

COMMONWEALTH OF MASSACHUSETTS

Middlesex. ss.

Division of Administrative Law Appeals

Lorraine Magarian,
Petitioner

v.

Docket No. CR-22-0088
Dated: December 22, 2023

Lexington Retirement Board,
Respondent

Appearance for Petitioner:

Robert H. D'Auria, Esq.
133 Great Road, Suite 101
Bedford, MA 01730-1037

Appearance for Respondent

Joseph R. Kenyon
Law Offices of Michael Sacco, P.C.
P.O. Box 479
Southampton, MA 01073-1324

Administrative Magistrate:

James P. Rooney

Summary of decision

When member has not repaid all of the overpayment he received by the time of his death and was retired under Option B, the remaining funds in his annuity account must be paid to the option B beneficiary. The retirement board may not seize it to pay off some of the member's remaining debt.

DECISION

Lorraine Magarian appeals the February 11, 2022 decision of the Lexington Retirement Board to retain the money left in Robert Magarian's annuity account at the time of his death in order to help recover the debt he owed the retirement system, rather than paying it to her as his Option B beneficiary. The parties filed cross motions for summary decision. The case will be decided on the documents pursuant to 801 CMR 1.01 (10)(c) in lieu of conducting an evidentiary hearing. I marked 24 exhibits into evidence. I marked the Petitioner's Appeal "A," the Board's Motion for Summary Decision "B," and the Petitioner's Cross Motion for Summary Decision "C." A list of exhibits appears on the last page of this decision.

Findings of Fact

Based on the exhibits and reasonable inferences from them, I make the following findings of fact:

1. Robert Magarian worked for the Town of Lexington Department of Public Works from August 17, 1981 to March 25, 2016. Mr. Margarian suffered a rotator cuff injury to his right shoulder in July 2015 that required surgery, after which he was prescribed narcotic pain relievers. He retired for superannuation under Option B effective December 31, 2016. Mr. Magarian settled his worker's compensation case by lump sum settlement on September 12, 2017. He was granted accidental disability retirement in August 2017 under Option B. In July 2021 he had a craniotomy and was diagnosed with Non-Hodgkin's Lymphoma that resulted in his death on January 8, 2022. (Exs. 2, 6, 7, 8, 10, 15, 16, 17.)
2. On October 11, 1985, Mr. Magarian named his wife, Lorraine Magarian, as his beneficiary under M.G.L. c. 32, § 11. (Ex. 14.)
3. By letter of June 19, 2018, Mr. Magarian was notified that the retirement board had mistakenly underpaid his accidental disability retirement benefit. He was notified that his next retirement check in the amount of \$7,197.76 would include a retroactive amount of \$3,665.55 to satisfy the underpayment, after which the gross amount of future payments would be \$3,532.21. (Ex. 17.)
4. As a result of a data entry error by a retirement board employee Mr. Magarian's retirement benefit was overpaid from July 2018 to October 2020 in the amount of \$102,635.40 because the board continued to send him monthly checks for more than

\$7,000 each. The board demanded that the overpayment be repaid immediately.

(Ex. 18.)

5. On January 28, 2021, the retirement board voted to withhold Mr. Magarian's monthly gross retirement allowance, minus health and dental premiums, to recover the \$102,635.40 overpayment. The retirement board denied Mr. Magarian's request to waive the overpayment under the provisions of M.G.L. c. 32, § 20(5)(c)(3) because Mr. Magarian knew or should have known he was being paid in error because he had been notified of what his monthly retirement allowance would be by the letter of June 19, 2018. (Exs. 17, 19.)
6. Mr. Magarian, through counsel, did not appeal the retirement board's decision to withhold his monthly retirement allowance. (Ex. 20.)
7. The retirement board brought a civil action against Robert Magarian in February 2021, in Middlesex County Superior Court, No. 2181CV00299 seeking a real estate attachment to satisfy the overpayment. The motion for a real estate attachment was denied in September 2021. (Ex. 11.)
8. After Robert Magarian's death in January 2022, the case was recaptioned *Retirement Board, Lexington vs. Lorraine Magarian, Personal Representative of the Estate of Robert Magarian*. The case was dismissed without prejudice by agreement of the parties on April 25, 2023 to "proceed before the Division of Administrative Law Appeals." (Ex. 23.)
9. At the time of Mr. Magarian's death on January 8, 2022, the retirement board had withheld a total of \$36,514.58 from his monthly retirement allowance, leaving a balance due of \$66,120.82. (Exs. 1, 21.)

