

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

January 25, 2019

Middlesex, ss.

Docket No. CR-16-514

STEPHANIE LAWLOR, TYLER MELANSON, MIRANDA (BENGSTON) MILLEDGE
and THERESA STEWART, Petitioners

v.

STATE BOARD OF RETIREMENT, Respondent

DECISION

Appearance for Petitioners:

Stephanie A. Lawlor, *pro se* and on behalf of
petitioners Melanson, Milledge and Stewart
33 Colorado St., Apt. 1
Keene, NH 03431

Appearance for Respondent

Candace L. Hodge, Esq.
State Board of Retirement
1 Winter St., 8th floor
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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

A retirement board's decision to distribute the amount remaining in a retired, deceased public employee's retirement account to her estate, rather than to the petitioners she had designated as retirement account beneficiaries, is vacated following a hearing; and the Board is directed to distribute the remaining retirement account funds, including accrued interest, to the petitioners in the proportion the deceased employee specified in her retirement option selection form (25 percent each).

The Board had concluded that the beneficiary designation was deficient because the employee's signature on the option selection form she filed with her retirement application was undated, the first witness to the employee's signature was disqualified because she was also a designated beneficiary, and the beneficiaries were not identified sufficiently. The evidence showed, however, that (1) the employee signed the option selection form without dating it, but while the form provided a space for entering a date, it did not state that a date was required, or that omitting the date would invalidate the retirement option the employee selected or her designation of beneficiaries; (2) the signature was validly witnessed by a second person who was not a designated beneficiary and was not disqualified, and the form required only one valid witness signature; (3) the form identified the petitioners as the employee's beneficiaries, and specified the percentage each of them was to receive of what remained in her retirement account when she died—25 percent each; (4) these percentages would result in a distribution of 100 percent of the retirement account remainder, which made each beneficiary "primary" even though the employee did not check the "primary" or "conditional" box for any of the beneficiaries she designated; (5) following the employee's retirement, and well before she died, the Board asked the employee to backdate her signature to the date on which it was actually witnessed, and supply missing information regarding two of the beneficiaries (the Social Security number of one of them, and the name and address of a beneficiary who had been identified by her Social Security number and birth date but whose name had been omitted inadvertently), and she did so immediately; and (6) proceeding in that manner, rather than rejecting the employee's retirement option choice and her beneficiary designation, implemented the employee's reasonable expectation as to how the amount remaining in her retirement account upon her death would be distributed; it also left the Board certain as to who the beneficiaries were and what proportion of the amount remaining in the retirement account each of them was to receive.

Background

Petitioners Stephanie Lawlor ("Stephanie"), Miranda Bengston Milledge ("Miranda"), Tyler Melanson ("Tyler") and Theresa Stewart ("Theresa") are, respectively, the two daughters, grandson and friend of the late Beverly A. Lawlor ("Beverly"), a retired Commonwealth employee, and the "Option B" beneficiaries Beverly designated in the "option selection form" included in her 2013

superannuation retirement application.¹ They appeal, pursuant to M.G.L. c. 32, § 16(4), respondent State Board of Retirement’s October 28, 2016 decision to distribute the remaining balance of Beverly’s retirement contributions to her estate rather than to them. (Exh.B-5.) The Board decided to proceed this way because, in its view, Beverly’s designation of beneficiaries was defective. (Exh. B10)

The Board’s decision identified the defect as failure to designate any of the beneficiaries as “primary” (those to whom would be paid whatever amount remained in Beverly’s retirement account when she died) or “contingent” (those to whom what remained in the retirement account would be paid if a primary beneficiary predeceased Beverly, or after a primary beneficiary died). (Exh. B5.) After the petitioners appealed, the Board asserted other defects as well— Beverly signed the option selection form but did not date it; Theresa, who signed Beverly’s option selection form as witness, was also listed as a beneficiary, but the instructions under the witness signature line stated that the witness could not be a beneficiary unless the witness was the spouse;² the handwritten designations of Stephanie, Tyler and Miranda on the form as beneficiaries differ noticeably in appearance from the handwritten designation of Theresa Stewart; and the designations also include several cross-outs or corrections. In the Board’s view, this made it doubtful that any of the beneficiaries were properly

¹/I use first names here to avoid confusion—for example, “Ms. Lawlor” could refer to Beverly or to her daughter Stephanie. Apparently for the same reason, the parties used first names in their memoranda, and the petitioners also did so when they testified.

²/Theresa’ husband, John Stewart, also signed as a witness, but the Board was troubled by this for reasons that included the presence of two witness signatures rather than the single witness signature the form required, including one that was void (Theresa’s), and where John signed—in a blank space below the preprinted witness signature line on which Theresa signed.

designated. (Bd. prehearing mem. at 7-8.)

The petitioners filed timely appeals on November 9, 2016—Stephanie, Miranda and Tyler in one filing, and Theresa in another. On April 12, 2017, the Division of Administrative Law Appeals (DALA) issued an order directing the Board to show cause why the remaining funds in Beverly’s retirement account should not be paid to her four designated beneficiaries, since she had specified that each of them receive precisely 25 percent of the funds remaining in the retirement account when she died, and this appeared to demonstrate Beverly’s intention that each beneficiary be primary, rather than contingent.

The Board’s May 17, 2017 response to the show cause order recited the additional beneficiary designation defects it has since asserted in support of its decision to distribute the funds remaining in Beverly’s retirement account to her estate rather than to the petitioners. DALA accepted the Board’s response, and treated the two appeals as having been consolidated for adjudication. On June 6, 2017, it issued a first prehearing order directing the parties to file their respective prehearing memoranda and proposed hearing exhibits. On July 25, 2017, Stephanie Lawlor, who was acting on behalf of all of the petitioners and continued to do so subsequently, filed seven proposed hearing exhibits that I marked as Exhibits P1-P7, and a “statement of relevant facts” that I treated as the petitioners’ prehearing memorandum. On September 1, 2017, the Board filed a prehearing memorandum and five proposed hearing exhibits numbered 5, 8, 9, 10 and 11. I marked these as Exhibits B5 and B8–B11.³

³/ The Board did not explain why it numbered its exhibits in this manner. Rather than renumber the exhibits and direct that the Board correct exhibit references in its prehearing memorandum, I used the

On November 6, 2017, DALA issued a notice scheduling a hearing, which I held on February 8, 2018 and recorded digitally. I marked all of the proposed hearing exhibits in evidence, without objection. There are, as a result, a total of 12 hearing exhibits in evidence. Each of the four petitioners testified at the hearing. The Board presented no witness testimony. The Board waived a closing argument. Stephanie made a brief closing argument to the effect that Beverly's clear intent was to designate the four petitioners listed on Exh. B10 as primary beneficiaries and that each of them was to receive 25 percent of whatever remained of her retirement account. The Board requested time to reassess whether it wished to reconsider its decision in view of the evidence and testimony, or whether it wanted me to decide the appeal. In view of this request, I ordered that post-hearing memoranda be filed within 60 days after the hearing ended. On April 5, 2018, Stephanie filed "closing arguments" on behalf of all four petitioners, which I have treated as their post-hearing memorandum. The Board filed its post-hearing memorandum on April 11, 2018, which closed the record.

