

MINUTES  
OF THE MEETING OF  
THE EXECUTIVE COMMITTEE  
STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

March 9, 2023

A meeting of the Executive Committee of the State Employees' Retirement System of Illinois was held on Thursday, March 9, 2023, at 8:45 a.m. in the System's Springfield office at 2101 S. Veterans Parkway and by videoconference as allowed under Section 7(e) of the Open Meetings Act (5 ILCS 120/7(e)).

Committee Members Present:

Marvin Becker, Chairperson  
Timothy Blair, Executive Secretary

Committee Members Present via Videoconference:

Tad Hawk, SERS Trustee

Others Present:

Jeff Houch, Assistant to the Executive Secretary  
Eric Glaub, Manager, Claims Division  
Samantha Goetz, SERS General Counsel  
Aaron Evans, Attorney, Sorling Northrup  
Jessica Blood, Recording Secretary  
Mike Duffy, Stenographer  
Lance Fancher, Claimant  
Angela Mason, Claimant

Minutes of the Previous Meeting

The minutes of the Executive Committee's meeting on February 9, 2022, were presented by Chairperson Becker for approval. Copies of the minutes were previously e-mailed to Committee members for review. Chairperson Becker moved to approve the minutes as submitted. The motion was seconded by Executive Secretary Blair and passed unanimously.

Routine Claims Report

The Routine Claims Report for February 2023 was presented. Following a brief discussion, the Routine Claims Report for February 2023 as prepared by staff, was received by the Committee.

## Old Business

### Crystal Williams - Appeal of Nonoccupational Disability Benefit Overpayment - Recommendation

Crystal Williams was on SERS' nonoccupational disability benefits February 19, 2020, through September 30, 2021. Her benefit ended because her half time ceased.

Ms. Williams returned to work from October 2021 through May 2022. She again applied for a nonoccupational disability benefit in May 2022, which was approved and paid through September 30, 2022.

Upon another review of her file, it was later discovered that Ms. Williams should not have received any additional nonoccupational disability benefits because her service credits were calculated incorrectly. Her return to work did not actually result in enough days worked to earn the necessary service credits to further extend her disability benefit.

Ms. Williams only worked a total of 25 days in the eight months between October 2021 and May 2022.

Ms. Williams did not earn enough service credit to extend her benefit by even one month, so she was ineligible for all benefits paid to her from May 2022 through September 2022.

Ms. Williams is appealing the overpayment of benefits. If the Executive Committee cannot forgive the overpayment, she is requesting a repayment plan in the least amount possible. She is currently on a medical leave of absence from her position.

After hearing Ms. Williams present her case at their January 2023 meeting, the Committee decided to refer her appeal to external counsel for a recommendation.

The Committee decided to defer a decision on Ms. Williams' appeal at their February 2023 meeting after Eric Glaub informed them that Ms. Williams had not yet provided a signed waiver for her personal hearing.

Mr. Glaub again informed the Committee that Ms. Williams still had not provided a signed waiver. Attorney Evans presented Recommendation No. 2023-3, to deny Ms. Williams' appeal. Executive Secretary Blair moved to adopt Recommendation No. 2023-3. The motion was seconded by Chairperson Becker and passed unanimously.

### Daniel Nelson - Appeal of Nonoccupational Disability Benefit Claim Denial - Recommendation

Daniel Nelson works for the Department of Insurance as a Public Service Administrator-8L. He went on a medical leave of absence in August 2017.

Mr. Nelson did not apply for a SERS benefit until February 2022. His case was referred for a review by MMRO in April 2022 to determine his inability to perform his job duties. MMRO determined Mr. Nelson was not mentally incapacitated to perform his duties as a PSA. They noted that during the relevant time, there was no documentation of severe symptoms, impairments, or substantial reduction in social, occupational, or general functioning.

Mr. Nelson's attorney requested an appeal of the denial. He submitted additional medical records from the VA hospital, showing 100% service-connected disability. He also provided more information about Mr. Nelson's job duties.

Mr. Nelson's file was sent back to MMRO in December 2022. MMRO determined that the additional evidence did not support a reversal of their decision that Mr. Nelson was not mentally incapacitated from performing his job duties.

