

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEBORAH BARRINGTON,

Petitioner,

vs.

Case No. 21-0108

DEPARTMENT OF MANAGEMENT SERVICES,  
DIVISION OF RETIREMENT,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On April 22, 2021, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (DOAH), conducted an evidentiary hearing pursuant to section 120.57(1), Florida Statutes (2017), in Tallahassee, Florida, via Zoom web-conference.

APPEARANCES

For Petitioner: Deborah Barrington, pro se  
44 Parkside Circle  
Crawfordville, Florida 32327-7413

For Respondent: Gayla Grant, Esquire  
Department of Management Services  
Suite 160  
4050 Esplanade Way  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner Deborah Barrington, the surviving spouse of Ronald Mitchell Barrington, is entitled to a monthly benefit from Mr. Barrington's Florida Retirement System (FRS) pension plan.

PRELIMINARY STATEMENT

On November 30, 2020, Respondent, Department of Management Services, Division of Retirement (Respondent), issued a final agency action letter to Ms. Barrington, informing her that her request that Respondent pay her FRS benefits from Mr. Barrington's retirement account was denied. Dissatisfied with Respondent's decision, Ms. Barrington timely filed, via an email dated December 29, 2020, a request for a formal administrative hearing, "based on the fact that the entire form FRS-110 was not properly notarized or may have been unlawfully notarized." On January 12, 2021, Respondent referred the matter to DOAH to assign an administrative law judge to conduct a formal hearing.

On January 20, 2021, the undersigned noticed the final hearing for March 15, 2021. On March 8, 2021, Respondent filed an Emergency Motion to Continue Final Hearing, which was unopposed. On that same date, the undersigned entered an Order Granting Continuance and Rescheduling Hearing by Zoom Conference, which reset the final hearing for April 22, 2021.

The undersigned conducted the final hearing on April 22, 2021, by Zoom web-conference. Ms. Barrington testified on her own behalf, and did not tender any exhibits for admission into evidence. Respondent presented the testimony of Harry Halley, the Benefits Administrator in the Survivor Benefits section of Respondent. The undersigned admitted Respondent's Exhibits R1 through R13 into evidence.

The one-volume Transcript of the final hearing was filed with DOAH on May 7, 2021. Respondent timely submitted a Proposed Recommended Order on May 17, 2021, which the undersigned has considered in the preparation of this Recommended Order. Petitioner did not submit a proposed recommended order.

All statutory references are to the 2017 codification of the Florida Statutes, unless otherwise indicated.

#### FINDINGS OF FACT

1. Respondent is the state agency charged under chapter 121, Florida Statutes, with administering the FRS.

2. In 1986, Mr. Barrington began employment with the Department of Revenue (DOR). Mr. Barrington was a member of the FRS pension plan based on his employment with DOR.

3. Ms. Barrington was the spouse of Mr. Barrington. Ms. Barrington testified that she was married to Mr. Barrington for 43 years.

4. On June 6, 2007, Mr. Barrington contacted Respondent, via email, to inquire as to when he could enter the Deferred Retirement Option Program (DROP) administered by Respondent. Respondent requested some additional information from Mr. Barrington, which he provided, including the identity of his spouse, Ms. Barrington.

5. Respondent received, on January 11, 2011, a form entitled “Florida Retirement System Pension Plan, Notice of Election to Participate in the Deferred Retirement Option Program (DROP) and Resignation of Employment,” from Mr. Barrington. This form shows that Mr. Barrington intended to enter the DROP program on April 1, 2011, and that his termination and resignation date would be March 31, 2016.

6. Mr. Barrington also completed a “Florida Retirement System Pension Plan, Application for Service Retirement and the Deferred Retirement Option Program (DROP)” form, which Respondent also received on January 11, 2011. This form, similar to the form described in paragraph 5 above, listed Mr. Barrington’s intended dates to enter the DROP program, and his intended termination and resignation dates, but also listed Ms. Barrington as his primary beneficiary.

7. Respondent also received Form FRS-110, entitled “Florida Retirement System Pension Plan Option Selection for FRS Members” (Option Selection Form), on January 14, 2011 (according to the facsimile header on this form). The Option Selection Form required Mr. Barrington to select one of four retirement benefit payment options. The Option Selection Form provided an explanation for each of the four options. The Option Selection Form reflects that Mr. Barrington initially selected to receive an Option 3 retirement benefit by checking the line next to the Option 3 benefit payment option. However, the Option Selection Form also reflects that Mr. Barrington struck through the checkmark next to the Option 3 benefit payment option, wrote his initials “RB,” and then checked the line next to the Option 1 benefit payment option, indicating he selected to receive the Option 1 retirement benefit. A significant difference exists between Options 1 and 3: Option 3 provides for a “reduced monthly benefit” during the member’s lifetime, and after death, the member’s joint annuitant would receive a lifetime monthly benefit in that same amount; while under Option 1, the member would receive the maximum benefit for the member’s life, with no continuing benefit to a joint annuitant after the member’s death. The Option Selection Form reflects that Deborah Holley notarized the signature of Mr. Barrington.

