

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DELORIS WILLIAMS,

Petitioner,

vs.

Case No. 19-5499

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted pursuant to sections 120.569 and 120.57(1), Florida Statutes (2019),¹ on January 6, 2020, by Administrative Law Judge Cathy M. Sellers, by video teleconference at locations in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: Deloris Williams, pro se
1219 West Ninth Street
Riviera Beach, Florida 32404

For Respondent: Ladashia Jackson Ford, Esquire
Nikita S. Parker, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner, a surviving beneficiary, is entitled to change the Florida Retirement System retirement benefits

¹ All references to chapter 120 are to the 2019 version.

payment option selected by her now-deceased spouse, a member of the Florida Retirement System.

PRELIMINARY STATEMENT

On July 17, 2019, Respondent sent Petitioner a certified letter, notifying her that the Florida Retirement System option that had been selected by her husband, a member of the Florida Retirement System, at the time of his retirement in 2002, was not able to be changed. The letter constituted proposed agency action, and Petitioner was provided notice of her right to request an administrative hearing challenging that action. On August 6, 2019, Petitioner filed a request for an administrative hearing, and the matter was referred to the Division of Administrative Hearings ("DOAH") for assignment of an administrative law judge ("ALJ") to conduct a hearing pursuant to sections 120.569 and 120.57(1).

The final hearing initially was scheduled for December 9, 2019, but was continued due to the unavailability of one of Respondent's witnesses. The final hearing was held on January 6, 2020.

Petitioner testified on her own behalf and presented the testimony of her daughter, DeVonnia G. Jones, who appeared by telephone. Petitioner did not tender any exhibits for admission into evidence. Respondent presented the testimony of David Heidel, and Respondent's Exhibits 1 through 13 were admitted into evidence over objection. Following the final hearing, Petitioner sent ex parte communications to the undersigned, consisting of a January 21, 2020, letter, and a January 27, 2020, letter with attachments. These ex parte communications were placed on the record, pursuant to sections 120.66 and 120.57(1)(f).

The one-volume Transcript was filed on February 3, 2020. The parties were given until February 13, 2020, to file proposed recommended orders.

Petitioner's letter dated January 27, 2020, without the attachments, was treated as Petitioner's Proposed Recommended Order. Respondent's Proposed Recommended Order was filed on February 14, 2020. Both proposed recommended orders were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Respondent, Department of Management Services, Division of Retirement, is the state agency charged under chapter 121, Florida Statutes (2002),² with administering the Florida Retirement System ("FRS").

2. Petitioner is the spouse of James L. Williams, now deceased, who was employed by the School District of Palm Beach ("District) for 38 years, and was a member of the FRS.

3. Williams retired from his employment with the District on August 23, 2002. At that time, he executed the Florida Retirement System Application for Service Retirement Form, Form FR-11. On Form FR-11, he designated Petitioner as his primary beneficiary and Jones as his contingent beneficiary. Williams signed this form, and his signature was notarized.

4. Also on August 23, 2002, Williams executed the Florida Retirement System Option Selection for FRS Members Form, Form FRS-11o. On that form, he selected FRS retirement benefits payment Option 2, and designated that choice by writing an "X" on the line next to Option 2. Option 2 was described on Form FRS-11o as:

A reduced monthly payment for my lifetime. If I die before receiving 120 monthly payments, my designated beneficiary will receive a monthly benefit in the same amount as I was receiving until the monthly benefit payments to both of us equal 120 monthly payments. No further benefits are then payable.

² All references to chapter 121 are to the 2002 version of the Florida Statutes, which was in effect at the time that the retirement benefits application and option selection forms that have given rise to this proceeding were executed.

5. Form FRS-110 contained a section, immediately below the description of Option 2, that was required to be completed by the spouse of a married FRS member who had selected Option 1 or Option 2. On August 23, 2002, Petitioner completed, signed, and dated that section, confirming that she was the legal spouse of Williams and acknowledging that she was informed that Williams had selected either Option 1 or Option 2.

6. The purpose of that section on Form FRS-110 is to inform the spouse of the FRS member that, by the member's selection of either Option 1 or Option 2, the surviving spouse is not entitled to receive a continuing benefit for the rest of his or her life.

7. The last sentence on Form FRS-110, immediately above the space for the FRS member's signature, states in pertinent part: "[m]y retirement becomes final when any payment is cashed . . . [or] deposited."

8. DeVonnia Jones was present with Williams at the time he was given Form FR-11 and Form FRS-110 to execute. Jones testified that when Williams arrived at the District office on August 23, 2002, Form FR-11 and Form FRS-110 already had been filled out by District staff, and were presented to him by his supervisor, who informed him that he needed to retire or he would be terminated.