Mr. Nelson is requesting to appeal the denial of nonoccupational disability benefits.

Mr. Houch informed the Committee that he would be recusing himself from hearing Mr. Nelson's appeal due to a prior working relationship with the claimant.

Attorney Bradley Bauer presented the case on behalf of Mr. Nelson at the Committee's January 2023 meeting. After hearing the appeal, the Committee decided to defer a decision pending further research into the facts provided.

Additional documentation was provided on behalf of Mr. Nelson's appeal after the Committee's January 2023 meeting. The Committee decided to refer the case to external counsel for a recommendation at their February 2023 meeting.

Attorney Evans presented Recommendation No. 2023-5, to deny Mr. Nelson's appeal. Executive Secretary Blair moved to adopt Recommendation No. 2023-5. The motion was seconded by Chairperson Becker and passed unanimously.

#### Iris Johnson – Appeal to Revoke Level Income Option – Recommendation

On September 6, 2001, SERS received a retirement application from Iris Johnson to begin receiving retirement benefits effective November 1, 2000. During the application process, SERS staff documented that on September 24, 2001, Ms. Johnson elected to have her retirement benefit calculated under the level income option, based on her Social Security Administration (SSA) retirement pension starting at age 62 years, 1 month. Her retirement application included her Personal Earnings and Benefit Estimate Statement (PEBES) from the Social Security Administration, which enabled staff to calculate the payment schedule. As a result of her election, her initial monthly retirement annuity increased by \$466.83 and totaled \$754.33. Ms. Johnson received her first payment on October 24, 2001, which included payments retroactive to November 1, 2000. However, effective November 1, 2002, her monthly amount reduced by \$581.00, totaling \$194.96.

Ms. Johnson contends that this election should be revocable because she never made this election. She also contends that she never understood the level income option, and that SERS did not notify her in the initial benefit approval letter from October 19, 2001, that her “frontloaded” SERS benefit under this option would be reduced at age 62 years, 1 month. It should be stated that the last active member statement issued to Ms. Johnson was issued for the period that ended June 30, 1998. That statement indicated that if Ms. Johnson remained in service at her rate of compensation through October 31, 2000, her starting monthly retirement annuity would total approximately \$365.

The System acknowledges that accepting an election change over the phone is not reflective of best practices and is vulnerable to these types of issues. However, the System contends that this action was performed because Ms. Johnson originally elected to have her SERS pension calculated under the level income option so that the pattern would reflect beginning her SSA benefit at age 65 years, 6 months. However, when staff performed the calculation under that scenario, it was discovered that the level income reduction to be applied to her SERS benefit at age 65 years, 6 months, would reduce her SERS pension to less than \$10 per month, which is prohibited by statute (see 40 ILCS 5/14-112). SERS contends that when staff notified her of that dynamic, she then instructed staff to base the level income option pattern to reflect beginning her SSA retirement pension at age 62 years, 1 month.

SERS contends that Ms. Johnson’s submission of the PEBES document demonstrates that Ms. Johnson was familiar with the details of the level income program and was at least considering such option because only the member can obtain their PEBES statement from the Social Security Administration, and the only the only reason a PEBES statement is relevant to the SERS application process is for level income option purposes. These facts do not necessarily prove that she instructed SERS to change her election in this manner, but it does support that she had an interest in, and knowledge of the key details of the level income option program.

Furthermore, the System contends that if she did not intend to elect the level income option, then she should have resolved this error at the time the System notified her that her initial retirement annuity was more than twice the amount that she was projected to receive under her previous active member statements. The “definitely determinable benefit rule” under the Internal Revenue Code prohibits the pattern of such recurring pension payments to be modified after the payments begin (see 26 CFR § 1.401-1(b)(1)(i)). Given the dynamics of this appeal, changing her benefit payment schedule 22 years after it began will be difficult to justify non-compliance with such Internal Revenue code provision.

