership class multiplier, had a survivor annuitant option election, was to adjusted an adjusted payment reduced by excess earnings, mandate the calculation of her monthly benefit; then PSERS outlined Claimant’s finalized retirement benefit. PSERS-21; N.T. p. 103, L. 19-24.

45. Claimant did not file the Options for Converting to Regular Retirement or the Application for Retirement by the November 6, 2018 deadline. N.T. p. 101, L. 3-7.

46. Claimant received PSERS’ August 14, 2018 disability termination letter and filed an appeal from that letter to the PSERS Executive Staff Review Committee (“ESRC”). N.T. p. 104, L. 8-16.

47. The ESRC is a committee of PSERS executive staff who review member appeals. N.T. p. 104, L. 17-20.

48. By letter dated March 13, 2019, the ESRC notified Claimant that it had denied her appeal because she did not file a timely 2018 Renewal Application. PSERS-18; N.T. p. 105, L. 1-17.

49. Claimant filed an appeal from the ESRC decision to the Board. N.T. p. 106, L. 1-3.

50. On June 9, 2021, an administrative hearing occurred before the undersigned. N.T. *passim*.

51. Claimant appeared *pro se*, and she had an opportunity to testify, examine witnesses,

and offer evidence. Id.

CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Public School Employees' Retirement Code, 24 Pa. C.S. § 8101 *et seq.* ("Retirement Code"). See *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

2. The General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et seq.* apply to the activities of and proceedings before PSERS and the Board, except as otherwise provided in the Board's rules and regulations. 22 Pa. Code §201.1.

3. Claimant bears the burden of proof in this proceeding. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 751 A.2d 194 (Pa. 2000); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

4. The burden of proof applied in an administrative action is the preponderance of the evidence standard and is "such proof as leads the fact-finder... to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pa. Bd. of Prob. & Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986); see *Samuel J Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

5. Cases interpreting the State Employees' Retirement System's ("SERS") Retirement Code provisions "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n. 3 (Pa. Cmwlth. 1998).

Disability

6. To be eligible for a disability retirement benefit from PSERS, a member must: (1) be an active or inactive member of PSERS; (2) have at least five years of service credit with PSERS; (3) file a proper application; (4) become mentally or physically incapable of continuing to perform the job duties for which he is employed; and (5) qualify for an annuity under Section 8505(c)(1) of the Retirement Code. *See* 24 Pa. C.S. §§ 8307(c) and 8505(c)(1); 22 Pa. Code §213.44; *In re Account of MW*, Docket No. 2016-29 (PSERB Oct. 18, 2018), at *12.

7. Because only an active or inactive member of PSERS can apply for a disability annuity, the window to apply is within two school years following a member's last day of paid service or approved leave. *See* 24 Pa. C.S. §8102 ("Active member" is a school employee for whom contributions are being made and an "inactive member," is in relevant part, a member for whom contributions have been made within the last two school years).

8. A determination of disability is made based upon medical conditions at the time the member left her job. *See* 24 Pa. C.S. §8307(c); 22 Pa. Code §213.44(a); *Albright v. State Employees' Ret. Sys.*, 500 A.2d 522 (Pa. Cmwlth. 1985).

9. The Retirement Code requires that a medical examiner review a member's application for a disability retirement and make a recommendation as to a finding of disability or nondisability. 24 Pa. C.S. § 8505(c)(1).

10. If the medical examiner opines that the applicant is disabled, the medical examiner gives an opinion "with respect to the permanency of disability or the need for subsequent reviews." 24 Pa. C.S. §8505(c)(1).

11. Based on the medical examiner's recommendation, PSERS must establish "the terms and conditions regarding subsequent reviews." 24 Pa. C.S. § 8505(c)(1).

12. In the case of a renewal application, a member must prove that she remains disabled from returning to her prior public school employment. 24 Pa. C.S. §§8508(d) and 8505(c)(2).