9. According to Jones, Williams did not wish to retire at that time. Jones asked District staff how much more Williams' monthly benefits would be if he did not retire for another year or two, and was told that Williams' benefits would be between \$25 and \$30 more per month. According to Jones, "my dad basically shed a couple tears. He was not comfortable, but he went ahead and signed it because I told him to, because they made it seem like he wasn't going to be eligible to get what he was supposed to get."

10. Williams signed and dated Form FRS-110 on August 23, 2002, and his signature was notarized.

11. On August 28, 2002, Respondent sent Williams a document titled "Acknowledgement of Service Retirement Application." This document stated,

among other things, that Williams had selected FRS Option 2, and that his retirement was effective September 2002. At the bottom of this document was a standalone paragraph, in bold face type, that read: **"ONCE YOU RETIRE, YOU CANNOT ADD ADDITIONAL SERVICE OR CHANGE OPTIONS. RETIREMENT BECOMES FINAL WHEN ANY BENEFIT PAYMENT IS CASHED OR DEPOSITED!"**

12. Also on August 28, 2002, Respondent sent Williams a document titled "Florida Division of Retirement Estimate of Retirement Benefit (Estimate only, subject to final verification of all factors)." This document provided information regarding the amount of the monthly benefits Williams would receive for the four options offered under the FRS. A statement in bold face type at the bottom of the document read: **"Comments: You have chosen Option 2. Your option selection cannot be changed after you cash or deposit any benefit payment."**

13. Had Williams wished to change his retirement benefits payment option, he could have done so up to the time he cashed or deposited a retirement benefits payment.

14. Williams began receiving his monthly FRS retirement benefits payments from Respondent on October 4, 2002. He cashed or deposited the first FRS benefits warrant (Warrant #0618275) that he received.

15. Thereafter, Williams received monthly FRS retirement benefits payments until his death on April 26, 2010. Williams received a total of 92 monthly benefits payments before his death. All of the FRS retirement benefits payment warrants issued to Williams were deposited or cashed.

16. On May 17, 2010, Respondent contacted Petitioner to inform her that she needed to complete a Florida Retirement System Pension Plan Application for Beneficiary of Monthly Retirement Benefits Form, Form FST-11b, in order for her to receive monthly FRS retirement benefits payments as Williams' beneficiary. In the contact letter, Respondent informed Petitioner that "you will receive the same gross monthly benefits to which the member

was entitled through August 31, 2012." Petitioner completed Form FST-11b on June 25, 2010, and began receiving FRS monthly benefits payments on June 30, 2010.

17. Petitioner received a total of 28 FRS retirement monthly benefits payments. The last warrant issued to Petitioner (Warrant #0375196) was issued on August 31, 2012. All of the warrants issued to Petitioner were cashed or deposited.

18. In sum, Williams and Petitioner collectively received a total of 120 FRS retirement monthly benefits payments, pursuant to Option 2. All of the warrants issued to Williams, and then to Petitioner, as his beneficiary, were deposited or cashed.

19. Petitioner testified that beginning in 2003, she made numerous attempts, over a period of years, to contact the District and Respondent regarding changing the FRS retirement benefits payment option that Williams had selected on August 23, 2002. During this time, Williams and Petitioner continued to cash or deposit the benefits payment warrants they received from Respondent.

20. In this proceeding, Petitioner does not claim that Williams accidentally selected Option 2, or that he intended to select another option, when he signed Form FRS-11o on August 23, 2002. Rather, she asserts that at the time Williams retired, he suffered from confusion and memory loss such that he did not understand the option he chose—effectively, that he lacked the mental capacity to have chosen Option 2 as his retirement benefits payment option. Alternatively, Petitioner contends that because Williams was forced to retire under threat of termination from his employment, he was under duress when he chose Option 2 on Form FRS-11o. On these grounds, Petitioner asserts that she should be permitted to change Williams' choice of retirement benefits payment option.³

³ Here, Petitioner, has requested that she be allowed to "change" Williams' choice of Option 2 on the FRS retirement option selection forms. She did not identify, or present evidence,

21. Petitioner's impassioned testimony at the final hearing shows that she fervently believes her husband was wrongly treated by the District when it required him to retire in 2002, against his desire to continue to work.⁴ However, as was explained to Petitioner at the final hearing, the purpose of this proceeding was not to determine whether the District wrongly forced Williams out of his employment; rather, it is to determine whether there is any factual or legal basis for changing the retirement benefits option that Williams selected when he executed Form FRS-110 nearly 18 years ago.