Ms. Johnson presented her appeal to the Committee at their February 2023 meeting. The oral proceedings were recorded by a stenographer, Cynthia Splayt, and the transcripts shall be provided to Ms. Johnson and the Executive Committee. After reviewing the information presented in Ms. Johnson’s appeal and a lengthy discussion, the Committee decided to refer her case to external counsel for a recommendation.

Attorney Evans presented Recommendation No. 2023-8, to deny Ms. Johnson’s appeal.

Executive Secretary Blair moved to adopt Recommendation No. 2023-8. The motion was seconded by Chairperson Becker and passed unanimously.

Brenda Hullum – Appeal of SSA Award Overpayment – Recommendation

Brenda Hullum worked at the Illinois Department of Veteran's Affairs as a Veteran's Nursing Assistant Certified. In July 2019, Ms. Hullum was in a car accident that was unrelated to her job. She applied for nonoccupational disability benefits and has been paid this benefit since 8/5/2019.

In February 2021 her file was accepted by Midwest Disability for representation in filing for Social Security Administration disability benefits.

SERS received her notification of award from SSA in November 2022, with an onset date of November 2020. Overpayment of SERS benefits was calculated from November 1, 2020, through October 31, 2022.

Ms. Hullum is appealing the full overpayment of SERS benefits. She states she was given misguided information and that she was manipulated. She is appealing to have her overpayment dismissed. After hearing Ms. Hullum present her case at their February 2023 meeting, the Committee decided to refer to external counsel for a recommendation.

Attorney Evans presented Recommendation No. 2023-9, to deny Ms. Hullum's appeal. Trustee Hawk moved to adopt Recommendation No. 2023-9. The motion was seconded by Executive Secretary Blair and passed unanimously.

Lindsey Plummer – Appeal of Occupational Disability Benefit Termination – Recommendation

Lindsey Plummer received SERS' temporary disability benefits from October 18, 2019, through September 30, 2021. She had previously received occupational disability benefits while receiving TTD from Workers' Compensation (WC) from July 2018 through October 17, 2019. TTD was terminated by WC, so Ms. Plummer applied for and was approved for a SERS temporary disability benefit. Ms. Plummer's benefit ended 9/30/2021 due to her half-time ceasing.

SERS learned that Ms. Plummer received a settlement from WC, so her temporary benefit was converted to an occupational benefit, thereby creating an overpayment. SERS did not put Ms. Plummer on a future occupational benefit. SERS requested additional medical evidence from September 30, 2021, to show continued disability. Her file was sent to MMRO with all medical evidence SERS had received. The MMRO report does not find that she is currently disabled.

Ms. Plummer is appealing that the conversion ended September 30, 2021, and is asking for occupational benefits from October 1, 2021 to present. After hearing Ms. Plummer present her case at their February 2023 meeting, the Committee decided to refer to

external counsel for a recommendation.

Attorney Evans presented Recommendation No. 2023-10, to deny Ms. Plummer's appeal. Trustee Hawk moved to adopt Recommendation No. 2023-10. The motion was seconded by Chairperson Becker and passed unanimously.

### New Business

#### Lance Fancher – Appeal to Include Temporary Assignment Pay in Final Average Compensation Calculation – Formal Hearing via Videoconference – 9:00 a.m.

Lance Fancher retired under the Tier 1 alternative formula plan with a benefit start date of November 1, 2022. Mr. Fancher had just completed the purchase of 32.25 months of service credit, which qualified him to retire on November 1, 2022. Mr. Fancher contends that he was told verbally and “has in writing” by SERS representatives and his payroll office that his temporary assignment (T.A.) pay would be included in his “monthly rate of compensation” certification. The monthly rate of compensation can be used as the Final Average Compensation (FAC) component for the pension calculation of a Tier 1 alternative formula member if such rate exceeds the monthly average for the highest 48 consecutive months of service within his last 120 months of service.

The SERS representatives who interacted with Mr. Fancher contend that they clearly told him the “rate of compensation” is determined by the employer and the amount so certified by his payroll office would be used as his FAC component if it was higher than the monthly average for the highest 48 consecutive months of service. The SERS representatives acknowledge that they initially told him it was their understanding that the T.A. payment was included in the rate, but additional research on the legislative history was needed.

