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

IN RE: ACCOUNT OF ARTHUR J. SAUNDERS (D)
DOCKET NO. 2012-48
CLAIM OF SYLVIA JORDAN

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Hearing Officer's proposed Opinion and Recommendation. No exceptions to the proposed Opinion and Recommendation were filed.

The Board finds appropriate the Hearing Officer's History, Findings of Fact, Conclusions of Law, Discussion, Conclusion, and Recommendation and, we hereby adopt them as our own, and accordingly:

IT IS HEREBY ORDERED that,

- (1) Claimant's request to set Arthur J. Saunders' death benefit at \$270,300 is DENIED;
and
- (2) Claimant's request that the Public School Employees' Retirement System pay her either a lump sum amount of the balance remaining on the death benefit or an increased monthly annuity disbursement is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 3/14/2014

By: Melva S. Vogler
Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:

ACCOUNT OF ARTHUR J. SAUNDERS (D)
CLAIM OF SYLVIA JORDAN

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DOCKET NO. 2012-48

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PSERS
EXECUTIVE OFFICE

OPINION AND RECOMMENDATION

Ruth D. Dunnewold
Hearing Officer

Date of Hearing: September 25, 2013
Hearing Officer: Ruth D. Dunnewold
For the Claimant: Sylvia Jordan
For PSERS: Kathrin V. Smith, Assistant Deputy Chief Counsel

HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Sylvia Jordan ("Claimant") from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated November 3, 2012 ("denial letter"), which denied Claimant's request that PSERS allow Claimant to change the payment election made by Claimant's mother, Mae Green ("Green"), who received the death benefit of Arthur J. Saunders ("Saunders") as his beneficiary. On December 14, 2012, Kathrin V. Smith, Assistant Deputy Chief Counsel, filed an Answer on behalf of PSERS.

By letter dated April 30, 2013, John T. Henderson, Jr., Esquire, was appointed by the Board's Secretary, Jeffrey B. Clay, to act as Hearing Officer for Claimant's administrative hearing. By letter of the same date, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on her appeal was scheduled for September 25, 2013, in Harrisburg, PA.

On September 25, 2013, the hearing was held as scheduled at the Public School Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101, before Hearing Officer Ruth D. Dunnewold.¹ Claimant attended the hearing *pro se*, while Attorney Smith represented PSERS. At the close of the hearing, the parties elected to file post-hearing briefs. Thereafter, the hearing transcript was filed on October 8, 2013, and an Order Establishing Briefing Schedule, dated October 9, 2013, was issued, providing for Claimant to file her initial brief by November 8, 2013, for PSERS to file its responsive brief by December 2, 2013, and for Claimant to file her reply brief, if any, by December 12, 2013.

Claimant filed her post-hearing brief on November 8, 2013. Attorney Smith filed PSERS' post-hearing brief on December 2, 2013, and the deadline for Claimant to file a reply passed without

¹Because John T. Henderson, Jr., Esquire, retired at the end of September 2013, this matter was reassigned to Hearing Officer Dunnewold.

Claimant's filing any additional brief. Accordingly, the matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Saunders submitted an Application for Retirement to PSERS on or about August 30, 2005, in which he elected to withdraw his contributions and interest, selected an Option 1 monthly annuity, and named Mae Green as his beneficiary. Exhibit PSERS-1; Notes of Testimony (“NT”) at 61 – 62.
2. Following its routine business practice, PSERS mailed Saunders an initial retirement benefit payment letter, dated September 28, 2005, which explained Saunders’ retirement benefits and notified him of his lump sum withdrawal amount and his initial monthly benefit. Exhibit PSERS-2; NT at 63, 64, 65 – 66, 160 – 161.
3. Beginning in October 2005, PSERS paid Saunders a monthly annuity. NT at 66.
4. Saunders returned to PSERS-covered public school service on January 23, 2006. Exhibit PSERS-3; NT at 66, 159.
5. PSERS members who are retired from PSERS cannot actively work in a PSERS-covered public school and receive an annuity from PSERS at the same time. NT at 68.
6. If a retired member returns to work in a PSERS-covered school district, the school district must notify PSERS that the member has returned to work so that PSERS can stop the annuity. *Id.*
7. PSERS did not learn of Saunders’ return to service until August 2006, so Saunders continued to receive annuity checks from PSERS after his return to service, resulting in overpayment to him. NT at 159, 178.
8. By letter dated September 18, 2006 (“return to service letter”), PSERS notified Saunders that it had received notification of his return to service on January 23, 2006, had removed Saunders’ name from PSERS’ annuitant payroll, and had re-enrolled Saunders as an active contributing member of PSERS. Exhibit PSERS-3; NT at 68.

9. In the return to service letter, PSERS also notified Saunders that he had been overpaid \$3,777.06 in monthly checks but was entitled to an additional \$2,141.79 in contributions, interest and installment interest. Exhibit PSERS-3; NT at 68 – 69, 160, 161, 178.

10. The amount PSERS owed Saunders was offset against the amount by which Saunders had been overpaid before PSERS learned of his return to service, with the result being that Saunders owed PSERS \$1,635.27 in overpayments. Exhibit PSERS-3; NT at 68 – 69, 160, 161, 178 – 179.

11. The return to service letter directed Saunders to pay the amount due within 30 days or interest of 4% per annum would be charged and would continue until he retired, at which time, if payment was still outstanding, the overpayment and interest would be actuarially reduced from his retirement benefit. Exhibit PSERS-3.

12. Saunders did not remit the amount due, \$1,635.27, so interest of 4% per year began to accrue on that amount. NT at 162 – 163.

13. After Saunders' return to service, Green remained his beneficiary. NT at 69.

14. Saunders died on April 14, 2008, while he was an active, contributing member of PSERS. NT at 71, 73.

15. Jackie Ames, a retirement technician in PSERS' Bureau of Benefits Administration, Disability and Preretirement Death section, was assigned the job of processing Saunders' death benefit and in doing so, learned that not all of the necessary information and service had been added to Saunders' account after he had returned to work, and there were issues related to school district reporting, contract records and frozen annuity, so she could not do any type of calculation until his account was corrected. Exhibit PSERS-13; NT at 121, 122, 123 – 124, 127.

16. On August 18, 2008, Ames sent an email to PSERS' Bureau of Information Management Research Center ("BIM Research") regarding the need to restore Saunders' original service so that the death benefit could be accurately calculated. Exhibit PSERS-12; NT at 122, 123, 124.

17. The Saunders account was a high priority because there was a “financial hardship” notation on the account, so after referring it to BIM Research, Ames put together a rough estimate of the account, using the information currently available, trying to get as close as possible to what the account might be, in an effort to please the beneficiary by getting some information to her as quickly as possible because the case was identified in PSERS’ records as a financial hardship case. Exhibit PSERS-13; NT at 74 – 75, 115, 127 – 128, 129.

