

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Roberta Johnnene,
Petitioner

Docket No.: CR-22-0055

v.

Boston Retirement System,
Respondent

Appearances:

For Petitioner: Roberta Johnnene, pro se

For Respondent: Natacha Thomas, Esq.

Administrative Magistrate:

Judi Goldberg

RULING ON MOTIONS FOR SUMMARY DECISION

Petitioner Roberta Johnnene timely appealed, under G.L. c. 32, § 16(4), the decision of the Boston Retirement System (BRS) to recoup an overpayment from her late mother's retirement allowance as well as the BRS's calculation of interest on her mother's funds. Ms. Johnnene (RJ) filed a pre-hearing memorandum and proposed exhibits (RJ A-K) and the BRS filed its pre-hearing memorandum and proposed exhibits (BRS L-M). The BRS subsequently filed two separate motions for summary decision with exhibits (BRS A-J). Ms. Johnnene filed separate oppositions with exhibits (RJ N-S). On March 25, 2026, I held a non-evidentiary hearing on the BRS's motions for summary decision. At the beginning of the hearing, I notified the parties that I

might award judgment to either party even though the BRS was the moving party.¹ Neither party objected.

Undisputed Facts

The following facts are not in dispute:

1. On May 15, 2009, Francesca Johnnene retired from her employment with the City of Boston. (RJ A.)

2. On June 19, 2009, Francesca² completed a retirement option selection form. She chose Option B and named her daughter Roberta Johnnene as her beneficiary. (RJ A.)

3. Francesca received her monthly retirement allowance by direct deposit to her bank account until December 15, 2015. (Agreed-upon facts ¶ 10.)

4. Francesca passed away on December 19, 2015. Roberta immediately notified the BRS that she had died. (Agreed-upon facts ¶¶ 12, 13.)

5. On December 21, 2015, the BRS sent Roberta a letter asking Roberta to:

- a. Pay \$1,236.01 “that was overpaid to Francesca in December, then SBRB will owe you for the Option B Refund that is due you[;]” and
- b. Forward a copy of Francesca’s death certificate.

(RJ C.)

¹ Cf. *Petrillo v. Zoning Bd. of Apps. of Cohasset*, 65 Mass. App. Ct. 453, 461 (2006); Mass. R. Civ. P. 56(c) (“Summary judgment, when appropriate, may be rendered against the moving party.”).

² As both the member and her beneficiary share the same last name, I am using their first names to avoid confusion.

6. On January 9, 2016, Roberta sent the BRS a copy of the death certificate and the name of the attorney handling matters relating to Francesca's death. She asked the BRS to provide her with information regarding Francesca's retirement allowance. (RJ D.)

7. On January 14, 2016, a member of the BRS's staff responded: "Once we receive the check for \$1236.01 which is the balance due back for December, we then will process the Option B Refund to you." Attached was a document showing the amount of the remaining annuity balance and a retirement calculation worksheet. (RJ D.)

8. On March 14, 2016, Roberta responded to the BRS and asked again for information regarding Francesca's retirement allowance. She again provided the name and contact information of the attorney working with the family on issues related to her mother's death. (RJ E.)

9. In March and April 2016, Roberta spoke with BRS staff and the BRS attorney. (Agreed-upon facts ¶¶ 17-21.)

10. There is no evidence that either party took any actions during the next three years. On December 4, 2019, the BRS contacted Roberta to ask her to sign a form indicating that it would recoup the amount paid to Francesca before her death and deduct that amount from Roberta's beneficiary interest. (RJ N.)

11. Roberta did not respond for almost two years. On November 8, 2021, she sent a letter to the BRS explaining that family events had prevented her from following up on the outstanding issues relating to her mother's death. Among other issues, she wrote that she did not believe that she was obligated to repay the money that the BRS paid to Francesca and that the BRS could have made a claim against Francesca's estate. Roberta also took issue with how

the BRS had calculated the outstanding amount due because she believed that the BRS had “failed to accrue interest related to the account from 2009 to payment.” (RJ F.)