Findings of Fact

1. Beverly A. Lawlor (Beverly), who died on October 3, 2016 (Exh. P7), was a former employee of the Commonwealth who began work at the Templeton Developmental Center, a live-in complex for mentally-challenged persons, on December 4, 1998. She continued working there as a "Developmental Service Worker 1" employed by the Massachusetts Department of Developmental

same exhibit numbers the Board used, with the prefix "B" before each one. As a result, there are no Exhibits B1-B4, B6 or B7.

Services (DDS) until she retired for superannuation effective December 16, 2013. (Exhs. B5 and B10.) As a DDS employee, Beverly was a member of the Massachusetts State Employees' Retirement System, which is administered by respondent Massachusetts State Board of Retirement (the Board). She contributed a statutorily-mandated portion of her regular compensation toward her retirement. Her retirement contributions were paid to the Massachusetts State Employee Retirement System and were kept in an annuity savings account. *See* M.G.L. c. 32, § 22(1)(b).

2. Stephanie Lawlor (Stephanie) is Beverly's oldest daughter. She is the first beneficiary listed in the Option B beneficiary information section of Beverly's retirement application. (Exh. 10, sixth page.) In early December 2013, Stephanie assisted her mother in filling out the retirement application, and also helped her file it with the Board. (Stephanie Lawlor direct testimony.)

3. Tyler Melanson is Stephanie's 20-year-old son, and is Beverly's oldest grandson. He is the second beneficiary listed in the Option B beneficiary section portion of Beverly's retirement application. (Exh. 10, sixth page.)

4. Miranda (Bengston) Milledge is Beverly's youngest surviving daughter, and is the third beneficiary listed in the Option B beneficiary information section of Beverly's retirement application. (*Id.*)⁴

5. Theresa Stewart was Beverly's close personal friend, and is the fourth beneficiary

⁴/ Beverly had another daughter who died in 1969, and a son from whom she was estranged. The son lived in residential homes as a child and became what Theresa described as a "career criminal" who was "in prison for burglaries, financial crimes and criminal trespass." Beverly had obtained a restraining order against him. (Theresa Stewart direct testimony.) She did not designate the son as one of her Option B beneficiaries.

listed in the Option B beneficiary information section of Beverly's retirement application. (*Id.*) Beverly had known Theresa Stewart since 1996, when both of them were working as cleaners at Franklin Pierce College in Rindge, New Hampshire. Later, Beverly and Theresa worked together as housekeepers at the Templeton Developmental Center. As of December 2013, Beverly was living in Theresa and John Stewart's home in Phillipston, Massachusetts (several miles west of Templeton) because she had been sick and needed a place to live. (Theresa Stewart direct testimony.)

Beverly's Retirement Application

6. Beverly decided to retire in early December 2013, on account of her poor health and her treating physician's advice that she cease working. Among other things, she suffered from cirrhosis of the liver, hypertension, and an abdominal aortic aneurysm, as well as fluid in the abdomen and legs. In addition, Beverly had exhausted her sick leave and family medical leave. Theresa had also suggested to Beverly that she retire in view of her health. (Stephanie Lawlor direct testimony; Theresa Stewart direct testimony.)

7. Theresa called the Board to obtain a retirement application for Beverly to complete. Beverly had difficulty doing so because some of the form's terminology and instructions confused her. She was especially perplexed by the choice of options for directing how much of her monthly retirement benefits would be distributed to her over her life;⁵ which persons she could designate as her beneficiaries to whom would be paid whatever remained in her retirement account when she

⁵/ These options (A, B and C) are summarized below at Finding 10.

died; and, if she designated such beneficiaries, what percentage of the amount remaining in the retirement account each one of them would receive. She did not understand how these options differed from each other, or which option would provide more money to her and her daughters and grandson. In addition, Beverly's hands shook, it was difficult for her to hold a pen and write, and she needed to nap frequently, problems that her daughter Stephanie believed were related to her health or to the medications she was taking, including Tramadol.⁶ (Theresa Stewart direct testimony; Stephanie Lawlor direct testimony.)

8. Stephanie and Theresa helped Beverly filled out her retirement application form in early December 2013. Theresa wrote in most of the identifying information that appears on the first page of the retirement application form, including the day on which Beverly wished to retire (December 6, 2013), the number of years she worked as a public employee (15), her current place of employment (Templeton Developmental Center), her position and title ("DSW1," meaning "Developmental Service Worker 1"), her retirement group (Group 2), and her contact information. Beverly signed at the bottom of this page. Theresa wrote the date as "12/6/13" to the right of Beverly's signature.⁷ Below the signature line were several boxes for Beverly to check in order to

⁶/ Tramadol is a narcotic-like pain reliever whose side effects can include drowsiness. *See, e.g.*, <https://www.drugs.com/tramadol.html>. Although the record is without medical or pharmacy records that would confirm what medications Beverly was taking at the time, I credit, as reliable, Stephanie Lawlor's testimony that Tramadol was one of them. Her testimony revealed her to be a good family historian; in addition, she was close to her mother, visited her often, and spoke with her frequently, including during early December 2013, and so had an opportunity to learn and observe what medications Beverly was taking at the time.

⁷/ The date appears to be in the same hand as the date that Theresa entered next to her witness signature on the option selection form (*see* Finding 13.) Theresa's handwritten "3" has distinguishing features—the bottom portion of the number "3" is noticeably larger than the top portion, and it curves in

confirm that “all statements made on this application” were made under the penalties of perjury; she understood that no changes could be made to retirement or to her option selection after her retirement date; and that she understood there were three retirement options, A, B and C, and she would be awarded Option B if she did not provide a properly-completed option selection form. Either Beverly or Theresa made the check-marks in these boxes, but at any rate, they were checked. (Exh. B10, first page; Theresa Stewart direct testimony.)