8. Along with the Option Selection Form, Respondent received a form entitled “Florida Retirement System Pension Plan Spousal Acknowledgment Form,” (Spousal Acknowledgment Form) on January 14, 2011 (according to the facsimile header on this form). The Spousal Acknowledgment Form provides that if the member is married and has selected Option 1 or 2 on the Option Selection Form, the member’s spouse must complete “Box 2” on the Spousal Acknowledgment Form.

9. The Spousal Acknowledgment Form reflects that Ms. Barrington completed “Box 2,” but in the portion that states that she “acknowledge[s] that the member has selected Option 1 or 2[,]” the Spousal Acknowledgment Form reflects that “1 or 2” is stricken through, and instead, the number “3” is

hand written nearby. The Spousal Acknowledgment Form further reflects the signature of Ms. Barrington, dated September 10, 2010, and that Deborah Holley notarized the signatures of both Mr. and Ms. Barrington.

10. Respondent introduced into evidence Ms. Holley's public commission as a notary in the State of Florida, indicating that Ms. Holley was a duly licensed notary, and which was effective when Mr. and Ms. Barrington executed the Spousal Acknowledgment Form.

11. On February 1, 2011, Respondent mailed Mr. Barrington an "Acknowledgment of DROP Application," acknowledging: (a) receipt of Mr. Barrington's Application for Service Retirement and the Deferred Retirement Option Program (DROP); (b) his selection of Option 1 as the benefit payment option; and (c) his DROP begin date of April 1, 2011, and this DROP end date of March 31, 2016. The Acknowledgment of DROP application expressly states, in bold, all-caps letters, the following:

**AFTER YOUR FIRST MONTH OF DROP PARTICIPATION (OR 30 DAYS FROM THE DATE OF THIS LETTER IS MAILED, IF LATER) RETIREMENT IS FINAL. YOU CANNOT ADD SERVICE, CHANGE OPTIONS, CHANGE YOUR DROP BEGIN DATE, CHANGE YOUR TYPE OF RETIREMENT OR ELECT THE INVESTMENT PLAN.**

12. On May 10, 2011, Respondent mailed Mr. Barrington a "Final Notice of DROP Benefit," which included his final benefit accrual calculation based on Option 1.

13. Respondent received (according to the facsimile header on this form) on December 14, 2015, a "Florida Retirement System Pension Plan Deferred Retirement Option Program (DROP) Termination Notification," from Mr. Barrington, which reflected that he would terminate his employment with an FRS employer on March 31, 2016.

14. On January 11, 2017, Mr. Barrington passed away.

15. On February 23, 2017, Respondent sent a survivor letter to Ms. Barrington informing her that “[t]he option selected by the member does not provide a continuing benefit beyond the month of death.”

16. After Ms. Barrington contacted Respondent to inquire about receiving a monthly benefit, Respondent sent Ms. Barrington a letter, dated November 30, 2020, which constituted final agency action, and which informed Ms. Barrington that Respondent paid Mr. Barrington’s retirement benefits according to his retirement option selection—Option 1—and that denied Ms. Barrington’s request to receive a monthly benefit.

Testimony of Ms. Barrington and Mr. Halley

17. Ms. Barrington testified that she never signed the Spousal Acknowledgment Form, that Mr. Barrington mistakenly selected Option 1 on the Option Selection Form, and that Ms. Holley failed to properly notarize these documents. Ms. Barrington further testified that Mr. Barrington was ill and, according to her, must have been confused when he selected Option 1. Ms. Barrington testified that she was not with Mr. Barrington when he completed the Option Selection Form.

18. Ms. Barrington did not present any medical or other evidence to establish that Mr. Barrington lacked mental capacity at the time he executed the Option Selection Form or the Spousal Acknowledgment Form.

19. Ms. Barrington did not present any additional evidence, other than her own testimony, to establish that Ms. Holley failed to properly notarize the Option Selection Form or the Spousal Acknowledgment Form.

20. Mr. Halley testified that when Respondent receives the forms for processing a FRS member’s application to enter the DROP program, it reviews the forms “to make sure they are not blank or any information that is necessary is not omitted[,]” and “for any irregularities on the forms and things of that nature[.]” He testified that at any given time, there are more than one million members in FRS. He testified that it is an “impossibility” for

Respondent to reach out to each FRS member to confirm that their signature is authentic, or to call and confirm with each FRS member that they intended the particular option that they selected.

21. Based on the persuasive and credible evidence adduced at the final hearing, Ms. Barrington failed to establish that Mr. Barrington lacked the mental capacity to select a retirement option at the time he completed the Option Selection Form.