12. On December 9, 2021, the BRS sent Roberta an Option B beneficiary form to sign. The BRS had inserted the phrase: “BRS will owe you the balance of the Option B Annuity Refund.” Roberta crossed this out, completed the form, and included a handwritten note: “Unreduced amount w/ interest per c32S22(2)”. (RJ G.)

13. On January 24, 2022, the BRS sent Roberta a letter acknowledging that she was challenging the BRS’s entitlement to recoup the overpayment. The letter provided Roberta with directions to appeal the BRS’s decision. (RJ H.)

14. On February 7, 2022, Roberta filed an appeal asserting that the BRS handled two issues incorrectly: (a) the attempt to recoup part of the December payment; and (b) the calculation of interest on Francesca’s account after her retirement. (RJ I.)

15. Ten days later, the BRS issued a check to Roberta for \$22,517.36, from which it had deducted \$1,236.01 as BRS’s recoupment. Roberta wrote “VOID” on the face of the check and returned it to the BRS. (RJ J.)

16. On January 30, 2023, Roberta received a 1099-R tax form relating to the distribution check, which listed a gross distribution amount of \$28,751.34. This included the amount that the BRS was attempting to recoup. (RJ O, P.)

Decision

Summary decision is appropriate when there is no genuine issue of material fact “relating to all or part of a claim or defense and [the movant] is entitled to prevail as a matter of law[.]” 801 CMR § 1.01(7)(h). “[T]hat some facts are in dispute will not necessarily defeat a motion for

summary judgment. The point is that the disputed issue of fact must be material.” *Hudson v. Comm’r of Corr.*, 431 Mass. 1, 5 (2000) (internal citation omitted). Here, there are no disputed issues of material fact relating to the recoument or the post-retirement interest calculation; both issues involve the proper application of the relevant law.

Public employee’s retirement allowance. Some background on public employees’ retirement allowance will help guide the analysis of both issues. A public employee’s retirement allowance includes two components. See *Haverhill Ret. Sys. v. Contributory Ret. Appeal Bd.*, 82 Mass. App. Ct. 129, 130 n.2 (2012). The first component is the amount deducted from the employee pay, referred to as “regular deductions.” G.L. c. 32, § 1. The regular deductions plus the “interest thereon credited to any member’s account” while the person is an active public employee make up the employee’s “accumulated regular deductions.” *Id.* The second component is the employer contribution, referred to as the “pension.” *Id.* An employee’s pension is the difference between the amount of the annuity and the amount of the employee’s accumulated regular deductions. *Id.* § 12(2)(a)(ii). The “annuity” is derived from the employee’s accumulated regular deductions or their accumulated additional deductions, if any, or both. *Id.* § 1.

While a person is an active public employee, their employer deposits the regular deductions into an annuity savings fund. *Id.* § 22(1)(a). Interest is then credited to the employees’ individual accounts in the annuity savings fund. *Id.* At retirement, the employee’s accumulated total deductions (the accumulated regular deductions plus any accumulated additional deductions) move from the annuity savings fund to the annuity reserve fund. *Id.* §§ 1, 22(1)(l), 22(2)(a). The total amounts that transfer to the annuity reserve fund establish the initial annuity

reserve that then pays the annuity portion of the retirement allowance to the retired employee. *Id.* § 22(2)(a).³ There is no statutory provision that allows or requires interest to be credited to an employee when their accumulated total deductions are in the annuity reserve fund.

Option B. When a state retirement system member decides to retire, the member can elect one of three options (A, B, or C) that determines how they will receive their retirement benefits. *Id.* § 12(2). Relevant to this case is Option B.⁴ When a retiree who has selected Option B dies “before receiving in annuity payments a total amount equal to [the] value of [the] accumulated total deductions,” the retiree’s designated beneficiary receives a cash refund of the difference between the accumulated total deductions and the amount the retiree received in annuity payments. *Id.* § 12(2)(b)(i). Here, Francesca chose Option B and designated her daughter Roberta as her beneficiary.⁵

Payment up to and including the date of death. A retiree is entitled to a monthly allowance up to and including their date of death. Specifically:

[M]onthly payments shall be made during the lifetime of the person . . . and shall cease with the last full monthly payment due prior to the death of such person; provided, that a pro rata payment shall be allowed for that portion of the month in which such death occurs which has elapsed up to and including the date of death.