18. After arriving at the rough estimate of the Saunders’ account, Ames sent Green a balance estimate letter (“balance estimate letter”), dated August 22, 2008, indicating that the “**approximate** amount due” to Green as beneficiary was \$270,300; setting forth the “**approximate** gross distributions of the account;” stating that “[a]s soon as the completed application is received in this office, a benefit can be **recalculated** and payment sent” (emphasis added); and enclosing an Application for Option 1 Death Benefits form, which had a chart on its reverse that would allow a beneficiary to determine the amount she would receive under the various options available for receiving the benefits. Exhibit C-13²; NT at 74, 87, 128, 129, 130.

19. At the time Ames sent the balance estimate letter, she made the following note in PSERS’ workflow tracking system:

A very rough estimate was sent to Ms. Green. There is some issues with school district reporting, contract records and frozen annuity. We are going to actively continue to work on this one before the forms come in to get it correct and we will need to rush it.

FINANCIAL HARDSHIP

Exhibit PSERS-13; NT at 126 – 128.

20. On August 28, 2008, PSERS received Green’s completed Application for Option 1 Death Benefits, on which Green had elected a partial lump sum payment of \$150,000, with the remaining balance being put towards a Life Annuity Plan 2-C. Exhibit PSERS-6; NT at 78, 84 – 85, 90.

²Claimant’s Exhibit C-13 consists of the page in her exhibit binder numbered 13. NT at 20 – 21.

21. A Life Annuity Plan 2-C was a ten-year certain plan which guaranteed 120 months of payments to Green, and if she should pass away before receiving all 120 months, the remainder of those months would be paid to her named beneficiary, but if Green should live past the 120 months, she would continue receiving the monthly check as long as she should live and at her death, all payments would cease. NT at 84, 117.

22. There are costs associated with taking an annuity instead of a lump sum, because the annuity has to spread the amount available out, over the beneficiary's life span. NT at 172.

23. In order to do that, PSERS had to apply actuarial factors, related to the beneficiary's predicted life span and age, to arrive at an actuarially sound amount to be paid as the monthly benefit for the remainder of the beneficiary's – Green's – life. NT at 172 – 173.

24. Because some of the total funds have to be put aside in order to fund that guaranteed income stream, the longer the plan guarantees a benefit, the more the monthly check is reduced. NT at 85.

25. On the Application for Option 1 Death Benefits form, Green named Claimant as her beneficiary. Exhibit PSERS-6; NT 18 – 19, 20, 42, 102.

26. At the time the balance estimate letter was sent, PSERS had done only an initial calculation based on the information in PSERS' system at the time, nothing had been audited or approved, and no final audit of Saunders' account had yet occurred. NT at 74, 75, 129.

27. PSERS does not pay anything to a beneficiary until an entire audit review team has reviewed an account and performed a final audit to determine the correct present value of the account. NT at 109 – 110.

28. Between August 22, 2008 and September 30, 2008, PSERS conducted the final audit of Saunders' account and calculated his death benefit to be \$215,119.19. Exhibit PSERS-16; NT at 75, 76, 110, 131, 153 – 154, 170 – 171.

29. There is a cost involved to a PSERS member who retires and then returns to service, because the funds the member received during a previous retirement were not available between the time the member retired and returned to service, and PSERS calculates that cost based on all of the funds that the member received in the previous retirement, annuity, contributions, and interest calculated from the date the member returned to service until the next life-changing event in a member's life, such as death or another retirement. NT at 150, 151.

30. The Retirement Code permits PSERS members who had previously retired and returned to service, who become "frozen annuitants," to eliminate the costs of their previous retirement by rendering three years of credited school service after return to service, which requires special specifications and special calculations. NT at 150 – 151, 153.

31. To calculate Saunders' death benefit, PSERS used those same calculations that it applies to all return to service members upon their subsequent retirement who have not earned the three years of credited school service necessary to eliminate the effects of the previous retirement. Exhibit PSERS-16; NT at 151 – 154, 156 – 158, 163 – 170.

32. None of the formulas or procedures for calculating a death benefit has changed since 2008, so the same calculation could be done in 2013 to mirror the calculation done in 2008. Exhibit PSERS-16; NT at 154 – 155, 156.

33. In 2008, PSERS' policy and routine business practice, upon learning that a death benefit had changed after an audit, was to telephone the beneficiary to give her the option of changing the election previously made; if the beneficiary said no changes were necessary, PSERS did not require any additional documentation because it would slow down the process, but if the beneficiary indicated the desire to change the payment selection, PSERS would send a follow-up letter, with new forms that the beneficiary would have to submit in order to receive payments. NT at 76 – 77, 110 – 111, 112 – 113, 115, 132, 134.

34. Upon learning that the approximation provided to Green in the balance estimate letter of August 22, 2008 was incorrect, prior to the first annuity payment to Green, and after learning the correct amount of the death benefit based on the final audit, in September 2008, Ames followed PSERS' routine practice and telephoned Green. NT at 131 – 132, 133 – 134, 144, 146 – 147.

35. Ames spoke to Green, explaining that Saunders' annuity was a frozen annuity, the approximate calculation of the death benefit was incorrect, the correct amount was \$215,119.19, rather than \$270,300, and Ames would hold the account and send Green new forms if she wanted to select a different payment option based on the new information. NT at 132 – 134, 136 – 137, 143, 144, 146 – 147.

36. At the time of Ames' call, Green had two living daughters, Claimant and another named Brenda Green; neither Claimant nor Brenda Green was living with Green in August, September or October 2008, although they were there regularly. NT at 40, 42, 43, 44.

37. During her call to Green in September 2008, Green gave permission for Ames to speak with one of Green's daughters; Ames is not sure which daughter she spoke with. NT at 133, 146.

38. Ames told Green's daughter the same things: that Saunders' annuity was a frozen annuity, the approximate calculation of the death benefit was incorrect, the correct amount was \$215,119.19, and if Green would like to change her option, PSERS would send her new forms for that purpose. Exhibit PSERS-14; NT at 133 – 134, 137, 146 – 147.

39. After speaking to Green and Green's daughter, Ames followed her routine business practice with regard to anything out of the ordinary related to an account, and made a handwritten notation on a copy of the balance estimate letter of August 22, 2008 which PSERS had sent to Green, with the notation stating "After frozen annuity estimate was too high. Explanation was given to Mae Green's daughter." Exhibit PSERS-14; NT at 135 – 136, 137.

40. Ames did not make a note that she spoke with Green, because it was the normal course of business to speak directly to the beneficiary, rather than being out of the ordinary, and for that reason, Ames only made a note in the account or typed a notation into the workflow if she spoke to someone else besides the beneficiary. Exhibit PSERS-14; NT at 135, 137.

