

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Michelle Lally
Petitioner

v.

Docket No.: CR-24-0674
Date: July 11, 2025

State Board of Retirement
Respondent

Appearance for Petitioner:

Pro se

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The State Board of Retirement properly denied the Petitioner's request to change her retirement option election after the effective date of her retirement. G.L. c. 32, § 12(1).

DECISION

Petitioner Michelle Lally timely appeals under G.L. c. 32, § 16(4) the October 29, 2024 decision of Respondent State Board of Retirement. The Board denied her request to change her retirement option election from Option B to Option A.

On November 18, 2024, the Division of Administrative Law Appeals (DALA) determined that this matter could be decided on written submissions. 801 CMR

1.01(10)(c). DALA ordered the parties to file any documents they would like considered and a written argument. On March 21, 2025, the Board submitted its argument and 9 proposed exhibits. Ms. Lally did not submit anything. I enter the Board's proposed exhibits as marked. (Exs. 1-9.)

FINDINGS OF FACT

Based on the documents submitted by the parties, I make the following findings of fact:

1. Michelle Lally, born 1957, began working for the Commonwealth on May 24, 1990. (Ex. 3.)
2. On April 2, 2024, Ms. Lally submitted a superannuation retirement application to the Board. She did not provide a retirement date on the application. (Ex. 3.)
3. On the retirement option selection form included in the application, Ms. Lally selected Option B and named her son and daughter as her beneficiaries. (Ex. 3.)
4. On April 4, 2024, the Board notified Ms. Lally that she had omitted the retirement date and asked her to complete the first page of the application. Ms. Lally did so and chose a retirement date of May 31, 2024. (Ex. 4.)
5. Ms. Lally retired effective May 31, 2024. This meant that her retirement benefits began on June 1, 2024. (Ex. 6.)
6. Ms. Lally claims that on May 31, 2024, she discussed with Board staff changing her option selection. (Ex. 2.)

7. On June 12, 2024, the Board received another option selection form from Ms. Lally. This time, she attempted to choose Option A, which requires no beneficiaries to be named. The form was signed and witnessed on June 4, 2024. (Ex. 5.)

8. In a letter dated June 21, 2024, Ms. Lally was informed of the estimated initial benefit payment that would be deposited in her bank account on the last business day of each month. (Exs. 6, 7.)

9. Ms. Lally received her first retirement allowance payment on June 30, 2024. (Exs. 7, 8.)

10. By letter dated October 29, 2024, the Board informed Ms. Lally that the attempted change to her option selection could not be accepted, explaining:

Your benefit went into payment on June 30, 2024 with retroactive payment to your retirement date via the estimated initial payment process. Changes to the retirement option after the retirement date are not allowed. Therefore, your request is denied.

(Ex. 1.)

11. Ms. Lally timely appealed the Board's decision on November 9, 2024. (Ex. 2.)

CONCLUSION AND ORDER

Before retiring, retirement system members may choose from among several options as to how their retirement allowance will be distributed. G.L. c. 32, § 12(1) provides in pertinent part:

Any member who is retired for superannuation . . . may elect to have his allowance paid in accordance with the terms of any one of the three options specified in subdivision (2) of this section. . . . Election of an option shall be made by such member in writing on a prescribed form filed with the board, and once made may be changed from time to time by making a new election in a similar manner; provided that no election of an

option shall be valid . . . *unless such election is filed with the board on or before the date his allowance becomes effective.*”

(Emphasis added.) A superannuation retirement allowance becomes effective on the date of a member’s retirement. G.L. c. 32, § 5(2)(a). Consequently an option election will be valid only if filed “with the board on or before” the date of retirement. By implication, any election after that date is not valid. *See Capece v. State Bd. of Ret.*, CR-07-586 (Div. Admin. L. App. Mar. 5, 2010) (Chapter 32 does not permit a retired member to change his option election once the member has retired), and cases cited therein.

Ms. Lally retired May 31, 2024, at which time she had selected Option B. Her superannuation retirement allowance became effective on that date. G.L. c. 32, § 5(2)(a). The date she actually received any distribution of her retirement allowance is immaterial. Ms. Lally’s Option B election was valid and cannot be changed after her retirement date.

Option B provides Ms. Lally with (a) a life-time retirement allowance that is slightly less than the amount to which she would otherwise be entitled; and (b) upon her death, a lump sum benefit consisting of the unexpended balance of her annuity savings account to her named beneficiaries. G.L. c. 32, § 12(2)(b). Ms. Lally attempted to change her option to Option A, which would pay the maximum life-time retirement allowance; upon her death the allowance would cease and no benefit would be paid to any beneficiary, even if funds remained in her annuity savings account. *Id.* § 12(2)(a).

“Although generally a member may not change his or her retirement option after the effective date of his or her retirement, there is a narrow exception that allows a member to change his or her option if the member was incompetent at the time of selection.” *Tierney v. Massachusetts Teachers’ Retirement System*, CR-08-166 (Div. Admin. L. App. May 24, 2012). Ms. Lally has made no such showing.

Ms. Lally does not explain why she wanted to change her retirement option. She claims only that on the effective date of her retirement, she spoke with retirement system staff who agreed to mail an option selection form to her. She also claims that staff did not inform her that any modification would need to be submitted that day (as it was her retirement date) and that she could not fax or email it because the Board required an original signature on the form. Ms. Lally asserts that this led her to conclude that her request to change her option to Option A was considered “timely,” as she “requested it” before 5:00 p.m. on her retirement date. Several months later, Board staff correctly explained however that Ms. Lally had been misinformed and that the signed and witnessed form itself had to have been filed before she retired to have been effective.

There are no mistake or ignorance exceptions to the unforgiving bar on post-retirement changes to option election. While this result may seem unfair, allowing Ms. Lally and other retirees to change their option election would potentially threaten “the actuarial soundness of [the] retirement system.” *See J. Olsen v. State Bd. of Retirement*, CR-1136 (Contributory Ret. App. Bd. Aug. 1978). Further, DALA can apply Chapter 32 only as it is written. *See Bristol County Retirement Bd. v. Contributory Retirement App. Bd.*, 65 Mass. App. Ct. 443, 446 (2006); *Petrillo v. Public Employee Retirement Admin.*, CR-92-731 (Contributory Ret. App. Bd. Oct. 22, 1993) (CRAB does not have the “authority to employ an equitable remedy in the face of specific statutory language [to

the] contrary”).

For the above-stated reasons, the Board’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

Dated: July 11, 2025