Beverly’s Option Selection Form

9. Beverly’s retirement application included an “option selection form” on which she was to choose how her retirement allowance would be paid to her during her life, and whether the amount remaining in her retirement account at her death would be paid to the beneficiary or beneficiaries she designated. (Exh. B10, fifth and sixth pages.) The option selection form had four sections:

Section 1 was entitled “Choose One Option,” meaning retirement option A, B or C. There was a box to the left of each option. The employee was directed to check the box next to the retirement option she chose.

Section 2 was entitled “Member Signature (required),” in which the employee acknowledged that she had “read and understood the provisions” of the retirement option he or she selected by signing on the line provided. At the right side of the line appeared the word “Date:” followed by the remainder of the line.

a wide arc below the line on which it is written; and, in the number 13, this lower curve in the “3” meets, or nearly meets, the number 1 to its left, while in other numbers with two digits, the individual numerals are distinctly apart from each other. (*Compare* the date at the bottom of Exh. B10, first page, with the date to the right of Theresa Stewart’s witness signature at the bottom of Exh. B10, fifth page.)

Section 3 was entitled “Witness Signature (required).” It included the instruction “If married, the witness must be your spouse. Witness CANNOT be a beneficiary unless the witness is your spouse.” (emphasis in original.) Section 3 provided lines for the person witnessing the member’s signature to sign his or her name, insert the date, and print his or her name and address. There was a large blank space below these lines.

Section 4 was entitled “Beneficiary(ies) Information (required if Option B is selected.” (parentheses in original.) This section included a four-column table with several rows, one for each Option B retirement account beneficiary the employee designated. For each such beneficiary, the information to be provided in the appropriate column was the name and address; whether the beneficiary was “primary” or “contingent” (by checking one or the other); the “proportion” of the amount remaining in the retiree’s account that each designated beneficiary was to receive (by checking either “all” or entering a percentage); and the beneficiary’s social security number and relationship to the retiree.

Choice of Retirement Option

10. Section 1 of Beverly’s option selection form described each of the three retirement options provided by M.G.L. c. 32, § 12. The options that the form listed and described were:

Option A, “No Survivor Benefits.” The form explained that under this option, the full retirement allowance is paid monthly to the retiree during her life; there are no survivor benefits; and upon the retiree’s death, her estate receives only a prorated amount for her monthly retirement allowance for the number of days she lived in the month of her death.

Option B, “Lump Sum Payment to Beneficiary in Event of Early Death.” The form explained that under this option, the retiree receives a reduced monthly allowance for life. If there is a remaining balance in the retirement account when the retiree dies (deposits and interest), it will be refunded to the retiree’s beneficiaries or estate in a lump sum. The retiree’s estate receives a prorated amount for her monthly retirement allowance for the number of days she lived in the month of her death. If the account is depleted at the time of the retiree’s death, there are no survivor benefits.

Option C: Joint Survivor Allowance. The form explained that under this option, the retiree receives a reduced monthly retirement allowance for life. When the retiree dies, her named beneficiary receives two-thirds of the retiree’s retirement allowance each month during his or her lifetime. The retiree’s estate receives a prorated amount for her monthly retirement allowance for the number of days she lived in the month of her death.

(Exh. B10 at sixth page.)

11. Beverly asked Theresa to help her complete the form. Beverly told both Stephanie and Theresa that she wanted her two daughters (Stephanie and Miranda) and her grandson (Tyler) to “have something.” Theresa understood from her conversations with Beverly that she was estranged from her son Chad, who was “always incarcerated,” and so he was “not in the picture” in terms of being one of Beverly’s potential retirement beneficiaries. Theresa and Beverly met together with a Board representative in Springfield, Massachusetts before Beverly began filling out the retirement application. Theresa spoke with a union representative about completing the retirement form, and then worked with Beverly to complete it and mail it to the Board in early December 2013. (Stephanie Lawlor direct testimony; Theresa Stewart direct testimony; Theresa Stewart appeal at 1.)

12. On the option selection form included in her retirement application, Beverly printed her name at the top of the first page, and selected Option B by writing an “X” in the box to the left of the option. (Exh. B10 at fifth page.)

Beverly’s Signature on the Option Selection Form

13. Section 2 of Beverly’s option selection form was entitled “Member Signature (required).” (Exh. B10 at fifth page, middle.) It directed Beverly to acknowledge that she had “read and understood the provisions” of the retirement option she selected by signing on the line provided. At the right side of the line appeared the word “Date:” followed by the remainder of the line. In the “member signature” section of the option selection form, Beverly signed the acknowledgment stating that she had read, and understood, the provisions of Option B, her retirement option choice.

Stephanie Lawlor recognized this signature at the time as her mother's handwriting. During her hearing testimony, she recognized this handwriting as similar, in terms of letter structure, to her mother's signature on another handwriting exemplar in the record—Exh. P3, an undated personal note Stephanie had received from Beverly several years earlier about being careful in taking her son to school on account of the weather. (Stephanie Lawlor direct testimony.)

14. There was a line to the right of the option selection form's signature line on which the date was to be entered, but Beverly did not do so at the time. (Exh. B10 at fifth page.)

Witness Signature

15. Section 3 of Beverly's option selection form was entitled "Member Signature (required)." (Exh. B10 at fifth page, bottom.) It directed that Beverly's signature be witnessed. It recited the following instruction: "If married, the witness must be your spouse. Witness CANNOT be a beneficiary unless the witness is your spouse." (*Id.*; upper case emphasis in original). This was followed by separate lines on which the witness was to sign his or her name and enter the date, and print his or her name and address. (*Id.*)

16. Theresa signed her name in the "witness signature" section of the option selection form's first page, and to the right of her signature she entered the date as "12-6-13." She then printed her name and address on the lines the form provided for doing so. (*Id.*)

17. Theresa was not the only person who signed as a witness. She had read the form's instruction that a beneficiary could not sign as a witness. Because Beverly had told her she would be listing her as a beneficiary, Theresa asked her husband, John B. Stewart, to sign as a witness as

well. Following the “witness signature” section of the option selection form’s first page, there was an approximately 1¾ inch blank bottom margin area. In this area were written, in the following order:

The handwritten number “3” at the left, followed by a large handwritten letter “X,” and then, in handwriting, “John B. Stewart.”

An address that was the same as the one Theresa Stewart provided, followed by a handwritten date, “12.6.13.”

(Exh. B10 at fifth page.)

18. Theresa Stewart was present when her husband signed the option selection form as a witness. John B. Stewart placed an “X” to the left of his signature and address. He did so because there was also an “X” between the preprinted words “witness signature” and Theresa Stewart’s signature. He also wrote the number “3” to the left of his signature, to make it clear that it was part of the witness signature section (section 3) of the form, and that he was signing as a witness. (Theresa Stewart direct testimony.) The handwritten date “12.6.13” appears to the right of John B. Stewart’s signature. Theresa saw him write it. The numbers in this date differ visibly from those Theresa used in dating her witness signature on the same page. (*See* Exh. B10 at 1.)