41. Ames added her handwritten note, memorializing the communications with Green and her daughter, to Green's PSERS file prior to October 1, 2008, when the note was scanned into PSERS' electronic workflow file pertaining to Green. NT at 138 – 139, 140.

42. Prior to disbursing any payments to Green, PSERS notified her that the death benefit amount of Saunders' account was \$215,119.19. Findings of Fact 31 – 38.

43. If Green had raised an issue about her plan or asked to change her plan, such a request would have been documented in PSERS' files as a matter of routine business practice. NT at 100 – 101.

44. Green never requested that PSERS send new forms to her, nor did Green ever contact PSERS to request that PSERS change her plan selection. NT at 100 – 101, 134, 141.

45. There was no option Green could have selected which would have allowed her to direct a lump sum amount to Claimant, as her beneficiary, upon Green's death. NT at 85 – 86.

46. After PSERS' final audit had been completed, on or about October 6, 2008, PSERS paid to Green the \$150,000 lump sum she had elected. Exhibit C-14;³ Exhibit PSERS-8; NT at 88, 118.

47. PSERS calculated the amount of the monthly annuity payment to Green to be \$479.93. NT at 95.

48. PSERS arrived at that amount using its standard formula for calculating monthly payments for death benefits for all beneficiaries. NT at 95.

49. Between October 6, 2008, and February 2012, based on Green's selection of Life Annuity Plan 2-C, PSERS paid Green the monthly annuity payments, in the gross monthly amount of

³Claimant's Exhibit C-14 consists of the page in her exhibit binder numbered 14. NT at 22.

\$479.93, which was calculated based on the \$215,119.19 death benefit. Exhibit PSERS-8; NT at 93 – 94, 95 – 97, 98 – 99, 118.

50. Green accepted the monthly annuity payments based on the finalized death benefit of \$215,119.19 as the correct amount, never raised an issue with PSERS regarding the amount of her monthly annuity, and never attempted to change her elected payment plan even when Ames offered her the opportunity to do so in September 2008. NT at 91, 100 – 101, 112 – 113, 134, 141.

51. The last monthly annuity payment made to Green was in February 2012, because Green died on March 5, 2012. Exhibit PSERS-8; Exhibit PSERS-9; NT at 97 – 98.

52. PSERS sent Claimant, as Green's beneficiary, a payment letter, dated May 4, 2012, telling Claimant that Green's death benefit comprised a monthly benefit of \$479.93 which would be paid until March 2018, with the initial payment bringing Claimant's benefit up to date and subsequent monthly payments being issued on the last business day of each month. Exhibit C-15;⁴ NT at 102 – 103.

53. Claimant was not aware that the \$479.93 monthly annuity payment to Claimant was the same amount per month that Green had been receiving. NT at 50, 103.

54. Green's Life Annuity Plan 2-C provided for 120 guaranteed payments, and Green had received 47 of them, so there were 73 payments left to be paid to Claimant. NT at 105.

55. By letter dated May 20, 2012, PSERS acknowledged that Claimant had sent a letter of appeal with regard to Green's retirement account, as PSERS had explained it in the May 4, 2012 letter. Exhibit C-16;⁵ Exhibit C-17.⁶

56. By correspondence dated November 3, 2012, PSERS' Executive Staff Review Committee ("ESRC") denied Claimant's request that PSERS allow Claimant to change the payment

⁴Claimant's Exhibit C-15 consists of the page in her exhibit binder numbered 15. NT at 22 – 23.

⁵Claimant's Exhibit C-16 consists of the page in her exhibit binder numbered 16. NT at 14.

⁶Claimant's Exhibit C-17 consists of the pages in her exhibit binder numbered 17 through 22. NT at 24. It is the same document as Exhibit PSERS-11.

election made by Green, as well as Claimant's request that PSERS pay her an amount in excess of the amount owed to Green or Saunders. Exhibit C-17; Exhibit PSERS-11; NT at 107.

57. On page 2 of Attachment "A" which was included with PSERS' correspondence of November 3, 2012, in the first full paragraph, PSERS referenced "Saunders' frozen debt," but that was incorrect; it should have referenced "Saunders' frozen annuity." Exhibit C-17; Exhibit PSERS-11; NT at 183 (stipulation by PSERS).

58. There was no frozen debt associated with Saunders' account; frozen debt only occurs when a member retires, returns to service, and renders three years of credited school service after returning. NT at 107, 179 – 180, 182.

59. Claimant timely appealed the determination of the ESRC by correspondence dated November 26, 2012. Exhibit C-46.⁷

60. Claimant received notice of the hearing in this matter, attended the hearing, chose to proceed *pro se*, and testified and presented documentary evidence on her own behalf. NT at 6 and *passim*.

⁷Claimant's Exhibit C-46 consists of the pages in her exhibit binder numbered 46 through 48; it was admitted solely for the purpose of demonstrating that Claimant filed an appeal. NT at 36.

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with her appeal. Finding of Fact 60.
2. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 *et seq.*; *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).
3. The Board does not have the authority to grant rights to members beyond those specifically set forth in the Retirement Code. *Id.*
4. Claimant bears the burden of establishing the facts necessary to sustain her claim. *See Gierschick v. State Employees' Ret. Bd.*,⁸ 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *see also Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991).
5. If a PSERS annuitant returns to school service, any annuity payable to the annuitant shall cease effective upon the date of his return to school service and the present value of such annuity shall be frozen as of the date the annuity ceases. Retirement Code, 24 Pa.C.S. § 8346(a).
6. Upon subsequent discontinuance of service, such member shall be entitled to an annuity which is actuarially equivalent to the sum of: (1) the present value as determined under Section 8346(a); and (2) the present value of a maximum single life annuity based on years of service credited subsequent to reentry in the system and his final average salary computed by reference to his compensation during his entire period of school service. Retirement Code, 24 Pa.C.S. § 8346(c).
7. PSERS correctly calculated the present value of Saunders' account. Retirement Code, 24 Pa.C.S. § 8346(c); Findings of Fact 1 – 5, 7, 9 – 12, 14 – 16, 28 – 32, 46 – 49, 54, 57 – 58.

⁸Cases interpreting provision of the State Employees' Retirement Code "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).

8. In the event of the death of a member who is eligible for an annuity. . . his beneficiary shall be entitled to a death benefit as provided in Section 8347 (relating to death benefits). Retirement Code, 24 Pa.C.S. § 8309.

9. Any member who dies and was eligible for an annuity shall be considered as having applied for an annuity to become effective the day before his death, and in the event he has not elected an option, it shall be assumed that he elected Option 1 and assigned as beneficiary that person last designated in writing to the Board. Retirement Code, 24 Pa.C.S. § 8347(a).

10. Option 1 is a life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision that, if, at his death, he has received less than such present value, the unpaid balance shall be payable to his beneficiary. Retirement Code, 24 Pa.C.S. § 8345.