13. A member maintains the burden of proving a disability. 24 Pa. C.S. §8508(d); *Wingert v. State Employes' Ret. Bd.*, 589 A.2d 269,271 (Pa. Cmwlth. 1991); *Account of MW.*, Docket No. 2016-29, at *13; *Harasty v. Pub. Sch. Employes' Ret. Bd.*, 945 A.2d 783, 786 (Pa. Cmwlth. 2008).

14. An *Application for Retirement* creates a binding contract between a member and the Board. See *Krill*, 713 A.2d at 135 (Pa. Cmwlth. 1998); *Estate of McGovern v. State Employes' Ret. Bd.*, 517 A.2d 523, 526 (Pa. 1986).

15. One of the terms of that contract is contained in the Board's regulations which allows a single opportunity to change the terms of retirement within 90 days after PSERS terminates a disability supplement. 22 Pa. Code §215.5(a)(4).

16. Claimant did not file her *Application for Disability Retirement* under duress. Findings of Fact Nos. 4 - 9.

17. Claimant failed to file an *Application to Reapply for Renewal of Disability Benefits* in 2018. Findings of Fact Nos. 27 - 45.

18. Claimant has failed to proffer sufficient evidence or argument in support of her appeal. Findings of Fact Nos. 1- 50; Transcript, *passim*.

19. Claimant was afforded notice and an opportunity to be heard and participated vigorously in this appeal. Finding of Fact No. 51; Docket entries.

DISCUSSION

The Retirement Code provides for a retirement benefit to PSERS members retiring on or after their superannuation age, calculated based on years of service, final average salary, and a membership class multiplier. *See* 24 Pa. C.S. §§8342 and 8102 (“standard single life annuity” and “superannuation or normal retirement age”). If a member retires prior to reaching superannuation age, the Retirement Code provides for an early retirement benefit, in which a “reduction factor” is applied so that the benefit is actuarially equivalent to what the member would have received had they waited to retire until superannuation age. *See* 24 Pa. C.S. §8342. Within the regular, normal and early, retirement, the Retirement Code creates several actuarially equivalent retirement options from which a member may select a retirement benefit. *See* 24 Pa. C.S. §§8342 and 8345.

In addition to the regular retirement, the Retirement Code provides for a disability retirement in the event an eligible member becomes disabled from performing their public school employment:

An active or inactive member who has credit for at least five years of service shall, upon filing of a proper application, be entitled to a disability annuity if he becomes mentally or physically incapable of continuing to perform the duties for which he is employed and qualifies for an annuity in accordance with the provisions of section 8505(c)(1) (relating to duties of board regarding applications and elections of members and participants).

24 Pa. C.S. § 8307(c). To be eligible for a disability retirement benefit from PSERS, a member must:

1. be an active or inactive member of PSERS;
2. have at least five years of service credit with PSERS;
3. file a proper application;
4. become mentally or physically incapable of continuing to perform the job duties for which he is employed; and,
5. qualify for an annuity under Section 8505(c)(1) of the Retirement Code.

See 24 Pa. C.S. §8307(c); 24 Pa. C.S. §8505(c)(1); 22 Pa. Code §213.44; *In re Account of MW*,

Docket No. 2016-29 (PSERB Oct. 18, 2018), at *12. The third eligibility prong, file a “proper application,” includes submitting “appropriate medical evidence.” 22 Pa. Code §213.44(a); *Account of MW*, Docket No. 2016- 29, at *12. The fourth prong, “become mentally or physically incapable of continuing to perform the duties for which he is employed,” requires that an applicant’s disability commence while the applicant is still employed. 24 Pa. C.S. §8307(c) (emphasis added). The fifth prong requires that a PSERS medical examiner recommend granting the application for disability retirement. 24 Pa. C.S. §8505(c)(1); *Account of MW*, Docket No. 2016-29, at *13.

A portion of the disability annuity is the disability supplement, which is the amount of the disability annuitant’s monthly benefit that is in excess of the annuity to which they would otherwise be entitled to receive in retirement if they did not qualify for the disability annuity. *See* 24 Pa. C.S. §§8102 (def. “disability annuitant”), 8344, 8505(c)(2). The Retirement Code establishes the amount of the disability supplement and when the member leaves public school employment prior to reaching superannuation age, the disability supplement generally serves to increase the member’s monthly annuity to the level it would have been, had the member been able to continue working until attaining superannuation age. 24 Pa. C.S. §8344(a). If a member recovers from their disability, the member’s disability supplement is stopped, but, if otherwise eligible, the member may still receive an early or regular retirement benefit from PSERS. 24 Pa. C.S. §8344(c).