22. The evidence does not support Petitioner's argument that Williams lacked the mental capacity to adequately understand the option that he chose on Form FRS-110. Although Petitioner testified that Williams had been treated by a neurologist, no direct medical evidence was presented establishing that Williams was mentally incapacitated at the time he executed Form FRS-110. Additionally, at the time Williams signed the form, he was accompanied by his daughter, who, after speaking to District staff regarding his options, advised him to sign the form. Petitioner herself also was present at the District office and signed Form FRS-110, expressly acknowledging that she understood Williams had chosen Option 2. Thus, to the extent that Williams may not, on his own, have fully appreciated his choice of options on Form FRS-110—and there is no competent direct evidence showing that to be the case—both his daughter and wife were present with him when he executed Form FRS-110, his daughter *told* him to sign the form, and his wife expressly acknowledged that she understood his choice of Option 2. These circumstances do not support a finding that Williams lacked the mental capacity to understand, or did not adequately

regarding which specific option she would choose, if permitted to change Williams' selected FRS benefits option.

⁴ The evidence indicates that the District required Williams to retire because he began having difficulty with his job as a mail carrier. According to Petitioner, Williams had an accident in a District vehicle and did not report the accident to the District, and that when he was transferred to the mail room, he had difficulty remembering to do certain required tasks.

understand, the consequence of choosing Option 2 when he executed Form FRS-11o.

23. The evidence also does not support a finding that Williams' choice of Option 2 should be changed, due to duress. There is no direct evidence establishing that Williams was under duress when he chose Option 2. Although Jones testified, credibly, that her father was upset about being forced to retire when he wanted to continue working, her testimony that he was under duress was based on her subjective conclusion. Furthermore, even if Williams was emotionally distressed when he signed the FRS benefits options forms, there is no evidence showing that as result of such distress, he chose Option 2 instead of a different option.

24. It also is noted that Form FR-11 and Form FRS-11o both *expressly* informed Williams that once his retirement became final—which would occur when any benefit payment was cashed or deposited—his retirement benefits option selection would become final and could not be changed. Further, Williams received two more pieces of correspondence from Respondent—both containing statements in bold face type—expressly informing him that once any FRS retirement benefits payments were cashed or deposited, his retirement benefits option choice could not be changed.

25. As noted above, Williams could have changed his FRS benefits option at any time before he cashed or deposited a benefits payment; however, he did not do so. Thus, pursuant to the express terms of Form FR-11 and Form FRS-11o, when Williams cashed or deposited the first benefits payment, his selection of Option 2 became final and could not be changed.

26. In sum, the evidence does not establish any factual basis for permitting Petitioner to change Williams' selection of Option 2 as his FRS retirement benefits payment option.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction over the parties to, and the subject matter of, this proceeding, pursuant to sections 120.659 and 120.57(1).

28. Here, Petitioner contends that she should be permitted to change Williams' FRS retirement benefits option from Option 2 to a different option. Because Petitioner is asserting the affirmative of the issue in this proceeding, she bears the ultimate burden to establish, by a preponderance of the evidence, that she should be permitted to change Williams' selected FRS benefits option to a different option. *Balino v. Dep't of HRS*, 348 So. 2d. 349, 350 (Fla. 1st DCA 1977)(unless otherwise established by statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal); *see Wilson v. Dep't of Admin., Div. of Retirement*, 538 So. 2d 139, 142 (Fla. 4th DCA 1989)(burden is on beneficiary seeking to establish his or her right to retirement benefits under chapter 121).

29. Section 121.021(12) defines an FRS "member," in pertinent part, as "any . . . employee who is covered or who becomes covered under this system in accordance with this chapter."

30. Section 121.021(46) defines "beneficiary," in pertinent part, as the "joint annuitant or any other person . . . designated by the member to receive a retirement benefit, if any, which may be payable upon the member's death."

31. Section 121.021(28) defines "joint annuitant," in pertinent part, to mean "any person designated by the member to receive a retirement benefit upon the member's death who is: (a) [t]he spouse of the member[.]"

32. Section 121.091(6) governs the types of FRS retirement benefits, the process for selecting an option for receipt of FRS retirement benefits payments after termination of employment, and the payment of FRS retirement benefits to the member and beneficiaries. The statute states, in pertinent part:

(6) OPTIONAL FORMS OF RETIREMENT BENEFITS AND DISABILITY RETIREMENT BENEFITS.—

(a) Prior to the receipt of the first monthly retirement payment, a member shall elect to receive the retirement benefits to which he or she is

entitled under subsection (1), subsection (2), subsection (3), or subsection (4) in accordance with one of the following options:

1. The maximum retirement benefit payable to the member during his or her lifetime.

2. A decreased retirement benefit payable to the member during his or her lifetime and, in the event of his or her death within a period of 10 years after retirement, the same monthly amount payable for the balance of such 10-year period to his or her beneficiary or, in case the beneficiary is deceased, in accordance with subsection (8) as though no beneficiary had been named.