11. Green, as Saunders' beneficiary, was entitled to the \$215,119.19 present value of Saunders' account upon his death on April 14, 2008. Retirement Code, 24 Pa.C.S. §§ 8345 and 8347(a); Findings of Fact 1, 13, 14, 28 – 32, 42.

12. An election by a beneficiary for an annuity, when made, shall be deemed irrevocable, so Green's choice of a \$150,000 lump sum payment and Plan 2, Life Annuity 2-C, is irrevocable. 22 Pa. Code § 213.49.

13. There is no option that Green could have selected that would have provided Claimant with a lump sum payment upon Green's death. 24 Pa.C.S. § 8349.

14. Claimant is entitled only to a \$479.93 monthly annuity until a total of 120 payments have been made pursuant to Green's section of the Plan 2, Life Annuity 2-C. Findings of Fact 20 – 25, 47 – 49, 52, 54.

DISCUSSION

Summary of Claimant's arguments

Claimant's argues in this matter that PSERS' calculation of Saunders' death benefit in 2008 was incorrect, in that it was not \$215,119.19 but was \$270,300. *See* NT at 50 – 51. Also, she argues that PSERS never notified Green that the balance estimate letter of August 22, 2008 provided Green with the wrong figure, so that Green made her Option 1 selection based on incorrect information and was not allowed to change it. *See* Claimant's Brief (first page after cover page). And finally, Claimant argues that PSERS has presented insufficient credible evidence to rebut Claimant's case. However, the record supports none of Claimant's arguments.

Burden of proof

The Claimant has the burden of proof in establishing her position. *Gierschick, supra*, 733 A.2d at 32. The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

Accuracy of present value calculation of Saunders' account

With regard to the accuracy of PSERS' calculation of the present value of Saunders' account, Claimant in her post-hearing brief assert that (1) PSERS is attempting to illegally remove the School Board's financial contribution made to Saunders retirement account; (2) PSERS' worksheet dated 9/16/2013 is not valid evidence of Saunders' frozen annuity; (3) PSERS claims Saunders' account had frozen debt that was the basis for the purportedly erroneous calculation and this is not supported by the evidence; and (4) PSERS is attempting to deceive a beneficiary.

Claimant's sole evidence to support this argument was PSERS' balance estimate letter of August 22, 2008, which Ames prepared and sent on August 22, 2008. Exhibit C-13. Claimant asserts that the balance estimate letter is the most important evidence introduced at the hearing, and that the balance estimate letter is true and accurate. In the balance estimate letter, the amount of the account is stated as \$270,300. *Id.* However, the content of that letter also indicates in three places that the amount stated was not the final figure: it referred to "the approximate amount due," what "the approximate gross distributions" would be, and the fact that the benefit would be "recalculated." Based on the language of Claimant's own evidence, then, it is clear that the figure set forth, \$270,300, was not, by any means, a final figure. For that reason, Exhibit C-13 cannot be considered to contain a true and accurate statement of the balance of Saunders' account, nor does Exhibit C-13 constitute a preponderance of the evidence demonstrating that the balance of Saunders' account was \$270,300. It simply evidences the fact that PSERS provided Green with an *approximate* value of the account and told her that the value would ultimately be recalculated.

Moreover, Cook, Ames and Earnest all credibly testified that the approximate value stated in the August 2008 balance estimate letter, \$270,300, was determined to be erroneous in September 2008, when PSERS' final audit of Saunders' account arrived at a correct present value calculation of \$215,119.19. NT at 75, 76, 110, 132 – 133, 153 – 154, 170 – 171. Specifically, Ames testified that when she began processing Saunders' account in August, she found that not all of the necessary information and service had been added to Saunders' account after he had returned to work, and there were issues related to school district reporting, contract records and frozen annuity, so that Ames had to refer the matter to another division within PSERS to restore Saunders' original service before the death benefit could be accurately calculated. Exhibit PSERS-12; Exhibit PSERS-13; NT at 121, 122, 123 – 124, 127. Claimant provided no evidence to contradict or challenge Ames' testimony.

Corroborating and elaborating on Ames' testimony, Earnest identified Exhibit PSERS-16, a spreadsheet used by Earnest's division to calculate Saunders' benefit, NT at 154 – 155, and then explained each step of the calculation, re-creating in 2013 the calculation done in 2008. NT at 155 – 159, 162 – 170. The evidence supporting Earnest's calculation includes the following.

Saunders first retired in 2005 and began receiving retirement benefits from PSERS. Exhibit PSERS-1; Exhibit PSERS-2; NT at 61 – 62, 66. In January 2006, Saunders returned to school service. Exhibit PSERS-3; NT 66, 159. The Retirement Code at 24 Pa.C.S. § 8346(a) addresses such a situation, providing in pertinent part as follows:

If an annuitant returns to school service . . . any annuity payable to him under this part shall cease effective upon the date of his return to school service . . . and in the case of an annuity other than a disability annuity *the present value of such annuity . . . shall be frozen as of the date such annuity ceases.*

For that reason, when PSERS learned that Saunders had returned to public school service, PSERS froze his annuity based on the factors that were in place at the time, and Saunders became a “frozen annuitant.” NT at 153.

Additionally, the Retirement Code directs PSERS to collect any annuity payment that was made to a member on or after the date of his return to service, plus statutory interest. 24 Pa.C.S. § 8346. Because PSERS was not notified of Saunders' return to service immediately, PSERS continued to pay him a retirement benefit while he was working, resulting in an overpayment to him in the amount of \$3,777.06. Exhibit PSERS-3; NT at 68 – 69, 159, 160, 161, 178. But once PSERS was notified of Saunders' return, PSERS removed him from its annuitant payroll and accounted for the overpayments by offsetting against them an additional amount of contributions, interest and installment interest to which Saunders was entitled, \$2,141.79, resulting in Saunders' owing PSERS \$1,635.27 in overpayments. Exhibit PSERS-3; NT at 68 – 69, 160, 161, 178 – 179.

By letter dated September 18, 2006, PSERS notified Saunders of the overpayment and informed him of his repayment options, Exhibit PSERS-3; NT at 68 – 69, 160, 161, 178 – 179, as well as

informing him that, if he did not make a lump sum payment of the amount owed within 30 days, he would be charged 4% per annum interest until he retired, at which time the overpayment and interest would be actuarially reduced from his retirement benefit. Exhibit PSERS-3. This was in accordance with the Retirement Code at 24 Pa.C.S. § 8346, which permits a member to repay amounts owed by making a lump sum payment or deferring payment of the amount due, plus statutory interest, until termination of school service. Saunders did not pay back the \$1,635.27 in overpayments. NT at 162 – 163.