10. On January 27, 2022, the retirement board voted to retain the \$59,286.24 remaining in Mr. Magarian's annuity savings account and apply it towards the \$66,120.82 owed. By letter of February 11, 2022 the retirement board notified Lorraine Magarian of its intent to retain the annuity savings account balance rather than pay it to her as Mr. Magarian's Option B beneficiary. (Ex. 1)
11. Mrs. Magarian filed a timely appeal on February 25, 2022 of the retirement board's decision. ("A.")

Discussion

The Lexington Retirement Board shall pay to Lorraine Magarian the actuarial equivalent of the value of Robert Magarian's accumulated deductions at the time of his death in accordance with the provisions of M.G.L. c. 32, § 12(2)(d) as his Option B beneficiary.

It is undisputed that Mr. Magarian's monthly retirement benefit was overpaid from July 1, 2018 to November 30, 2020 as a result of the Retirement Board's calculation error. Under the provisions of M.G.L. c. 32, § 20(5)(c)(2) the Board was required to correct the error and adjust future payments so that the member or beneficiary receives the payment to which he is entitled. The Board began to recoup the overpayment by withholding Mr. Magarian's monthly gross retirement allowance, minus health and dental premiums. Mr. Magarian did not appeal the Board's action, apparently acknowledging that he had been overpaid and that the Board had the authority to recoup the overpayment.

The unpaid portion of this debt was not extinguished by Mr. Magarian's death. The Retirement Board may have a claim against Mr. Magarian's estate. However, while 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.

The Board claims such other under case law. But the decisions that the Board cites do not directly address whether a retirement board has the authority to seize money owed to an Option B beneficiary to satisfy a member's debt, nor do they provide any analysis of the statute to identify any provision of it that would grant boards such power. M.G.L. c. 32, § 19 allows a member's retirement benefits to be attached under limited circumstances but it does not give boards power to attach money owed to an Option B beneficiary to satisfy a member's debt.

As Mr. Magarian's Option B beneficiary, Lorraine Magarian expected to receive a "cash refund life annuity...to be paid in one sum" under the provisions of M.G.L. c. 32, § 12(2)(d) if he pre-deceased her. At the time of Mr. Magarian's death, the Board had recouped \$36,514.58 of the overpayment by withholding his monthly pension benefit, leaving a balance due of \$66,120.88. \$59,286.24 remained in his annuity savings account. At the time Mr. Magarian named his wife as his Option B beneficiary, his expectation was that if he died before receiving annuity payments in an amount equal to the actuarial equivalent of his accumulated deductions, the excess would be paid to his surviving beneficiary.

This was not simply Mr. Magarian's expectation, however. The retirement statute provides that if a member who has elected Option B "dies before receiving in annuity payments a total amount equal to such value of such accumulated total deductions, the excess of such value over such total amount shall be paid in one sum in accordance with the provisions of subdivision (2) of section eleven to his surviving beneficiary." M.G.L. c. 32, § 12(2)(d). Mr. Magarian accepted a lower monthly benefit payment than if he had picked Option A, which has no remainder provision, on the promise that if any annuity funds remained at the time of his death,

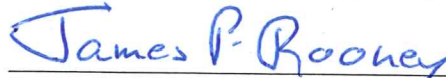
his beneficiary would receive them. Section 11(2) adds that the payment is to be made “[u]pon receipt by the board of proper proof of the death.” That is, the beneficiary is to be paid any remaining money in the annuity account directly by the retirement board upon proof of the member’s death. These funds do not go to the member’s estate or pass through probate, nor is there any provision that allows a retirement board, which is essentially holding these funds in trust for the beneficiary, to take some or all of these funds to pay an unpaid debt of the deceased member.