Retirement Beneficiary Designation

19. Section 4 of Beverly’s option selection form Section 4 was entitled “Beneficiary(ies) Information (required if Option B is selected.” (Exh. B10 at sixth page: parentheses in original.) Because Beverly had selected option B, she had to complete section 4 and designate her retirement allowance beneficiaries. This section included a four-column table in which the following

information was to be entered:

- (a) The beneficiary's name and address was to be entered in the left-hand column;
- (b) In the second column from the left, each beneficiary was to be designated, by checking the appropriate box, as either "primary" or "contingent;"
- (c) In the third column from the left, the "proportion" of the amount remaining in the retiree's account that each designated beneficiary was to receive was to be designated by checking either "all," or "%," and, if "%," was checked, by entering the percentage of the amount remaining in the retiree's account that the designated beneficiary was to receive; and
- (d) The beneficiary's social security number and relationship to the retiree was to be entered in the right-hand column.

(Id.)

20. Section 4 of the option selection form that Beverly submitted to the Board as part of her retirement application in December 2013 showed the following information:

- (a) In the left-hand column, Beverly printed the names and addresses of three beneficiaries—Stephanie Lawlor, Tyler Melanson, and Miranda Bengston—but not of the fourth beneficiary.
- (b) In the second column from the left, Beverly did not check off either "primary" or "contingent" for any of the three beneficiaries she named, or for the fourth, unnamed beneficiary.
- (c) In the third column from the left, where the "proportion" each beneficiary was to receive had to be shown, the box on the "percent" line was marked, and "25" was handwritten to the left of "%" for each of the name beneficiary, and for the unnamed beneficiary.
- (d) In the right-hand column were entered for each beneficiary, in the following order:
 - (i) The Social Security numbers of Stephanie, Tyler and the unnamed beneficiary, but not Miranda's Social Security number;
 - (ii) The relationship of each beneficiary to Beverly, thus: Stephanie Lawlor, "daughter;" Tyler Melanson "Grandson" (Capitalized G in original); Miranda Bengston, "daughter;" and the unnamed beneficiary, "Friend" (Capital F in original);

and

(iii) The birthday of each beneficiary, including that of the unnamed “Friend” beneficiary.

(Exh. B10.)⁸

21. Section 4 did not require, and did not have a preprinted line for, the signature of a witness to the beneficiary designation. (*Id.*)

22. Theresa and Beverly worked together to fill out the beneficiary information table in section 4 of the option selection form. Theresa wrote the names and addresses of Stephanie, Tyler and Miranda on the option selection form. In the right-hand column, Theresa wrote in the birth dates for these three beneficiaries, and the Social Security numbers for Stephanie and Tyler but not for Miranda, because she and Beverly did not know it. She and Beverly found the “proportion” column to be confusing in one respect, as neither of them understood what “primary” or “contingent” meant. Theresa understands now that a primary beneficiary is one who receives money from what remains in the retiree’s retirement account after the retiree dies, while a contingent beneficiary is one who receives money after a primary beneficiary dies. She did not know this in early December 2013, however, and for this reason she did not check either the “Primary” or “Contingent” box for any of the beneficiaries. However, Theresa wrote in the percentage that each beneficiary was to receive. Beverly had told her that each of the four beneficiaries was to receive 25 percent. For this reason,

⁸/ The Social Security numbers and birthdays on the copies of Beverly’s option selection forms in the record (Exhs. B10 and P1) were obscured to protect this information’s confidentiality. The Board did not assert that any of this information was incorrect, or that the Social Security number and birthday of the “Friend” beneficiary were not those of Theresa Stewart.

Theresa wrote “25” to the left of the preprinted “%” sign for Stephanie, Tyler, Miranda, and the fourth beneficiary—in other words, four equal 25 percent shares of whatever remained in Beverly’s retirement account, for a total distribution of 100 percent of this remaining amount. (Theresa Stewart direct testimony; Exh. B10 at sixth page.)

23. Theresa tried to persuade Beverly not to name her as a beneficiary, but Beverly insisted on doing so. Theresa did not believe it was right for her to write her name and address in the left-hand column as a beneficiary. On this point, she and Beverly reached a compromise—Beverly would write in Theresa’s name as the fourth designated beneficiary, and her address, and Theresa would write the information that appears in the right-hand column for the fourth beneficiary—her relationship to Beverly (“Friend”), her date of birth, and her Social Security number. The handwriting in which this information was written is visibly similar to the handwritten entries Theresa wrote in the same column for Stephanie, Tyler and Miranda. (*Id.*)

24. Beverly did not write in Theresa’s name and address at that time. When Beverly filed her retirement application in December 2013, four beneficiaries were listed on the beneficiary designation page, of whom three were named (Stephanie, Tyler and Miranda). Each of the four beneficiaries was to receive 25 percent of the amount remaining in Beverly’s retirement account when she died. Theresa’s name and address were not written on this page, but her other identifying information was written—“Friend,” date of birth and Social Security number, and the percentage of the amount remaining in Beverly’s retirement account that the beneficiary was to receive (25%). (Exh. B10 at sixth page.) In addition, Beverly had repeatedly and consistently told Stephanie, Miranda and Theresa that they, and Stephanie’s son Tyler, would each be listed on her retirement

application as a 25 percent beneficiary. (Stephanie Lawlor direct testimony; Theresa Stewart direct testimony; Miranda Bengston Milledge direct testimony.)

Board's February 18, 2014 Request for Information, and Beverly's Response

25. The Board approved Beverly's retirement application, and she retired effective December 16, 2013. (Exhs. B5 and B10.) It began sending retirement checks to Beverly in either February or March 2014. (Theresa Stewart direct testimony.)

26. On February 18, 2014, the Board sent a fax to Beverly at the Templeton Development Center requesting that she include additional information on her option selection form. (Exh. P1 at 1.) First, the Board's February 18, 2014 fax requested that Beverly date an unsigned signature. In December 2013, Beverly had signed her name in the "member signature" section of the option selection form (Exh. 10 at fifth page), but had not written or typed a date next to her signature (*see* Finding 14 above). The fax stated, "Please make sure you put a date next to your signature, and that date should match witness's date." Second, the Board's fax also requested that Beverly "provide Miranda's Social Security #." (Exh. P1 at 1.) Miranda's Social Security number was not provided in section 4 of the option selection form Beverly had submitted to the Board in early December, 2013. (*See* Finding 20(d)(i).)