When PSERS receives an application for a disability retirement, it must consider the “permanency of disability or the need for subsequent reviews, make a finding of disability or nondisability and, in the case of disability, establish an effective date of disability and the terms and conditions regarding subsequent reviews.” 24 Pa. C.S. §8505(c)(1); *see also* 24 Pa. C.S.

§8505(c)(2). To this end, PSERS passes the application to a PSERS medical examiner for review. 24 Pa. C.S. §8505(c)(1); Findings of Fact Nos. 9, 14. After review, the medical examiner is to opine whether the applicant is disabled. *Id.* The medical examiner can recommend approving the application, denying the application, or requesting additional information. Finding of Fact No. 10. In the case of an approval, the medical examiner recommends approving the application on a long-term or a short-term basis. Finding of Fact No. 11. A long-term grant of disability is used when a member is disabled from a condition that is not expected to improve. Finding of Fact No. 12. Alternatively, when a disability is granted for a limited time, PSERS requires that the member submit an *Application to Reapply for Renewal of Disability Benefits* at the end of that approved period, by their renewal date, so that their medical condition can be reevaluated. Finding of Fact No. 13; this is consistent with 24 Pa. C.S. §8505(c)(2). More specifically, this requirement allows PSERS to ensure that the member establishes continued disability. 24 Pa. C.S. §8508(d) (“In all instances, the member shall have the burden of establishing continued disability.”); 24 Pa. C.S. §8505(c)(2).

If a member fails to establish continued disability and PSERS stops their disability supplement, if otherwise eligible, the member can still receive a regular retirement from PSERS. In this circumstance, PSERS automatically converts the annuitant to a regular retirement benefit so as to avoid the possibility of creating a financial hardship, but provides the annuitant 90 days to make any changes to their retirement benefit. 22 Pa. Code §215.5(a)(4); PSERS-17; Finding of Fact No. 39. PSERS uses the annuitant’s option selection from their original *Application for Disability Retirement* to convert the benefit. Finding of Fact No. 40. After the 90-day period to request changes to the annuitant’s retirement benefit, no changes can be made. 22 Pa. Code §215.5(a)(4). Rather, an application for retirement creates a binding contract between a member

and the Board. *See Estate of McGovern v. State Employees Ret. Bd*, 517 at 526 (Pa. 1986); *Krill v. Pub. Sch. Employees' Ret. Bd*, 713 A.2d at 135 (Pa. Cmwlth. 1998).

With these preliminaries in mind, we will now analyze the facts and circumstances presenting.

A. DISABILITY RETIREMENT

Claimant requests “an appropriate retirement settlement for [her] years of service.” Claimant’s Brief, p. 5. Claimant proposes that she be allowed to receive her full disability retirement. Claimant’s Brief, p. 4. Claimant, however, is ineligible for a disability retirement from PSERS as she failed to submit an *Application to Reapply for Renewal of Disability Benefits* in 2018. Finding of Fact No. 17.

On March 12, 2014, Claimant attended a disability retirement counseling session, during which a PSERS retirement counselor reviewed the disability application and renewal process with her. The counselor informed her that the “*Application to Reapply for Disability Retirement (PSRS-1238)* must be completed by your physician and returned to PSERS by the date stated on the application.” Finding of Fact No. 3. That same day, Claimant submitted an *Application for Disability Retirement*, through which Claimant reviewed and certified she understood the disability renewal process:

Each year, effective with my retirement date, I will receive a renewal application unless approved for a long term disability. If this form is not completed and returned to PSERS by the requested date, my monthly disability retirement benefit will be suspended. Continued failure to return the form will result in the forfeiture of all rights to the disability retirement benefit in excess of any early or normal retirement annuity to which I am entitled.

Finding of Fact No. 6.

