

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Remarriage Penalty

DATE: February 23, 2015

This memorandum supersedes the portion of PERAC Memorandum #34/2000 pertaining to the Elimination of the Remarriage Penalty. Specifically, this memorandum supersedes the sentence: “This does not apply to any benefits which were terminated or reduced prior to July 1, 2000.”

Under certain circumstances, G.L. c. 32, §§ 9, 12(2)(d), 100 and 101 provide death benefits for the spouse of a deceased member. Prior to July 1, 2000, those sections of Chapter 32 contained provisions wherein the benefits terminated upon the remarriage of the spouse. These provisions were known collectively as the “remarriage penalty.” Effective July 1, 2000, the Legislature repealed the remarriage penalty (Chapter 159 of the Acts of 2000). Thereafter, on August 15, 2000, PERAC issued Memorandum #34/2000 which stated that the elimination of the remarriage penalty did not apply to any benefits that were terminated prior to July 1, 2000.

A 2014 Superior Court decision, however, has changed that interpretation.) See *Boston Retirement Board v. CRAB and Edith Carell*, Superior Court, C.A. No. 2013-02476 (attached). Factually, the matter concerned Edith Carell (“Ms. Carell”), the widow of a Boston Police Officer who died in 1968 from heart disease. Following his death, Ms. Carell received death benefits pursuant to G.L. c. 32, § 9. In 1978, Ms. Carell remarried and her death benefit was terminated in accordance with the remarriage penalty in force at that time. Although the Legislature repealed the remarriage penalty effective July 1, 2000, the repeal did not appear to apply to beneficiaries such as Ms. Carell, because her benefit had terminated prior to that date. Ms. Carell claimed that the repeal of the remarriage penalty should include beneficiaries like herself, who remarried prior to July 1, 2000, and reapplied for those benefits in 2012.

Following a Boston Retirement Board decision denying Ms. Carell’s reapplication for benefits, Ms. Carell filed an appeal with the Contributory Retirement Appeal Board (“CRAB”), who assigned the matter to the Division of Administrative Law Appeals (“DALA”). After a hearing, DALA affirmed the Board’s denial, and Ms. Carell filed an appeal of that decision with CRAB. On April 3, 2013, CRAB issued its decision, reversing the decisions of the Board and DALA,



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and finding that the repeal of the remarriage penalty extended to beneficiaries who remarried prior to July 1, 2000. Following that decision, the Board filed an appeal with the Superior Court, essentially arguing that CRAB gave retroactive operation to the repeal of the remarriage penalty when the Legislature had intended it to apply only prospectively to those who had not remarried prior to July 1, 2000.

On February 7, 2014, the Superior Court issued its decision, affirming CRAB's decision. The Court disagreed with the Board's contention that CRAB's award of death benefits to surviving spouses who remarried prior to July 1, 2000 constituted retroactive application of death benefits. The Court held that the CRAB decision did not mandate retroactive application, because Ms. Carell was not entitled to benefits from the date of her remarriage in 1978 to the present but, rather, was entitled to benefits going forward from the date of her reapplication for benefits. The Court agreed with CRAB's interpretation, which it referred to this as "prospective application."

Pursuant to the *Carell* decision, upon proper reapplication, all boards must grant a death benefit to any deceased member's surviving spouse who remarried prior to July 1, 2000 and had his or her death benefit terminated due to the remarriage penalty. Such death benefit shall be awarded prospectively only, from the date of reapplication.

Any applicable surviving spouse who claims to have reapplied for those death benefits after July 1, 2000, shall be required to prove the date and validity of such reapplication. Upon such proof, and once the amount of the death benefit owed the surviving spouse has been determined, interest on that amount should be calculated and paid as part of the death benefit from the date of reapplication. The rate adopted by a board must be applied consistently. Please refer to PERAC Memorandum #32/2013 for additional information regarding applicable interest rates.¹

If you have any questions, please feel free to contact this office.

Att.

¹ Neither chapter 32 nor the decision in *Herrick v. Essex Regional Retirement Board* specifies the interest rate to be applied in these adjustments. However, when an active member's funds are held by a retirement board, the member's contributions earn regular interest as determined by the provisions of G.L. c. 32, § 22(6)(b). Therefore, the board could properly apply the interest rate as annually determined by PERAC pursuant to this section for the period of underpayment. PERAC believes the boards have discretion in this area to adopt an appropriate interest rate. In 2011, the Legislature adopted a 3% rate of return on refunds to members who leave the system after less than 10 years' service, indicating legislative intent relative to an appropriate interest rate.