27. Because Beverly was no longer working at Templeton, a switchboard employee who had picked up the fax from Templeton Development Center's fax machine (Barbara) telephoned Beverly to tell her about the fax, and told her she could come over to the Center and fax a response back to the Board. Beverly and Theresa both drove to the Center, on the same day, to read the

Board's fax, compose a reply, and then fax the reply to the Board with Barbara's assistance. (Theresa Stewart direct testimony.) Miranda, who had received a letter from the Board requesting the same information as did the fax, either met them at the Center or drove to the Center with Beverly and Theresa. Prior to doing so, Miranda had called the Board and spoken with a person named "Ray," who told her that the name of the fourth designated beneficiary had to be inserted on the beneficiary designation page. (Miranda Bengston Milledge direct testimony.)

28. Stephanie interpreted the Board's fax as directing that Beverly backdate her signature to 12-6-13, the date on which Theresa and John Stewart had signed as witnesses, as that was the actual date on which Beverly had signed and on which her signature was witnessed. (Stephanie Lawlor testimony in response to questions by the Administrative Magistrate.)

29. Beverly's reply to the Board's fax consisted of a copy of the Board's February 18, 2014 fax, and a copy of the option selection form and beneficiary designation page on which was written the information that the Board had requested in its February 14, 2018 fax and that "Ray" at the Board had said was needed as well when Miranda spoke to him by telephone. This included the date "12-6-13," to the right of her signature on the line Beverly had left blank when she filed her retirement application in December 2013, and, on the beneficiary information page, Miranda's Social Security number, and Theresa's name and address. (Exh. P1, at 2-3.)

30. As she had promised Theresa she would do in early December 2013, Beverly wrote in Theresa as her fourth beneficiary on the copy of the option selection form's beneficiary designation page she faxed back to the Board on February 18, 2014, as well as Theresa's address. She made several cross-outs in doing so. There is a cross-out before the handwritten name "Theresa

Stewart” that is approximately half as long as the word “Theresa.” On the line that follows, there are two cross-outs between the address number and the street name. Her handwriting appears somewhat shaky. That handwriting characteristic and the cross-outs aside, Beverly wrote Theresa’s name and address legibly. The writing appears to be Beverly’s, when compared visually with what she wrote elsewhere on the option selection form. She also wrote Theresa’s name and address in the correct place—to the left of the percentage (25 percent) and the identifying information for the fourth beneficiary (“Friend,” birth date and Social Security Number) that Theresa had written in before Beverly filed her retirement application in December 2013 (*see* Findings 22-24, above). (Exh. P1 at 3;*see also* Miranda Bengston Milledge direct testimony.)

31. Barbara, the Templeton Development Center employee who was assisting Beverly (*See* Finding 27), faxed Beverly’s reply to the Board at 2:01 p.m. on February 18, 2014. (Exh. P1 at 3; fax dates at top of each page.)

Board’s Decision, and Petitioners’ Appeals

32. Beverly died on October 3, 2016. (Exh. P7.)

33. On October 28, 2016, the Board notified Stephanie, Tyler, Miranda and Theresa that it had decided to distribute any funds in Beverly’s retirement account to her estate. It stated that although Beverly had selected Option B and had listed Stephanie, Tyler, Miranda and Theresa as beneficiaries, “she did not designate any of the beneficiaries as primary or contingent.” (Exh. P5.)

34. Theresa filed a timely appeal of the Board’s decision on November 9, 2016. Tyler, Miranda and Stephanie filed a timely appeal of the Board’s decision on the same date.

35. None of the petitioners disputes the validity of the others' designation as beneficiaries on Beverly's option selection form. None of them asserts entitlement to a greater percentage of the account that remained in Beverly's retirement account at her death than she assigned in the option selection form (25 percent), or asserts that the percentages were overstated or excessive as to any other designated beneficiary. The record includes no evidence that any person other than the petitioners claims to be a beneficiary of Beverly's retirement benefits, and none of the parties asserted that any other person had made such claim. None of the parties claims that Beverly was incompetent, or that undue influence was being exerted upon her, when she designated her beneficiaries on the option selection form in early December 2013, or when she supplied the information requested by the Board on February 18, 2014.

36. There is no evidence in the record that Beverly had, or currently has, an actively-administered estate. None of the petitioners claims to be the executor or administrator of Beverly's estate. There is no testimony or evidence that Beverly executed a will appointing any of them, or any other person, as executor or administrator of her estate, or that any of the petitioners, or any other person, applied to any court for, or that any court granted to him or her, letters of administration with respect to Beverly's estate.

Discussion

There are two main issues to be decided here: (1) whether Beverly Lawlor's option designation form was properly signed and witnessed; and (2) whether she made a valid designation of beneficiaries to whom the Board must distribute what remained of her retirement account, or

whether the designation was defective and left the Board no choice but to pay that remainder to Beverly's estate, per M.G.L. c. 32, § 11(2)(c). For the most part, I find the answer in the option designation form itself, and the signatures and information it provided when Beverly filed her retirement application with the Board in early December, 2013, even before she provided the additional information regarding the fourth beneficiary in response to the Board's request on February 18, 2014. That document, and the additional information that was faxed to the Board in February 2014, reveal, as well, Beverly's clear intent to designate each of the four petitioners as a 25 percent primary beneficiary of the amount remaining in her retirement account when she died. The testimony confirms what is shown by the option designation form and by the additional information Beverly faxed to the Board, per the Board's request, on February 18, 2014.

1. Designation of Retirement Account Beneficiaries

a. Statutory Requirement, and Board's "Prescribed Form"

M.G.L. c. 32 "establishes a method by which an employee can make the identity of his beneficiaries known to his retirement board." *Reis v. New Bedford Retirement System*, Docket No. CR-07-391, Decision, 2008 WL 7557364 (Mass. Div. of Admin. Law App., Mar. 12, 2008). M.G.L. c. 32, § 11(2)(c) provides in pertinent part that any member of a public employee retirement system:

upon his written notice on a prescribed form filed with the board prior to his death, may nominate, and from time to time change, one or more beneficiaries to receive in designated proportions, or in the alternative, any sum becoming payable under the provisions of this subdivision on his death, and/or any uncashed checks in payment of amounts to which he was entitled from the funds of the system of which he was a member, or any sum payable to his estate from said funds

Per the statute, a public employee who chooses a retirement option providing payment of what remains in her retirement allowance at her death must do so on a “prescribed form,” meaning a form prescribed for this purpose by a public employee retirement system. Beverly’s superannuation retirement application included a State Board of Retirement option selection form, on which she could select a retirement option and, having selected option B, in which she could designate her beneficiaries. It is undisputed that the option selection form in Beverly’s retirement application was a “prescribed form” for designating beneficiaries, per M.G.L. c. 32, § 11(2)(c). It is also undisputed that the form directed Beverly to choose a retirement option (at section 1), sign following her option choice (at section 2), have the form witnessed by one who was not a beneficiary, unless the beneficiary was a spouse (at section 3), and designate her beneficiaries if she chose retirement option B. (*See* Finding 9.)