By letter dated March 17, 2014, PSERS informed Claimant that her disability retirement benefit was approved for one year, and Claimant would need to submit a completed *Application*

to Reapply for Renewal of Disability Benefits to PSERS by her renewal date of April 2015. Finding of Fact No. 16. Claimant applied for a renewal of disability benefits in 2015, 2016, and 2017, and each year she was approved for one year based on the recommendation of the PSERS medical examiner. Finding of Fact No. 18. With each approval letter, PSERS apprised Claimant that she would need to return a completed *Application to Reapply for Renewal of Disability Benefits* in the following year. Finding of Fact No. 19. In 2018, however, Claimant did not to return the 2018 *Renewal Application* to PSERS by which she would have applied for a continued disability retirement. Finding of Fact No. 36.

PSERS sent four letters, dated February 1, 2018, March 4, 2018, April 2, 2018, and May 4, 2018, to Claimant requesting that she submit the *2018 Renewal Application*. Findings of Fact Nos. 27- 29, 32, 33. Because Claimant did not submit her *2018 Renewal Application* by her April 30, 2018 renewal date, PSERS suspended her monthly pension payment, and through its May 4, 2018 letter, warned Claimant that if she did not submit the *2018 Renewal Application* by July 31, 2018, her disability supplement would be terminated, and PSERS would automatically convert her to an early retirement. Finding of Fact No. 32. PSERS suspends a disability annuitant's monthly annuity when they fail to return a renewal application by their renewal date to get their attention. N.T. p. 94, L. 13-17. Claimant did not submit the *2018 Renewal Application* by the July 31, 2018 deadline. Findings of Fact Nos. 34, 35. One can speculate as to why.¹

¹ Claimant may have decided not to reapply for a continued disability retirement because her earnings were above her annual earnings limitation, and therefore, she had been required to pay back her disability supplement to PSERS. 24 Pa. C.S. §§ 8344(b); 8508(b); Finding of Fact No. 24. Disability annuitants have an annual earnings limitation, which is the difference between the member's last fiscal year salary and their gross disability benefit. Finding of Fact No. 21. If a disability annuitant's earnings exceed the annual earnings limitation, PSERS will collect the excess earnings, but will not collect more than the amount of the disability supplement. Finding of Fact No. 22. Claimant reported no earnings in her 2014 Annual Earnings Statement, reported earnings of \$1,010.00 in her *2015 Annual Earnings Statement*, reported earnings of \$20,187.71 in her *2016 Annual Earnings Statement*, and reported earnings of \$39,635.82 in her *2017 Annual Earnings Statement*. Finding of Fact No. 23. Claimant's wages in 2016 and 2017

Regardless, Claimant was nonetheless required to comply with the medical eligibility requirements for a disability supplement and the terms and conditions of renewal to receive a disability supplement in the present or future from PSERS. The Board is tasked with creating the terms and conditions for subsequent reviews, and a disability annuitant must comply with those terms and conditions. 24 Pa. C.S. §8505(c)(1). The renewal application process verifies ongoing medical eligibility. 24 Pa. C.S. §8508(d). An annuitant cannot pause their disability retirement, and the conditions for renewal, as they would no longer show continued disability. *See* 24 Pa. C.S. §8307(c); 22 Pa. Code §213.44(a); *Albright*, 500 A.2d at 523; 24 Pa. C.S. §8508(d).

As Claimant failed to file a 2018 Renewal Application, she is no longer eligible for a continued disability retirement. Now, Claimant is beyond the window to file a new *Application for Disability Retirement*, as she left public school employment in April 2013, and therefore, is outside the two-school-year window to apply. 24 Pa. C.S. §8307(c); *see also* 24 Pa. C.S. §8102 (“Active member” is a school employee for whom contributions are being made and “inactive member,” in relevant part, is a member for whom contributions have been made within the last two school years). Accordingly, the Board should deny the request for disability retirement.