* * *

The spouse of any member who elects to receive the benefit provided under subparagraph 1. or subparagraph 2. shall be notified of and shall acknowledge any such election.

* * *

(b) The benefit payable under any option stated above shall be the actuarial equivalent, based on tables adopted by the administrator for this purpose, of the amount to which the member was otherwise entitled.

(c) A member who elects the option in subparagraph (a)2. shall, in accordance with subsection (8), designate one or more persons to receive the benefits payable in the event of his or her death. Such persons shall be the beneficiaries of the member. The member may also designate one or more contingent beneficiaries to receive any benefits remaining upon the death of the primary beneficiary.

* * *

(h) The option selected or determined for payment of benefits as provided in this section shall be final and irrevocable at the time a benefit payment is cashed or deposited.

§ 121.091(6), Fla. Stat. (emphasis added).

33. Pursuant to the plain terms of section 121.091(6)(h), Williams' election of Option 2 on Form FRS-110 cannot be changed.

34. As discussed above, Williams cashed or deposited his FRS retirement benefits payment warrants. Pursuant to section 121.091(6)(h), when he cashed or deposited a warrant, his selection of Option 2 became final and irrevocable. The statute does not provide any exceptions to this finality and irrevocability.

35. Additionally, under any circumstances, only Williams *himself*, as an FRS *member*, would have the right to change his retirements benefits payment option—and then only within the time period before finality and irrevocability attached, as provided in section 121.091(6)(h). *See* § 121.011(3)(d)(declaring the rights of FRS members to be of a contractual nature, entered into by the member and the state); *Boiler v. Dep't of Mgmt. Servs.*, Case No. 10-0001 (Fla. DMS Jan. 19, 2010)(concluding that only an FRS member can select an option under which he or she will receive benefits).

36. Case law routinely has held that a member's retirement benefits option selection cannot be posthumously changed. For example, in *Maddox v. Department of Management Services*, the ALJ determined, and the agency affirmed in its final order, that a spouse was not permitted to change a member's retirement benefit payment option after that member's death, on the basis of her belief that the member had chosen, or intended to choose, a different option. The ALJ reasoned that the member had negotiated his retirement benefits prior to his death, and the benefits, which were paid to him pursuant to his selected option, were deposited in his bank account,

thereby rendering his benefits option choice irrevocable under the statute. *Maddox v. Dep't of Mgmt. Servs.*, Case No. 17-1424 (Fla. DOAH Aug. 25, 2017; Fla. DMS, Jan. 5, 2018). Similarly, in *Carpenter v. Department of Management Services*, a spouse challenged the denial of her request to change the selection of Option 1 by her husband, an FRS member, on the basis that she had not consented to the selection of that option. The ALJ concluded, and the agency affirmed in its final order, that "the statutes do not require the spouse to agree with the member's option selection." Because the member had cashed or deposited retirement benefits payments, his selection of Option 1 was final and irrevocable, and the spouse did not have any right to change the member's selection of that option. *Carpenter v. Dept. of Mgmt. Servs.*, Case No. 01-1618 (Fla. DOAH Jul. 12, 2001; Fla. DMS Aug. 22, 2001). *See Jones v. Dep't of Mgmt. Servs.*, Case No. 16-0429 (Fla. DOAH Oct. 25, 2016; Fla. DMS Jan. 3, 2018)(the evidence did not support a posthumous change to a retirements benefits selection requested by the beneficiary).

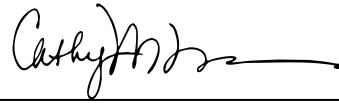
37. Based on the evidence presented at the final hearing, and section 121.091(6) and interpretive case law, it is concluded that Petitioner is not legally authorized to change the retirement benefits payment option that her husband, an FRS member, selected when he retired.

38. The undersigned is extremely sympathetic to Petitioner's situation. However, she is required to uphold the applicable law, which dictates the result that has been reached in this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Department of Management Services, enter a final order denying Petitioner's request to change the FRS retirement benefits payment option selected by her husband, an FRS member, when he retired.

DONE AND ENTERED this 4th day of March, 2020, in Tallahassee, Leon
County, Florida.



CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2020.

COPIES FURNISHED:

Ladasiah Jackson Ford, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950
(eServed)

Deloris Williams
1219 West Ninth Street
Riviera Beach, Florida 33404
(eServed)

Nikita S. Parker, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950
(eServed)

David DiSalvo, Director
Division of Retirement
Department of Mangement Services
Post Office Box 9000
Tallahassee, Florida 32315-9000
(eServed)

Sean Gellis, General Counsel
Office of the General Counsel
Department of Mangement Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.