Prior DALA decisions have held that the absence of a witness signature following the member’s signature is “fatal,” and renders the beneficiary designation “without effect,” as is failure to indicate the proportion of the remaining balance in the retirement account that a beneficiary is to receive. *See, e.g., Fritz-Elliott v. State Bd. of Retirement*, Docket No. CR-14-368, Decision at 5 (Mass. Div. of Admin. Law App., Apr. 22, 2016). If the beneficiary designation is without effect due to one of these fatal flaws, the remainder of the retirement account is paid to the deceased retiree’s “legal representatives,” per M.G.L. c. 32, § 11(2)(c), as it would be if there was no beneficiary of record. *Id.* The State Board of Retirement has construed “legal representatives” to mean the executor or administrator of the deceased retiree’s estate. *Id.*

Neither party has cited any decision regarding the effect of other omissions, such as a missing

date next to the member's signature, or the omission of a beneficiary's name while providing his or her Social Security number, or whether adding such missing information later at the Board's request cures the omission.

b. Purpose of "Prescribed Form" for Designating Beneficiaries, and Resolving Disputes as to Beneficiary Designation

The primary purpose of the prescribed form is to help meet the employee's "core expectation" that the beneficiaries she designated will be the persons the retirement system actually pays after she dies. *Reis*; 2008 WL 7557364 at *4. A second purpose is to facilitate ease of retirement system administration—specifically, the prescribed form for designating beneficiaries helps the retirement board determine efficiently, after the retiree dies, who her beneficiaries are, and it also provides the board with the legal basis for paying those beneficiaries to the exclusion of others who may claim what remains in the retirement account. As *Reis* explained:

Use of a "prescribed form" provides a readily available and clear way for the retiree to inform his retirement board of the identity of his beneficiary. It also narrows the inquiry the board must make after the death of a retiree and eases the administration of the retirement benefits system. The board need not look far and wide to determine a retiree's intentions. Rather, the board may review its own files to look for the latest prescribed form designating a beneficiary to determine to whom to pay benefits. Payment to the correct beneficiary is particularly important because the statute provides that payment made by a board to a retiree's "beneficiary or beneficiaries of record surviving at his death shall bar the recovery of such payment by any other person."

Id., quoting M.G.L. c. 32, § 11(2)(c).

Using the prescribed form for designating a public employee's beneficiaries does not necessarily preclude disputes over who the correct beneficiary is—for example, in *Reis*, where there

were several beneficiary designations on file with the retirement board that had been made on forms prescribed by the retirement board. However, *Reis* enunciated several principles governing the resolution of such disputes, in particular those in which the deceased retiree's "apparent wishes" conflicted with the retirement board's "ease of administration." Several are relevant here:

(1) "The decisions tend to favor results that most likely meet the retiree's actual expectations over results consistent with administrative ease." *Reis*; 2008 WL 7557364 at *4;

(2) A beneficiary designation on file with the retirement board is not given effect if it is "demonstrably inconsistent with the retiree's intentions." *Id.*; 2008 WL 7557364 at *5; and

(3) "[W]hen a beneficiary designation is on file, although not quite in the form a board expected, it may be given effect if it 'substantially complies' with the requirements of the state retirement system." *Id.*, citing *Smith v. Contributory Retirement Appeal Board*, Superior Court No. 05-3364, Memorandum of Decision and Order on Plaintiff's Motion for Judgment on the Pleadings (Mass., Suffolk Super. Ct., May 2, 2007).

2. *Validity of Beverly's Option Selection Form and Designation of Beneficiaries*

a. *Option Selection Page*

i. *Member's Signature*

At section 1 of the option selection form, Beverly placed a large "X" to the left of retirement Option B, and in section 2, she signed the acknowledgment but did not write in or type a date next to her signature. The Board views this as a defect that renders her designation of beneficiaries

defective. I do not agree.

The option selection form did not require that the signature required in section 2 be dated. Section 2 of the option selection form was entitled “Member Signature (required).” It was not entitled “Member Signature and Date (required).” Section 2 instructed, in other words, that the member’s signature was required, but it did not state that the signature had to be dated. Beverly signed at section 2 where the form indicated, but did not date it.

Beverly may have simply been doing what the instructions told her to do, or she may have been distracted, but none of the witnesses had an explanation, and Beverly left none. Whatever the reason was is, however, of no legal consequence, and neither is her omission of a date next to her signature in section 2. Without question, Beverly signed in section 2, which the option selection form required her to do. M.G.L. c. 32, § 11(2)(c) recites no requirement that the prescribed form for selecting a retirement option and designating retirement beneficiaries be dated, or signed, which left it to the retirement board to decide what the employee filing the prescribed form needed to do. Here, the board’s option selection form, which was the Board’s version of the prescribed form required by the statute, directed the employee to acknowledge that she had read and understood the retirement option she selected, but it did not state that her signature had to be dated, or that failing to do so would void the form. Although the word “Date” on the signature line might have, or should have, signaled the need to date the signature at section 2, this is not enough to transform the word “Date” into a requirement that the employee’s signature in section 2 be dated. Neither does an argument that an undated signature left it unclear when the employee signed and acknowledged her retirement option choice. There were reliable dates elsewhere in Beverly’s retirement application form of

which the option selection form was a part—for example, on the W-4P tax federal income tax form included in the retirement application that immediately preceded (in sequence of documents) the option selection form. (Exh. 10, fourth page.) The Board might have also looked to the date on which the signature in section 2 of the option selection form was witnessed as the signature date. As I conclude below, Beverly’s signature was witnessed validly by one of the two witnesses who signed in section 3, and the date of that witness’s signature, December 6, 2013, was written to the right of the witness signature.