Saunders died on April 14, 2008, while he was an active, contributing member of PSERS. NT at 71, 73. When an active member, who is eligible for an annuity, passes away, the Retirement Code directs that he

shall be considered as having applied for an annuity to become effective the day before his death; and, in the event he has not elected an option, it shall be assumed that he elected Option 1 and assigned as beneficiary that person last designated in writing to the board.

24 Pa.C.S. § 8347; *see also* 22 Pa. Code § 213.9; NT at 80 – 81. In other words, the Retirement Code required PSERS to treat Saunders as if he had retired the day prior to his death and as if he had selected Option 1.

Because Saunders had previously retired and returned to service, the Retirement Code also required PSERS to factor in Saunders' old retirement and his new service in order to calculate the present value of his account at the time of his death. Retirement Code at 24 Pa.C.S. § 8346(c). To do that, PSERS had to determine the actuarial equivalent of the sum of (1) the present value of Saunders' frozen annuity and (2) the present value of a maximum single life annuity ("MSLA") based on the years of service credited to him after he returned to work and his final average salary computed by reference to his compensation during his entire period of school service. *Id.*

As Earnest indicated when explaining the spreadsheet identified as Exhibit PSERS-16, the frozen annuity⁹ portion of Saunders' account, with the current factors applied in 2008, resulted in a present value of \$19,009.05 for the pre-July 1, 1983 portion and a present value of \$169,195.36 for the post-July 1, 1983 portion of Saunders' first retirement. Exhibit PSERS-16 at 2; NT at 157, 158, 163 – 166, 168.¹⁰ PSERS used Saunders' finalized monthly annuity from his first retirement, \$879.54, to calculate these numbers. *See* Exhibit PSERS-16 at 1 – 2; NT at 157, 159 – 160.

Pursuant to the Retirement Code, PSERS calculated the “after” portion of Saunders' benefit, i.e. that portion earned after he returned to service in January 2006, by taking Saunders' final average salary, \$45,919.00, multiplying it by his 2.5% multiplier and his 2.28 years of service after his return to service, and then multiplying that figure by his early retirement factor of 0.648645, yielding an MSLA of \$1,697.75. Exhibit PSERS-16; NT at 166 – 167, *see* 24 Pa.C.S. § 8102 (defining “final average salary” and “standard single life annuity”), § 8342 (pertaining to maximum single life annuity), and § 8345(a)(1) (pertaining to member's options and Option 1). PSERS then factored in Saunders' incomplete payment of \$2,600, which resulted from his \$1,635.27 debt, plus the interest accrued on it since 2006, and arrived at a MSLA of \$1,547.18. Exhibit PSERS-16 at 4; NT at 162 – 163, 167. Then PSERS multiplied the MSLA of \$1,547.18 by the dollar annuity factor of 17.396, to calculate a present value of \$26,914.76 for Saunders' post-January 2006 service. Exhibit PSERS-16 at 6; NT 169; *see* 24 Pa.C.S. § 8342(b) (setting forth the formula for calculating the present value of the MSLA as follows: MSLA multiplied by the cost of a dollar annuity on the effective date of the member's retirement).

The sum of the present value of Saunders' frozen annuity and his return to service benefit resulted in a total present value of \$215,119.22 (\$19,009.05 + \$196,110.17 + \$26,914.76). Exhibit

⁹Saunders had no “frozen debt” associated with his account, because frozen debt occurs only when a member who has returned to service after a previous retirement completes three years of school service after his return; Saunders only had 2.28 years of service after his return. NT at 107, 153, 167, 179 – 180, 182. *See* 24 Pa.C.S. § 8346(d).

¹⁰Different factors applied pre-and post-July 1, 1983 because before July 1, 1983, there were sex-biased factors in place, and after July 1, 1983, there were sex-neutral factors in place. NT at 163.

PSERS-16 at 6; NT at 154, 169 – 171. PSERS calculated this amount in 2008, in accordance with the provisions of the Retirement Code, and using the calculations that PSERS applies to all return to service members, upon their subsequent retirement, who have not completed the three years of additional school service required to eliminate the effects of a previous retirement. Exhibit PSERS-16; NT at 151, 152 – 153, 156 – 158, 163 – 170.

Additionally, Earnest testified that none of the formulas or procedures for calculating a death benefit has changed since 2008, so the same calculation could be done in 2013 to mirror the calculation done in 2008. NT at 154 – 155, 156. Although Claimant argues that Earnest's re-creation of the 2008 calculation in 2013 is not trustworthy, and that PSERS is attempting to illegally remove the School Board's financial contribution made to Saunders' retirement account, Claimant did not provide any evidence to demonstrate that any of the calculations performed was incorrect or inaccurate, that any of the factors used were improper or not in effect at the relevant time, that any part of Saunders' retirement account was not included in the calculation or was "illegally removed," or to otherwise factually or actuarially challenge the calculation. It was her burden to do so in order to tip the evidentiary scale in her favor. But all Claimant provides is an argument, and an argument alone cannot meet a burden of proof; there must be evidence to validate the argument.

Claimant also argues, based on PSERS' letter of November 3, 2012, denying her appeal, that PSERS claimed Saunders' account had frozen debt that was the basis for the purportedly erroneous calculation, and that this is not supported by the evidence. Claimant is correct that the evidence does not support any finding that Saunders had any frozen debt associated with his account. Cook and Earnest both testified unequivocally that there was no frozen debt associated with Saunders' account; Earnest explained that frozen debt only occurs when a member retires, returns to service, and renders three years of credited school service after returning, which Saunders did not do. NT at 107, 179 – 180, 182. In making her argument, Claimant accepts this testimony by Cook and Earnest as credible.

However, on page 2 of Attachment "A," which was included with PSERS' correspondence to Claimant dated November 3, 2012, in the first full paragraph, PSERS referenced "Saunders' frozen debt." Exhibit C-17; Exhibit PSERS-11. Claimant argues that PSERS' statement to that effect, because it was contradicted by Cook and Earnest in their testimony, is evidence that PSERS is trying to deceive her. At the hearing, PSERS stipulated that the reference in the November 3, 2012 letter to "frozen debt" was incorrect; it should have referenced "frozen annuity" instead. NT at 183 (stipulation by PSERS). While Claimant does not accept that the reference was a mere error, she has presented no evidence to contradict or challenge the truth of PSERS' stipulation; she argues that it was a deliberate attempt to deceive her. But again, she provided no evidence to support a finding that PSERS deliberately used the wrong term in the November 3 letter, nor did she provide any evidence to support any finding that PSERS had any motivation for deceiving her by deliberately using the wrong term. Moreover, since there are statutory criteria Saunders' would have to have met in order to have "frozen debt," and he did not meet those statutory criteria, it would be impossible for PSERS to deceive anyone on that count. Accordingly, Claimant has not sustained her burden of proof on this issue.