³ See generally *Raftery v. State Bd. of Ret.*, 496 Mass. 402, 404 n.2 (2025).

⁴ Under Option B, the retired employee’s annuity is determined “so that the value of such annuity on the date such allowance becomes effective shall be the actuarial equivalent of the value of his accumulated total deductions[.]” *Id.* § 12(2)(b)(i).

⁵ The member can designate as their Option B beneficiary one or more than one person who may or not be related to the member. See *Whitman v. State Bd. of Ret.*, CR-06-905, 2007 WL 7070549, at *4 (Div. Admin. Law App. Dec. 31, 2007) (“The language within G.L. c. 32 § 11(2) does not prohibit the designation of a charity as a beneficiary.”).

Id. § 13(1)(b). Here, Francesca received her retirement allowance on December 15. She died on December 19, part way through the month for which the payment applied. As set forth in Section 13(1)(b), Francesca was entitled to a pro rata payment for December 1 through December 19, the day on which she died, but not for the last 12 days of the month.

After the member's death. Section 11(2)(b) of Chapter 32 provides that when a retirement system receives proof of a retired employee's death, any Option B cash refund "shall . . . be paid in one sum to [the] surviving beneficiary[.]" *Id.* § 11(2)(b). In this case, Roberta promptly notified the BRS of her mother's death and sent the BRS a death certificate. As Francesca's designated beneficiary, Roberta then became entitled to receive any cash refund due, paid in one sum. The BRS did not, however, make the payment as required by Section 11(2)(b). Rather, the BRS conditioned payment of the cash refund on Roberta refunding \$1,236.01, which the BRS contends is the portion of the December payment for the days after Francesca's death (December 20 through December 31). The BRS has relied on Section 20(5)(c)(2) of Chapter 32 as the reason to condition the payment of the Option B beneficiary's payment on this refund. As set forth below, that reliance is misplaced.

Recoupment. Section 20(5)(c)(2) requires retirement systems to recoup an overpayment when:

[A]n error exists in the records maintained by the system or an error is made in computing a benefit and, as a result, a member or beneficiary receives from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct or had the error not been made, the records or error shall be corrected and as far as practicable, and future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid.

Id. § 20(5)(c)(2). In this case, Francesca received payment for the last 12 days of December, which was a payment to which she was not entitled. *Id.* § 13(1)(b). The BRS has attempted to recoup this overpayment from Roberta, asserting that it resulted from an error resulting from the belief that she would live until the end of the month.⁶

Deciding whether a member's death constitutes or creates an error is not a question that needs to be answered here. Rather, the more pertinent question is whether the BRS may recoup an overpayment to the member from her beneficiary. A case from 2023 answers this question in the negative. In *Magarian v. Lexington Retirement Board*, the member received an overpayment from the retirement board as the result of a data entry error. CR-22-0088, 2023 WL 9022702 (Div. Admin. L. App. Dec. 22, 2023). The board began to recoup the overpayment by withholding money from Mr. Magarian's monthly retirement allowance. *Id.* at *2-3. However, Mr. Magarian died before the board had recouped the entire overpayment. *Id.* at *3. Rather than pay his Option B beneficiary the value of his accumulated total deductions, the board decided to retain those funds to recoup the balance of the overpayment. *Id.* His Option B beneficiary appealed that decision.

⁶ The Board has not asserted that the overpayment resulted from an error in its records, that it incorrectly calculated its December payment, or that it based the calculation on erroneous information. *See, e.g., Pagnato v. Chelsea Ret. Sys.*, CR-21-0685, 2025 WL 2365545 (Div. Admin. L. App. Aug. 8, 2025) (board entitled to recoup retirement allowance based on mistaken calculation of time of service); *Ferguson v. State Bd. of Ret.*, CR-14-815, 2020 WL 14009731 (Contributory Ret. App. Bd. Aug. 10, 2020) (board entitled to reduce monthly accidental death benefit when error in identification number caused overpayment); *Spaulding v. Teachers' Ret. Bd.*, CR-04-423 (Contributory Ret. App. Bd. Sept. 24, 2004) (board entitled to recoup payments resulting from numerous calculation errors).