B. INCREASE IN RETIREMENT BENEFIT

Claimant suggests in her post-hearing brief that the Board could provide her a different retirement amount, presumably between the amounts of the disability retirement and early retirement, in consideration of equitable factors. *See* Claimant’s Brief, p. 4-5. However, any such position was waived as not previously asserted. More importantly it is not supported by evidence

rose above her earnings limitation, and she was required to pay back \$5,652.22 from 2016 and \$7,642.32 from 2017. Findings of Fact Nos. 24, 25.

entered at hearing.

“[T]he retirement system is a creature of the legislature and its members have only those rights created by the retirement benefit statute.” *Cosgrove v. State Employees’ Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995); *see also Forman*, 778 A.2d at 780; *see also In re Account of Christie L. Freeman*, Docket No. 2017-02 (PSERB Dec. 13, 2018), at *10-12; *In re Account of Esmeralda Matos*, Docket No. 2011-06 (PSERB June 12, 2013). PSERS is a defined benefit plan, and the Retirement Code establishes a formula for calculating an annuity based on years of service, final average salary, and a membership class multiplier. *See* 24 Pa. C.S. §§ 8342, 8345, and 8102 (defs. “standard single life annuity” and “superannuation or normal retirement age”). Claimant accrued 6.70 years of credited service, largely though her work as a short-term and long-term substitute teacher, with a final average salary of \$23,295.61, which figures, along with her early retirement date, TD membership class multiplier, survivor annuitant option election, and repayment of excess earnings, mandate the calculation of her monthly benefit. Finding of Fact Nos. 2, 44.

Claimant similarly cannot change her selected retirement benefit with PSERS, by vesting her account or changing retirement options – she is beyond the deadline to request such changes. 22 Pa. Code §215.5(a)(4). By letter dated August 8, 2018, PSERS notified Claimant that her disability supplement was terminated effective May 1, 2018, and that Claimant would be converted to a regular retirement benefit using the option selected in her initial *Application for a Disability Retirement*. Finding of Fact No. 38. In its August 8, 2018 notification, PSERS informed Claimant that she could request a change in her retirement benefit if she did so by November 6, 2018:

Although PSERS has converted your retirement as described above, you have until November 6, 2018 to file the enclosed *Options for Converting to Regular Retirement* (PSRS-4135) form.

...

Please complete and return the form by November 6, 2018 if you wish to make a change

to your retirement plan. If PSERS does not receive the enclosed *Options for Converting to Regular Retirement* (PSRS-1421) form by the due date, the terms of your early/normal retirement benefit will be based on the option you elected on your *Application for a Disability Retirement* and will be final and irrevocable.

Finding of Fact No. 38 *quoting* PSERS-17, p. 1. An annuitant can change retirement options by submitting either the *Options for Converting to Regular Retirement* or an *Application for Retirement* to PSERS, both of which PSERS provided to Claimant, along with retirement estimates, with the August 8, 2018 letter. Finding of Fact No. 42. Further, by letter dated August 14, 2018, PSERS outlined Claimant's finalized retirement benefit. Finding of Fact No. 44.

Claimant received PSERS' August 8, 2018 letter, and she filed an appeal from that letter to the PSERS Executive Staff Review Committee ("ESRC"). Finding of Fact No. 46; *see also* PSERS-17 (Claimant necessarily filed her appeal on or before the September 10, 2018 due date). Claimant did not, however, request to change her retirement benefit by the November 6, 2018 deadline. Finding of Fact No 45. Accordingly, the terms of her retirement contract cannot now be changed. *See Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 at 135 (Pa. Cmwlth. 1998); *Estate of McGovern*, 517 A.2d at 526 (Pa. 1986).

C. Conclusion

For the aforementioned reasons, the hearing examiner respectfully makes the following recommendation:

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

In re: Account of M [REDACTED] M [REDACTED], : Docket No. 2019-03
Claim of M [REDACTED] M [REDACTED] :

RECOMMENDATION

AND NOW, this 5th day of November, 2021, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion the Hearing Officer for the Public School Employees' Retirement Board recommends that the Board **DENY** Claimant's request and **DISMISS** Claimant's appeal

Michael T. Foerster

Michael T. Foerster
Hearing Officer

For the Respondent: M [REDACTED] M [REDACTED]
[REDACTED]

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