Taking all of this into consideration, then, Claimant has failed to sustain her burden of proving that PSERS was erroneous in calculating the present value of Saunders' account to be \$215,119.19. Earnest's explanation of the steps, as summarized above, is corroborated by citations to the relevant provisions of the Retirement Code, indicating that all of the steps PSERS took in calculating the present value were in accordance with the requirements of the Retirement Code. Claimant, likewise, has failed to sustain her burden of proving that PSERS, in arriving at that final, audited figure, did something illegal or attempted to deceive Green or Claimant.

Notification provided to Green

Claimant also argues that PSERS did not notify Green that the balance estimate letter of August 22, 2008 contained an incorrect figure for the present value of Saunders' account, \$270,300, and that

PSERS did not offer Green the opportunity to change her Option 1 selection based on the correct present value, \$215,119.19. In support of this argument, Claimant asserts that (1) at no time was Green made aware of any calculation changes to the “approximate” value first stated to her, \$270,300, so Green made no request for a new election of benefits because she was not aware of any erroneous calculation; (2) it is absurd to believe that something as important as a \$60,000 calculation error would be communicated only via a phone call; and (3) the lack of any written documentation communicating the calculation error makes PSERS’ version of events not credible.

Claimant’s sole evidence to support this argument was her own testimony, which was as follows:

Q In August or September of 2008 when your mother received the letter that says 270,000, right around that time did you speak with anyone from PSERS?

A I may have. I don’t know that. I don’t know that.

Q Do you recall speaking with a Jackie Ames from PSERS in or around August, September 2008?

A That name is not familiar, but I may have spoken with someone on behalf of my mother, yes.

Q Did anyone from PSERS in 2008 explain to you that a frozen annuity was associated with Mr. Saunders’ account?

A Not to my knowledge.

Q Did anyone from PSERS explain to you in 2008 that the 270,300-dollar number in the letter from August of 2008 was incorrect?

A Never.

Q Did anyone from PSERS in August or September of 2008 explain to you that the present value was actually \$215,119?

A Absolutely never.

NT at 44 – 45. Claimant’s unfamiliarity with Ames’ name, Claimant’s testimony “I don’t know that,” in response to the question asking whether Claimant spoke with anyone from PSERS in August or September of 2008 when her mother received the letter that said 270,000, and Claimant’s testimony that

no one from PSERS explained to her that a frozen annuity was associated with Mr. Saunders' account, that the 270,300-dollar number in the letter from August of 2008 was incorrect, or that the present value was actually \$215,119, all support the finding that Claimant never spoke with anyone from PSERS about those particular matters.

However, Claimant's testimony to that effect does *not* mean that no one from PSERS spoke to Green or to Green's other daughter about those particular matters. There is additional credible testimony on this subject in the record, from Ames and Cook. Cook testified that in 2008, PSERS' policy and routine business practice, upon learning that a death benefit had changed after an audit, was to telephone the beneficiary to give her the option of changing the election previously made, and a follow-up letter was sent only if the beneficiary elected a change, because communication via telephone was a lot faster than communication via correspondence. NT at 76 – 77, 111, 112 – 113, 115. Ames corroborated that testimony. NT at 132, 134.

Claimant did not contradict or rebut that testimony at the hearing; she simply argues now that something as important as a \$60,000 calculation error requires more than a mere phone call and should have been documented in writing. Regardless of the validity of her argument, which goes to the soundness of PSERS' policy, Claimant's argument does not contradict or make less believable the testimony of PSERS' witnesses as to its policy and practice. Claimant's burden is to prove that the notification did not occur, not that the notification practice used was not necessarily what Claimant believes would have been best from a policy standpoint. Indeed, given the fact that PSERS normally has sixty days from receipt of the notification of the death of a member and all other necessary data to notify the beneficiary of the benefits and make the first payment, *see* the Retirement Code at 24 Pa.C.S. § 8505(h); NT at 108, accelerating the error notification process by using a telephone call, rather than written correspondence, is more reasonable than Claimant would like to believe. Accordingly, while Claimant may find it absurd to believe that something as important as a \$60,000 calculation error would

be communicated only via a phone call, PSERS has clearly demonstrated that communication of such information via phone call was its policy, it better served the beneficiary, and it assisted PSERS in complying with the statutory time frames for processing the benefits.

Ames also testified that, upon learning that the approximation of \$270,300 was incorrect, and after learning the correct amount of Green's death benefit based on the final audit, in September 2008, she followed PSERS' routine practice and telephoned Green. NT at 131 – 132, 133 – 134, 144, 146 – 147. Ames spoke to Green, explaining that Saunders' annuity was a frozen annuity, the approximate calculation of the death benefit was incorrect, the correct amount was \$215,119.19, rather than \$270,300, and Ames would hold the account and send Green new forms if Green wanted to select a different payment option based on the new information. NT at 132 – 134, 136 – 137, 143, 144, 146 – 147.

Furthermore, the evidence from Claimant indicates that at the time of Ames' call, Green had two living daughters, Claimant and another, Brenda Green, and while neither Claimant nor Brenda Green was living with Green in August, September or October 2008, they were there regularly. NT at 40, 42, 43, 44. Ames' testimony also indicated that, during her call to Green, with Green's permission, Ames spoke with one of Green's daughters, but Ames was not sure which daughter she spoke with. NT at 133, 144, 146. Based on Claimant's testimony, set forth above, Ames does not appear to have spoken with Claimant. NT at 44 – 45. At any rate, Ames told the daughter with whom she spoke the same things she had told Green, including that, if Green would like to change her option, PSERS would send her new forms for that purpose. Exhibit PSERS-14; NT at 133 – 134, 137, 146 – 147.

Finally, Ames testified that, after speaking to Green and Green's daughter, Ames followed her routine business practice with regard to anything out of the ordinary related to an account, and made a handwritten notation, on a copy of the balance estimate letter of August 22, 2008 which PSERS had sent to Green, stating "After frozen annuity estimate was too high. Explanation was given to Mae Green's

daughter.” Exhibit PSERS-14; NT at 135 – 136, 137. Ames did not make a note that she spoke with Green, because it was the normal course of business to speak directly to the beneficiary, and for that reason, Ames only made a note in the account or in the workflow if she spoke to someone else besides the beneficiary, since that would be out of the ordinary. Exhibit PSERS-14; NT at 135, 137. Ames’ added her handwritten note, memorializing the communications, to Green’s PSERS file, and on October 1, 2008, the note was scanned into PSERS’ electronic workflow file pertaining to Green. NT at 138 – 139, 140. Based on Ames’ testimony, there is no factual support in the record for Claimant’s argument that PSERS never made Green made aware of any calculation changes to the “approximate” value first stated to her, \$270,300, nor is there any factual support for Claimant’s argument that Green was not aware of any erroneous calculation, so Green made no request for a new election of benefits.