22. Based on the persuasive and credible evidence adduced at the final hearing, Ms. Barrington failed to establish that Ms. Holley improperly notarized the Option Section Form or the Spousal Acknowledgment Form.

#### CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569 and 120.57(1), Florida Statutes.

24. As the party seeking the affirmative of an issue, Ms. Barrington has the burden of proving, by a preponderance of the evidence, that she is entitled to receive a continuing benefit. *Wilson v. Dep't of Admin., Div. of Ret.*, 538 So. 2d 139, 141-42 (Fla. 4th DCA 1989).

25. The rights of FRS members are contractual in nature between the member and the State of Florida. A party to a contract is conclusively presumed to know and understand the contents, terms, and conditions of a contract before signing it, and any inquiries concerning the ramifications of the contract should be made before signing it. *See Semerena v. Dist. Bd. of Trs. of Miami Dade Coll.*, 282 So. 3d 974, 977 (Fla. 3d DCA 2019).

26. With these legal principles in mind, the four retirement benefit payment options available to FRS employees are explained in section 121.091(6)(a):

(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.

3. A decreased retirement benefit payable during the joint lifetime of both the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in the same amount, subject to the provisions of subsection (12).

4. A decreased retirement benefit payable during the joint lifetime of the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in an amount equal to  $66 \frac{2}{3}$  percent of the amount that was payable during the joint lifetime of the member and his or her joint annuitant, subject to the provisions of subsection (12).

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. The division shall establish by rule a method for selecting the appropriate actuarial factor for optional forms of



benefits selected under subparagraphs 3. and 4., based on the age of the member and the joint annuitant.

27. Florida Administrative Code Rule 60S-4.010(9) provides:

(9) A married member who selects option 1 as provided in paragraph 60S-4.010(1)(a), F.A.C., or option 2 as provided in paragraph 60S-4.010(1)(b), F.A.C., shall notify his or her spouse of such option selection, and the spouse shall acknowledge such option selection as follows:

(a) A member who selects option 1 or 2 shall be required to indicate if he or she is married or not married on Form SA-1, Florida Retirement System Spousal Acknowledgment Form, as adopted in Rule 60S-4.010, F.A.C. If the member is married, his or her spouse shall complete the spousal acknowledgment section of such form acknowledging that the member has selected option 1 or 2.

(b) If the Division does not receive a completed spousal acknowledgment of option selection, the Division will advise the member in writing that his or her benefits will not commence until:

1. Such completed spousal acknowledgment of option selection is received by the Division; or
2. It is established in writing to the satisfaction of the Division that the spouse cannot be located; or
3. In the case of refusal by the spouse to sign the spousal acknowledgment of option selection, the Division shall notify the spouse in writing of the option selection. Such notification shall constitute acknowledgment by the spouse of such selection.

28. As detailed above, Respondent received Mr. Barrington's Option Selection Form and Spousal Acknowledgment Form that reflected that Mr. Barrington selected Option 1 for his choice of retirement benefit payment

option. Respondent provided Mr. Barrington an Acknowledgment of DROP Application, which confirmed he had selected Option 1, and which provided, explicitly, that this choice of retirement benefit payment option would become final within his first month of DROP participation, or 30 days from the date of the Acknowledgment of DROP application, if later.

29. The rights of FRS members are of a contractual nature, entered into between the FRS member and the State of Florida. § 121.011(3)(d), Fla. Stat. Mr. Barrington, as an FRS member, solely possessed the right to select the option for his retirement benefit payment option, and the right to change his retirement benefit payment option within the time period prior to it becoming irrevocable. *See Williams v. Dep't of Mgmt. Servs., Div. of Ret.*, Case No. 19-5499 (Fla. DOAH Mar. 4, 2019; Fla. DMS July 28, 2020).

30. The competent and persuasive evidence presented at the final hearing was that Mr. Barrington selected Option 1 for his retirement benefit payment option, consistent with operative law.

31. Ms. Barrington failed to establish, by a preponderance of the evidence, that Mr. Barrington lacked the mental capacity to select a retirement benefit payment option at the time he completed the Option Selection Form, or that Ms. Holley improperly notarized the Option Section Form or the Spousal Acknowledgment Form.

32. Based on the evidence presented at the final hearing, the undersigned concludes that Ms. Barrington is not entitled to a continuing monthly benefit from Mr. Barrington's FRS pension plan.

33. The undersigned is sympathetic to Ms. Barrington's situation. However, he is required to uphold the applicable law, which dictates the result reached in this case.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that Respondent, Department of

Management Services, Division of Retirement, enter a final order denying Petitioner's request for a continuing monthly benefit from Mr. Barrington's FRS pension plan.

DONE AND ENTERED this 3rd day of June, 2021, in Tallahassee, Leon County, Florida.



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ROBERT J. TELFER III  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of June, 2021.

COPIES FURNISHED:

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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.