In fact, the board did not treat the omission as fatal before Beverly died. After Beverly had filed her retirement application, the Board had approved it and she had retired, the Board notified her by fax, on February 18, 2014, that she needed to date her signature, and that the date should be the witness’s date, which was December 6, 2013. (Finding 26.) Beverly did so and, on February 18, 2014, faxed a copy of the option selection form with the date “12-6-13” to the right of her signature. (Findings 29-31.) The Board’s February 28, 2014 fax shows that it treated the missing date next to Beverly’s signature in section 2 as an inadvertent, curable omission. Beverly cured it by backdating her signature to the day on which her signature had been witnessed, as the Board directed. I infer in the circumstances that the Board understood the dated, valid witness signature (meaning John Stewart’s) as representing that Beverly had signed on that date, and that the witness had seen her do so. In backdating her signature as the Board directed, Beverly confirmed what John Stewart’s witness signature represented. In directing Beverly to do this, the Board chose a course of action that was most likely to meet her actual expectations in selecting option B and designating beneficiaries, consistent with the ease of administering the option B distribution to her designated

beneficiaries that M.G.L. c. 32, § 11(2)(c) contemplated. *See Reis*; 2008 WL 7557364 at *4 (discussed above at 21-22).

Beverly's signature was backdated, at the Board's direction, well before she died and, thus, before the Board was required to distribute whatever remained of Beverly's retirement account. She faxed the form with the backdated signature to the Board on February 18, 2014. (Finding 29.) Beverly died two years and eight months later on October 3, 2016. There is no evidence that the Board changed its opinion regarding the sufficiency of the backdated signature during this two year and eight month period, or, if it did so, that it notified Beverly of its changed opinion. While it was not obligated to contact Beverly regarding the sufficiency of her option selection form, *see Fritz-Elliott*; Decision at 5, it had elected to do so earlier when it sent Beverly its February 18, 2014 fax. Proceeding in that manner was consistent with assuring that the Board's distribution of any retirement account balance upon the retiree's death met Beverly's expectation that the balance would be distributed to Stephanie, Tyler, Miranda and Theresa in the proportion Beverly had chosen (25 percent to each). For that reason, its failure to speak further after Beverly faxed her response on February 18, 2014 is some evidence that the Board found her response sufficient to meet its concerns regarding her options selection form.

For all of these reasons, I conclude that the omission of a date next to Beverly's signature in section 2 of the option selection form was not "fatal" to her choice of retirement option B or to her designation of beneficiaries in section 4, and that the omission was cured to the Board's satisfaction.

ii. Witness Signature

The Board contends that Beverly's option selection form was unwitnessed and therefore defective. It argues, more or less, thus: (1) the first witness who signed (Theresa) was ineligible to witness Beverly's signature because she was a designated beneficiary: period, end of story, no need to look at the whoever else might have signed as a witness; or (2) even if John T. Stewart also signed as a purported witness, he either did so at a later date, despite the date to the right of his signature, or else it is unclear why he signed, since he did not sign on the printed line where Theresa signed, and she was disqualified from doing so; and (3) determining that John Stewart's signature sufficed for witnessing purposes would provide a form of equitable relief from the requirements of the Board's option selection form that DALA is without authority to grant.

The argument, and the Board's conclusion, are without factual or legal support.

Section 3 of the option selection form required that only one witness sign below Beverly's signature on the option selection form. It included no instruction that the presence of more than one witness signature would render the form unwitnessed.

There were, in fact, two witness signatures, both dated—those of Theresa Stewart and her husband, John T. Stewart. Although Theresa could not be both a beneficiary and a witness, her husband was not disqualified from signing as a witness because he was not designated as a beneficiary. It is true that he added his witness signature below Theresa's, but it is sufficiently clear from where he signed that he did so within section 3. He did not sign in a different section of the form; the signature was added in a large space below the printed signature line that is viewed

reasonably as a part of section 3 that could be used as space for an additional witness signature. John Stewart added markings to show that he intended to sign in section 3 of the form—by writing “3” to the left of his signature, and by placing an “X” before his signature, as there was an “X” before Theresa’s signature. (Findings 17-18.) The date that John T. Stewart wrote to the right of his signature, “12-6-13,” was the same date Theresa had written, but his date is in a visibly different handwriting, suggesting strongly that Theresa did not write that date.

The testimony confirms that John Stewart signed as a witness on December 6, 2013. Although the Board argues that the testimony on this point was self-serving, I do not rely upon the testimony in finding that John Stewart signed as a witness to Beverly’s signature and did so on the date next to his signature, December 6, 2013. I rely upon the form instead. This is what the form shows or, at least, what the copies in the record show, and the Board offered no different versions of the form. The testimony does no more than confirm what the form shows, and innuendo alone (for example, that John Stewart did not actually witness Beverly’s signature when she wrote it on December 6, 2013, and instead added his signature later) is insufficient to impeach the form and what is written on it. The Board offered no evidence that John Stewart’s signature was added at a later date, and it called no witnesses. Theresa testified that her husband, who was present when she signed as a witness, did so at that time as well because she realized she could not be both a witness and a beneficiary. Her testimony was unshaken by cross-examination.

In short, there was no absence of a valid witness signature on the option selection form that is “fatal” to Beverly’s choice of option B, or to her option B beneficiary designation, per *Fritz-Elliott*. (See above at 22.) Instead, the form had a single valid, dated and contemporaneous witness signature

(John Stewart's), which was all the form required, and as a result it is of no legal consequence that Theresa's signature was ineffective on account of her designation as a beneficiary. Because John Stewart's witness signature was valid, Theresa's disqualification from witnessing Beverly's signature rendered her own signature mere surplusage, not a flaw that vitiates the form despite the presence of a second, valid witness signature.

Focusing upon John Stewart's valid witness signature does no more than recognize that the form had two witness signatures, only one of which was valid, and that a single valid signature was all the form required. It does not rewrite what is on the form, and works no "equitable remedy" to remedy a fatal omission that DALA lacks authority to provide, as the Board argued. (*See, e.g.*, Board's prehearing mem. at 9.)

I conclude, therefore, that the option selection form was properly witnessed.

b. Beneficiary Designation Page

As it was submitted to the Board in early December 2013, the beneficiary designation page of Beverly's option selection form did not have printed on it the name and address of a fourth beneficiary. However, the intended percentage that beneficiary was to receive was stated clearly (25 percent, the same as the percentage designated for each of the other beneficiaries), and two key identification factors were supplied as well—the fourth beneficiary's Social Security number and birth date had been written in the right-hand column of the beneficiary table, in section 4.