The Option B beneficiary prevailed because the board had tried to recoup the funds from the wrong person. “[W]hile Section 20(5)(c)(2) grants retirement boards the power to adjust ‘future payments’ to a member who has been overpaid, it does not provide that a board may seize the one-time payment to be made to an Option B beneficiary after the member’s death.” *Id.* at *2. Indeed, the funds paid to the beneficiary “do not go to the member’s estate or pass through probate, nor is there any provision that allows a retirement board . . . to take some or all of these funds to pay an unpaid debt of the deceased member.” *Id.* at *3. Although the board could not seize the Option B beneficiary’s payment, the debt remained and the retirement board may have had a claim against Mr. Magarian’s estate. *Id.* at *2.

In the present case, as in *Magarian*, the BRS may have had a claim against Francesca’s estate or her personal representative,⁷ but it did not have the statutory authority to seize the balance of Francesca’s December 2015 payment from Roberta’s payment. It also did not have the statutory authority to refuse to make Roberta’s payment unless and until she returned the balance of the December payment.⁸ Thus, Roberta is entitled to receive one payment consisting of the remaining accumulated total deductions as provided for in Section 12(2)(b)(i).⁹

⁷ See generally *Gilbride v. Dickson*, 67 Mass. App. Ct. 1118 (Dec. 5, 2006) (unpublished decision) (describing differences between claim that arose during decedent’s life versus after decedent’s death).

⁸ There is no evidence that the BRS asked or knew whether Roberta had access to the bank account where the BRS deposited Francesca’s payment, could legally access those funds after Francesca’s death, or was authorized to act on behalf of Francesca’s estate. See G.L. c. 190B, § 3-103 (“[T]o acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person shall be appointed by order of the court[.]”); see also *id.* § 3-715 (personal representatives may satisfy and settle claims against the estate).

⁹ The BRS relies on *Benoit v. State Bd. of Ret.*, CR-19-0134 (Div. Admin. L. App. Jan. 24, 2019) (hypothesizing without jurisdiction to decide that board would be entitled to recoup overpayment before paying lump sum to beneficiary). However, a case that is dismissed for lack

Interest calculation. Roberta also appealed the calculation of the outstanding amount due, believing that the BRS had “failed to accrue interest related to the account from 2009 to payment.” There is no statutory authority that supports Roberta’s assertion that an employee’s accumulated total deductions, once transferred to the annuity reserve fund, earn interest that is credited to the employee’s individual account. To the contrary, although Section 22(1)(a) specifically references regular interest being transferred and credited “to the accounts of such [employees]” while their funds are in the annuity savings fund, Section 22(2)(a) references the transfer of the accrued regular interest but does not allow or require any additional interest to be credited to individual employees’ accounts once the funds are in the annuity reserve fund. When the Legislature uses different language in different parts of the same statute, it intends a different meaning. *See, e.g., Commonwealth v. Williamson*, 462 Mass. 676, 682 (2012) (internal citation and quotation marks omitted).

Conclusion and Order

For the reasons set forth above, BRS’s motion for summary decision regarding its attempt to recoup the balance of Francesca’s December 2015 retirement allowance from Roberta’s Option B beneficiary payment is denied. Summary decision for Roberta is granted on the issue of recoupment and the BRS shall pay Roberta the entire Option B beneficiary’s sum without delay. BRS’s motion for summary decision regarding the calculation of interest is allowed.¹⁰

of jurisdiction is not an adjudication on the merits. *See, e.g., Bevilacqua v. Rodriguez*, 460 Mass. 762, 780 (2011).

¹⁰ Roberta’s motion for leave to submit interrogatories and for reconsideration of the denial of her motion to compel are denied as moot.

Dated: April 10, 2026

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

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