In December of 2022, Mr. Fancher followed up with SERS representatives because his member services account indicated that his monthly rate of compensation, which was certified by his payroll office, was less than the amount he was previously told by his payroll office. Staff reiterated to Mr. Fancher that the amount as certified by the employer is the amount that must be used and that any perceived discrepancies must be corrected by his payroll officer.

On December 15, 2022, Mr. Fancher's payroll office emailed SERS an updated certification that distinguished his actual monthly rate of compensation plus the amount he was receiving for his temporary assignment. Following that response, a summary of the System's interpretation of the “rate of compensation” was provided to Mr. Fancher, which concluded that T.A. pay is not included in the “rate of compensation”.

Mr. Fancher is appealing that the “rate of compensation” option of his FAC component of the calculation of his retirement annuity should reflect the total monthly compensation amount that he was receiving at the time of his retirement, which would

include his T.A. payment. He makes this contention because he alleges that he was told by SERS representatives and his payroll officer that his T.A. pay would be included in his rate of compensation determination and that he relied on such information to make his decision to retire. Furthermore, he alleges that there are numerous retired IDOC employees who received similar artificial increases under similar circumstances.

The System points out that Mr. Fancher alleged in his appeal summary that his payroll office told him that the rate of compensation they would certify to SERS would include his T.A. pay. It should be noted that the initial amount certified by his payroll office included only his base rate of compensation and it excluded his T.A. payment.

Mr. Fancher alleges that SERS representatives instructed him to inform his payroll office that the certification needed to be increased to reflect the T.A. pay. The SERS representatives contend that they simply informed Mr. Fancher of the amount that his payroll office certified and told him if that amount was lower than what he believed it to be based on his prior conversations with his payroll office, then he would need to deal with that office to reconcile, if applicable.

When Mr. Fancher's payroll office submitted a subsequent certification, they emphasized that they were doing so at Mr. Fancher's instruction. Mr. Fancher's instructions were not only contrary to his payroll office's previous understanding of the process but were also contrary to what SERS representatives told Mr. Fancher.

Mr. Fancher made a bold claim when he stated, "I have seen firsthand and talked to many retirees, from administration to supervisors to line staff, who explained to me how they were able to use T.A. assignments, overtime, or accepting a promotion then retiring the very next day -without working a single day in the position to increase their retirement." It should be emphasized that Mr. Fancher cannot substantiate this bold contention.

Mr. Fancher insists that SERS representatives unequivocally told him numerous times that his T.A. pay would be included in his rate of compensation. In his appeal letter, he stated, "Carla stated she confirmed this with her supervisor. Carla stated that she confirmed this information all the way up her chain of command, stating that the only people left to consult with would be legislation." This passage is key because he acknowledges that SERS needed to conduct additional research on the legislative history, which could change that answer.

Mr. Fancher contends that he "has in writing" from SERS representatives and his payroll office that his temporary assignment (T.A.) pay would be included in his "monthly rate of compensation" determination. He clarified in a follow-up email that "in writing" meant the notes taken by Mr. Fancher and his spouse during his counseling session and were not actually documents received from SERS representatives.

The System contends that temporary assignment pay, by its definition, is temporarily added to the member's base rate of compensation to compensate the member for temporarily absorbing job duties and additional workloads. The State's payroll system

is programmed so that when a member is placed into a temporary assignment role, their payroll officer simply identifies the amount of additional pay to be added to the member's rate of compensation as a result of serving temporarily in that role. Said differently, the payroll officer does not change the member's base compensation rate, rather they input such amount into that specific payroll field, and it is added to the member's compensation rate for the duration that the member serves in the temporarily assignment.