Moreover, Ames’ testimony is supported by written documentation, in the form of Exhibit PSERS-14, which bears Ames’ handwritten note memorializing the conversation, as well as Exhibit PSERS-15, a screenshot of PSERS’ workflow application indicating each document produced in Green’s account with PSERS. In the ordinary course of PSERS’ business, the document with Ames’ handwritten note on it, Exhibit PSERS-14, was scanned into the workflow on October 1, 2008, as part of a document named “Miscellaneous Documents.” Exhibit PSERS-15; NT at 138 – 139, 140. In short, Claimant’s argument that there is a lack of any written documentation communicating the calculation error cannot be substantiated, because Exhibits PSERS-14 and PSERS-15 constitute written documentation. Claimant provided nothing to contradict or cast doubt upon either Ames’ testimony or this written documentation, so there is no basis for disregarding either the testimony or the documents. Both are credible.

Even if the written documentation from Ames did not exist, the case law in the Commonwealth does not support Claimant’s argument that the lack of written notification should be taken as evidence that no notification occurred. PSERS provided evidence of its routine practice, with regard to notifying

beneficiaries by telephone of a change in the final audited present value of an account, NT at 76 – 77, 111, 112 – 113, 115, and Claimant provided no evidence to contradict that statement of PSERS' routine practice. Under the case law,

[e]vidence . . . of the routine practice of an organization, whether corroborated or not . . . is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the . . . routine practice.

Hoffman v. State Employees' Ret. Bd., 915 A.2d 674, 680 (Pa. Cmwlth. 2006), *citing* Pa. R.E. 406.

Therefore, the case law supports the determination that in 2008, PSERS had a routine business practice of notifying beneficiaries by telephone of a change in the final audited present value of an account, and that PSERS followed that routine business practice in 2008 with regard to notifying Green of the change in calculated present value of Saunders' account. Given the evidence and the case law, then, Claimant's argument – that the lack of any letter communicating the calculation error makes PSERS' version of events not credible – is unsupported. Also, Claimant's argument that the notification should have been in writing simply attacks PSERS' oral notification policy; as such, it is an argument as to what the policy *should have been*, and cannot in any way contradict or render less credible the testimony of PSERS' witnesses as to what the policy actually was.

Lastly, with regard to PSERS' providing Green with the opportunity to change her election after learning of the correct present value of Saunders' account, Cook testified that PSERS' routine business practice, if the beneficiary wishes to make a change after PSERS informs her of a discrepancy in the amount, is to send a follow-up letter with new forms to execute and resubmit in order to receive payments. NT at 113, 115. On the other hand, PSERS' routine business practice, if the beneficiary does not wish to make a change, is to go ahead and process the payments based on the original selection, without the need for any follow-up correspondence, because that speeds up the processing of the payment to the beneficiary. NT. at 113. In this case, no follow-up letter with new forms was sent to Green, NT at 91, 100 – 101, 112 – 113, 134, 141, which under *Hoffman, supra*, is relevant to prove that

PSERS followed its routine practice, upon learning that Green did *not* wish to make a change, and went ahead with the processing of Green's benefit.

Credibility of PSERS' witnesses

Finally, with regard to Claimant's argument that PSERS' evidence is insufficient to rebut Claimant's evidence, Claimant attacks the credibility of PSERS' witnesses. Indeed, at the heart of Claimant's arguments is the assertion that the PSERS' witnesses, because they are employees of PSERS, are not credible or objective witnesses. Claimant couples this argument with the assertion that, when Claimant asked, in 2012, that Green's annuity be "paid out in full," PSERS began a campaign to deceive and mislead Claimant.

But contrary to Claimant's assertions, there is no evidence in the record to support her argument that PSERS' witnesses are not credible or that PSERS has made any attempt to deceive or mislead her. The testimony of Cook, Ames and Earnest was under oath, Claimant believes some of it when it suits her case,¹¹ and there is nothing in the record to suggest that they have any motivation for not testifying truthfully. Each of them fully explained his or her role in the processing of Saunders' death benefit, and Earnest meticulously guided the tribunal through each step of the complex process that her section of PSERS followed in calculating Saunders' death benefit. The calculations all flowed logically one from the other, and the bases for the various calculations relate back to, and are corroborated by, citations to the relevant provisions of the Retirement Code. *See* this Discussion, above, at pages 18 and 19. Furthermore, Claimant had the opportunity to cross-examine each of PSERS' witnesses, and in so doing, she did not shake or contradict their testimony in any way. PSERS' responsibility is to administer the retirement system in accordance with the Retirement Code, and there is no evidence in the record to

¹¹For example, Claimant plainly accepted the testimony of Cook and Earnest pertaining to the lack of frozen debt associated with Saunders' account. See the Discussion, above at page 19, about the accuracy of PSERS' present value calculation of Saunders' account.

indicate that it did anything other than carry out that responsibility. Accordingly, the testimony of PSERS' witnesses is credible and deserving of great weight.

Claimant's requested remedy

In the end, the remedy which Claimant seeks (the award of which pre-supposes that she has met her burden of proof), is a "complete cash-out" (by which Claimant presumably means a lump sum payment), or an updated monthly annuity disbursement "reflective of the true balance." *See* Claimant's Brief, last page. For the reasons discussed below, however (and setting aside for a moment the fact that Claimant did not produce sufficient evidence to tip the evidentiary scales in her favor, so she has not met her burden of proof), neither remedy is available to Claimant.

First, Claimant's requested remedy of "a complete cash-out" is simply not permissible under the terms of the applicable law. PSERS is a creature of the legislature, and a member of PSERS has only those rights created by the Retirement Code; none beyond that. *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). That means that the Board does not have the authority to grant any rights beyond those specifically set forth in the Retirement Code. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

Saunders was the member in this case, and it follows logically from the cases cited above that his beneficiaries can have no more rights under the Retirement Code than Saunders would have had. *See Burris, Bittenbender and Forman, supra.* Claimant does not dispute that Saunders died while he was an active member of PSERS, was eligible for an annuity, and had named Green as his beneficiary. Based on those facts, under the Retirement Code, Saunders was deemed to have elected an Option 1 retirement plan, which would provide Saunders' beneficiary – Green – with Saunders' death benefit. Retirement Code, 24 Pa.C.S. § 8309, § 8347(a); 22 Pa. Code § 213.9(a). The Retirement Code defines Option 1 as

[a] life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision

that, if, at his death, he has received less than such present value, the unpaid balance shall be payable to his beneficiary.

24 Pa.C.S. § 8345(a)(1). In accordance with this definition and Saunders' status, at the time of his death, as an active member of PSERS who was eligible for an annuity, PSERS processed Saunders' account as an Option 1 death benefit.