Additionally, M.G.L. c. 32, § 25(5) provides that membership in the retirement system is a contractual relationship in which members “who are or may be retired for superannuation are entitled to rights and benefits, and no amendments or alterations shall be made that will deprive any such member... of their pension rights or benefits...” In *Opinion of the Justices*, 364 Mass. 847, 860 (1973), the Supreme Judicial Court held that the contract “is formed when a person becomes a member by entering the employment, and he is entitled to have the level or rights and benefits then in force preserved in substance in his favor without modifications downwards.” Section 25(5) creates “something less than a full contractual relationship, but one that protects the ‘core’ of a member’s ‘reasonable expectations’ of ‘vested pension rights.’” *Herrick v. Essex Regional Retirement Board*, 465 Mass. 801, 806 (2013), quoting *State Board of Retirement v. Woodward*, 446 Mass. 698, 706 (2006), quoting *Opinion of the Justices*, above, at 856-862.

At the core of Robert and Lorraine’s reasonable expectations in the retirement system was that Lorraine Magarian would receive a cash refund life annuity in the amount of the “actuarial equivalent of the value of [Robert Magarian’s] accumulated deductions” if he predeceased her. The retirement statute so provides, and because the funds are not part of Mr. Magarian’s estate, the Board may not reach them to pay off a portion of his remaining debt. The

Board shall pay the full remaining annuity savings account balance to Lorraine Magarian and, in so doing, ensure that the beneficiary receives the actuarial equivalent of the benefit she would have received had the Board not retained the remaining annuity.

DIVISION OF ADMINISTRATIVE LAW APPEALS



James P. Rooney
Acting Chief Administrative Magistrate

EXHIBITS

1. Letter from Law Offices of Michael Sacco dated February 11, 2022
2. Affidavit of Robert Magarian
3. Affidavit of Lorraine Magarian
4. Excerpt from Lowell General Hospital Records
5. Affidavit of Leonard Nason
6. Death Certificate
7. PERAC letter to Lexington Retirement Board dated June 21, 2018
8. Letter Re: superannuation retirement allowance dated January 31, 2017
9. A. Lahey/Danvers Medical Records, 8/7/16 – 8/14/2016
B. 9/25/2018, 9/30/2018
C. Bridgewell 6/6/2017, 5/6/2019, 5/3/2019, 5/3/2021
D. Dr. Margery Walentuk
10. Lump Sum Settlement Agreement, approved 9/12/2017
11. Docket for *Lexington Retirement Board v. Robert Magarian*, Middlesex Superior Court, Docket no. 2181CV00299
12. Letter from Attorney Sacco, 9/11/2017
13. New Entrant Enrollment Blank
14. Change of Beneficiary Blank
15. Voluntary Superannuation Retirement application
16. Disability Transmittal to the Commission
17. Underpayment of disability pension, 6/19/18
18. Notice of Overpayment, 11/17/20
19. Atty. Sacco to Atty. Nason, Notice of Decision, 2/2/21
20. Atty Nason to Atty Sacco, 2/9/21
21. Balance of Overpayment as of 1/8/22
22. Docket, *In the matter of: Magarian, Robert Anthony, MI22P1369A*
23. Docket, *Retirement Board, Lexington vs. Lorraine Magarian, Personal Representative Of the Estate of Robert Magarian, 2181CV00299*
24. *Claire Maslauskas v. CRAB and State Bd. Of Retirement*, Superior Ct. No. 16-0993-C