The Board did not reject Beverly's beneficiary designation before she retired on December 16, 2013, and its February 18, 2014 fax did not ask that Beverly confirm who the fourth beneficiary

was. The fax requested that Beverly backdate her signature in section 2 of the option selection form and provide Miranda's social security number, but it did not request that she print Theresa's name and address in the left-hand column of section 4 where the beneficiaries were to be listed. (*See* Exh. P1, first page.) However, the person to whom Miranda spoke when she called the Board from Templeton Development Center on February 18, 2014 told her that the name of the fourth designated beneficiary should be written on the beneficiary designation page. Beverly added Theresa's name and address, as well as Miranda's Social Security number, before faxing her reply to the Board's information request later that day. (Findings 27 and 30.)

By supplying this information, Beverly neither added nor changed a designated beneficiary. She had indicated clearly on the form she submitted with her retirement application in December 2013 that she intended to designate four beneficiaries, each with a 25 percent share of the retirement account remaining when she died, and she had identified the fourth beneficiary albeit without printing Theresa's name and address. The information she did include was individual to Theresa—her Social Security number, and her date of birth. There were a number of ways by which the Board could have confirmed that Theresa was the person to whom the Social Security number was issued, and that the birth date shown in section 4 of the option selection form matched that of the Social Security number holder. Whether it did so or not, any lingering question about the fourth beneficiary's identity was resolved on February 18, 2014, when Beverly's reply fax confirmed that it was Theresa.

Theresa's testimony confirms Beverly's intent to designate her as the fourth beneficiary, which is what the information in section 4 of the option selection form shows. It also explains

reasonably why her designation was written by two different persons. Theresa wrote in her Social Security number and birth date, but as the named beneficiary she was uncomfortable writing in her name and address, and for that reason Beverly agreed to write Theresa's name and address on the form herself. (Finding 23.) The explanation also confirms that distributing 25 percent of what remained in Beverly's retirement account when she died to Theresa would correspond with Beverly's expectation that each of her four beneficiaries would receive that percentage.

I note that the Board chose to have the omission of Theresa's name and address corrected by having Beverly add this information, rather than to reject Beverly's designation of a fourth beneficiary, or her entire beneficiary designation. The addition of Theresa's name and address to the left of her designated percentage, Social Security number, and birth date occurred well in advance of Beverly's death. It should have cured any confusion there may have been on the Board's part, before Beverly died, as to who the "Friend" beneficiary with an identified Social Security number and birth date was. There was no further request by the Board to Beverly (or to any of the designated beneficiaries) for further information or clarification regarding the fourth beneficiary after Beverly sent her reply fax to the Board on February 18, 2014.

Because the Board had this information well in advance of Beverly's death, it could hardly have been confused as to who the fourth designated beneficiary was when Beverly died. It appears to argue that even with this information, the cross-outs and different handwriting used to designate Theresa as a beneficiary left it uncertain whether Beverly had actually designated Theresa as the fourth beneficiary. However, Theresa's name and address are legible even with the cross-outs, and despite whatever distraction the different handwriting on the form may have caused. The beneficiary

designation page recited no requirement that the handwriting on the form be uniform, or that it be printed without cross-outs or other corrections. It also did not prohibit assistance to the employee in filling out the form—for example, when the employee was confused by the form’s instructions and her hand shook on account of health-related issues, two circumstances that were present here.

The multiple handwriting and cross-outs may have raised a concern on the Board’s part that some sort of irregularity had attended Theresa’s designation as a beneficiary. The Board’s concern is laudable, and nothing precluded it from confirming that Beverly intended distribution of the retirement account remainder to each of the persons listed as beneficiaries on the prescribed beneficiary designation form, including her friend Theresa. However, neither the option selection form nor M.G.L. c. 32, § 11(2)(c) directed the Board to do more than confirm that the beneficiary designation and distribution percentages shown on the form were what the retiring employee intended, even if the form was not filled out with the orderliness that the Board preferred. It did so by asking, on February 18, 2014, that Beverly supply Miranda’s Social Security number and Theresa’s name and address, even though her Social Security number and birth date had been supplied. Beverly’s submission of this information by reply fax to the Board on the same day left no uncertainty as to who her beneficiaries were, and what proportion of her remaining retirement account each was to receive.

As a result, Beverly’s beneficiary designation showed clearly her expectation that what remained in her retirement account when she died would be distributed to Stephanie, Tyler, Miranda and Theresa in equal shares, 25 percent to each. No further clarification was needed for the Board to give effect to Beverly’s expectation. None was needed for the Board to distribute the retirement

account remainder as shown on the beneficiary designation form, to the exclusion of others who might claim it. As the Board itself points out, and as *Friz-Elliott* held, it is the responsibility of the retirement system member, not the retirement board, to ensure that a form designating his or her retirement beneficiaries is complete and accurate, and the board owes no general fiduciary duty to retirement system members other than with respect to the investment of the board's funds. *See, e.g., Friz-Elliott*; Decision at 7. The beneficiary designation on file with the Board would have been properly given no effect if it was "demonstrably inconsistent" with Beverly's expectation," per *Reis*, or if her selection of retirement option B was void for lack of a valid witness signature or because the beneficiary designation was invalid, per *Fritz-Elliott*. There was no proof of either circumstance here, however.

There remains the Board's contention that Beverly's beneficiary designation fails because she did not check whether Stephanie, Tyler, Miranda and Theresa were to be primary or contingent beneficiaries, and did not indicate the proportion of the remaining balance in her retirement account that each beneficiary was to receive. This contention is without merit. Beverly specified that each of the four beneficiaries she designated was to receive 25 percent of what remained in her remaining retirement account upon her death. That percentage was specified for each of the named beneficiaries, and also for the fourth beneficiary who was identified initially by Social Security number and birth date, and then later, at the Board's request and well before Beverly died, by name and address. That disposed of the entire remaining retirement account balance, leaving nothing to be distributed to other persons who might receive a distribution when a designated beneficiary died. Each of the four designated beneficiaries was therefore a primary beneficiary, even though Beverly

did not so specify by checking the box provided in section 4 of her option selection form.

Conclusion

Beverly Lawlor's option designation form was properly signed and witnessed. She made, in the beneficiary designation portion of that form (at section 4), a valid designation of primary beneficiaries to whom the Board must distribute what remained of her retirement account when she died, together with accrued interest and any other amounts since added, in the proportions the beneficiary designation shows (25 percent to each designated beneficiary).

Disposition

For the reasons set forth above:

(1) The Board's decision to distribute the amount remaining in Beverly Lawlor's retirement account when she died to her estate, rather than to the beneficiaries she designated in her option selection form, is vacated; and

(2) The Board is directed to distribute that amount, together with any amounts added to Beverly Lawlor's retirement account since her death, including interest accrued, to the petitioners as her designated beneficiaries, in the proportion she specified in her option selection form (25 percent to each of them).

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: January 25, 2019