Also, section 8349(b) of the Retirement Code provides as follows:

If the amount of a death benefit payable . . . is \$10,000 or more, such beneficiary may elect to receive payment according to one of the following options:

- (1) A lump sum payment.
- (2) An annuity actuarially equivalent to the amount payable.
- (3) A lump sum payment and an annuity such that the annuity is actuarially equivalent to the amount payable less the lump sum payment specified by the beneficiary.

24 Pa.C.S. § 8349(b). Here, Claimant does not dispute the fact that the death benefit payable to Green was in excess of \$10,000. Based on this provision, PSERS sent Green an Application for Option 1 Death Benefits form. *See* Exhibit PSERS-6; NT at 78 – 79. Green returned the completed form to PSERS, selecting a lump sum payment of \$150,000, with the remaining balance of the death benefit to be paid out in a monthly annuity for life. Exhibit PSERS-6; NT at 85. That selection was in accordance with the option outlined in the Retirement Code at § 8349(b)(3), which is quoted above. The life annuity option Green chose was Plan 2-C, *see* Exhibit PSERS-6; NT at 85, which is a ten-year certain plan, guaranteeing 120 months of payments, and if the beneficiary – Green – should pass away before receiving all 120 months, the remainder of those monthly payments would be made to her beneficiary, who in this case was Claimant. Exhibit PSERS-6; NT at 18 – 19, 20, 42, 85, 102.

Furthermore, In accordance with PSERS' regulations under the Retirement Code, once PSERS had processed Green's election, the election was irrevocable:

§ 213.49. Payment of benefits.

* * *

(c) As in the case of a member, an election by a beneficiary for an annuity, when made, shall be deemed to be irrevocable.

* * *

22 Pa. Code § 213.49(c). *See also Estate of McGovern v. State Employees' Ret. Bd.*, 517 A.2d 523, 526 (Pa. 1986) (no change can be made to a deceased member's selected retirement option because the member entered into a binding contract with the system when he made the selection); *Cosgrove v. State Employees' Ret. Bd.*, 665 A.2d 870, 874 (Pa. Cmwlth. 1995) (the decision by a member regarding retirement pension is irrevocable). For that reason alone, Green's choice of payment option cannot be changed, and Claimant is entitled only to a monthly annuity check in the amount of \$479.93, until all 120 guaranteed payments have been made, pursuant to Green's irrevocable election of the Life Annuity Plan 2-C explained earlier.

Not only is a complete "cash-out" impossible because Ms. Green's election was irrevocable, but also, the "cash out" is not even an option available under the Retirement Code. *See* 24 Pa.C.S. § 8349, *quoted above*; Exhibit PSERS-6; N.T. 85 – 86. Green could have elected a lump sum payment of the death benefit under § 8349(b)(1), but she chose, instead, a partial lump sum payment and the 120 month guaranteed payment annuity. While the option she chose allowed her to leave any unpaid payments, of the 120, to her designated beneficiary in the event Green should die before all 120 payments had been made, neither that option nor any other option available to her would have allowed her to leave a lump sum to her beneficiary or allowed Green's beneficiary to change the manner in which she would receive what was left of Green's annuity upon her death. NT at 85 – 86. Therefore, even if Claimant had met her burden of proof, PSERS would be prohibited by the relevant statutory provisions from giving Claimant the relief she requests in the form of a "cash out" or lump sum payment of the remaining balance of Green's account.

And finally, based on the same statutory provisions that make Green's payment selection irrevocable, Claimant is not entitled to the other type of relief she requests, i.e., an updated monthly annuity disbursement "reflective of the true balance" of the account. As already addressed above, the "true balance" of Saunders' account – as evidenced by PSERS' accurate and uncontradicted present value calculation – at the time of his death in 2008 was \$215,119.19. Using that present value, PSERS calculated the amount of the monthly annuity payment to Green, under the 120-month guaranteed payment annuity she chose, to be \$479.93. NT at 95. PSERS arrived at that amount from the present value of \$215,119.19 by using PSERS' standard formula for calculating monthly payments for death benefits for all beneficiaries. NT at 95. Claimant produced no evidence to challenge that fact. Furthermore, Earnest testified that, if Saunders himself had retired in 2008, the present value of his account still would have been \$215,119.19, and *his* annuity would have been based on that figure. NT at 171. Therefore, Saunders himself would have been entitled to no more than that.

CONCLUSION

The only real issues relate to the correct present value of Saunders' account at the time of his death and its logical corollary, the correct amount of the remaining benefit due to Claimant as, essentially, the second beneficiary in this matter, receiving the balance of the first beneficiary's – Green's – account. In making her own calculations of that balance, Claimant appears to have overlooked or misunderstood the fact that there are costs associated with taking an annuity instead of a lump sum, because the annuity has to spread the amount available out, in order to cover the beneficiary's life span. NT at 172. To do that, PSERS had to apply actuarial factors, related to the beneficiary's predicted life span and age, so as to arrive at an actuarially sound amount to be paid as the monthly benefit for the remainder of the beneficiary's – Green's – life. NT at 172 – 173. Because, in the case of an annuity, some of the total funds have to be put aside in order to fund that guaranteed income stream, the longer the annuity plan guarantees a benefit, the more the amount of the monthly check is reduced. NT at 85. The 120 guaranteed payments are based on that actuarial calculation, *which occurred when Green selected the option*, and no recalculation occurs upon her death.

Therefore, Green's beneficiary receives the number of remaining guaranteed payments, multiplied by the amount of the actuarially-determined monthly benefit that was based on Green's age and predicted life span *at the time she selected the option*. NT at 105. Green's Life Annuity Plan 2-C provided for 120 guaranteed payments, and Green had received 47 of them at the time of her death, so there were 73 payments left to be paid to Claimant. NT at 105. As of the date of the hearing, because of the monthly payments Claimant had already received, there were 54 payments remaining, which when multiplied by the monthly amount, yielded a remaining balance of \$25,916.22. NT at 106. Claimant has advanced no logical reason, no evidence, and no statutory provision which would support an outcome that provides more to her than the original PSERS member or beneficiary would have received.

Accordingly, Claimant is entitled to no more, and the following recommendation will be made to the Board:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:

ACCOUNT OF ARTHUR J. SAUNDERS (D)
CLAIM OF SYLVIA JORDAN

DOCKET NO. 2012-48

RECOMMENDATION

AND NOW, this 24th day of **January, 2014**, 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 to set Saunders' death benefit at \$270,300, **DENY** Claimant's request that PSERS pay her either a lump sum amount of the balance remaining on the death benefit or an increased monthly annuity disbursement, and **DISMISS** Claimant's administrative appeal.



Ruth D. Dunnewold
Hearing Officer

For Claimant: Sylvia Jordan



For PSERS: Kathrin V. Smith, Assistant Deputy Chief Counsel
COMMONWEALTH OF PENNSYLVANIA
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Date of Mailing: 1/24/14