SERS administrators contend that the fiduciary duties that are statutorily bound on public pension fund decision-makers obligate them to administer the plan to exclude temporary assignment pay from the "rate of compensation". Additionally, Section 14-135.03 of the Pension Code authorizes the System to formulate policy for proper operation of the System. Title 80, Section 1540.30 a) 3) of the Illinois Administrative Code demonstrates that it has been the longstanding policy that the term "rate of compensation" means "the actual monthly base rate of pay, excluding overtime". Furthermore, in the Illinois Supreme Court ruling in *Marconi vs. Chicago Heights Police Pension Board*, the majority opinion stated that "perhaps the most important function of a pension board is to ensure adequate financial resources to cover the Board's obligations to pay current and future retirement and disability benefits to those who qualify for such payments." The majority opinion also stated that an important part of this responsibility is to provide measures "so that funds are not unfairly diverted". Excluding such pay in this manner complies with this direction because if the administrators of that plan were to permit such pay to be included in the "rate of compensation", departments that employ Tier 1 alternative formula members could artificially and significantly increase such members' pension calculations and unfairly divert pension funds.

Finally, despite the misinformation that was provided by SERS representatives, it should be noted that when the 4th District Appellate Court of Illinois ruled in *Desai v. State Universities Retirement System*, 2014 IL App (4th) 130825-U, it stated that a retirement system cannot provide equitable relief to members who detrimentally relied on incorrect information provided by a retirement system because the Systems do not possess the statutory authority to do so.

Mr. Fancher presented his appeal to the Committee. The oral proceedings were recorded by a stenographer, Mike Duffy, and the transcripts shall be provided to Mr. Fancher and the Executive Committee. After reviewing the information presented in Mr. Fancher's appeal and some discussion, the Committee decided to refer his case to external counsel for a recommendation.

Angela Mason – Appeal of Adjustment to Monthly Pension Amount – Springfield – 9:45 a.m.

Angela Mason retired April 1, 2018. Her file was recently reviewed for a back wage adjustment from retirement contributions that were posted to her account after she retired. The contributions were the result of payments made for both the Quinn era and Rauner era wage freezes.



The review led to Ms. Mason's FAC being increased. However, when many of the earnings from her Quinn back wage payments were spread into the months in which they were earned, some earnings used in the initial calculation fell outside her FAC range. Additionally, funds had to be removed from her earnings due to non-pensionable holidays that were paid out by her agency with retirement contributions withheld in error. Ms. Mason is owed a refund of these contributions.

These both reduced the impact of the additional earnings also added to increase the FAC from the Rauner back wages. The increased FAC led to a slight increase in her pension amount.

In accordance with Section 14-148.1 of the Illinois Pension Code, Ms. Mason's gross monthly pension benefit amount has been corrected.

Angela Mason is appealing the recent adjustment to her monthly pension annuity, contending that the amount should be higher.

After discussing the information presented in Ms. Mason's appeal, the Committee decided to refer to external counsel for a recommendation.

#### John Wiggins – Request Refund of Interest for Refund Repayment

On December 22, 2010, John Wiggins completed the repayment of the refund that he accepted on June 1, 1992, which reinstated the 104.5 months of Alternative Formula service credit that he initially forfeited. Mr. Wiggins applied to retire effective December 1, 2022. He has less than 20 years of service credit, which means he is ineligible for a retirement benefit calculated under the Alternative Formula plan.

Mr. Wiggins is eligible for a refund of "Alternative Formula" contributions, which equals the difference between the alternative formula contribution rate (8.5%) and the regular formula contribution rate (4.0%). Mr. Wiggins has requested to receive a refund of the interest he paid on the Alternative Formula contribution portion of the repaid refund.

After discussing the facts presented in Mr. Wiggins' appeal, Executive Secretary Blair moved to deny his request. The motion was seconded by Chairperson Becker and passed unanimously.

#### James Majors – Request Refund of Military Service Purchase

On May 24, 2002, James Majors purchased 19.25 months of military service. Through February of 2023, Mr. Majors has earned 39 years and 3 months of service credit with SERS, and 7 years and 9 months of service credit with IMRF. Given this amount of service credit, Mr. Majors has maxed out his "proportional benefits" under the reciprocal systems act and will no longer benefit from those 19 .25 months of service credit.

Mr. Majors recently requested a refund for that purchase, but his request was denied because there is no provision that authorizes or supports this transaction. Mr. Majors has requested a written appeal to receive such a refund.

After reviewing Mr. Majors' case and some discussion, Chairperson Becker moved to deny his appeal. The motion was seconded by Executive Secretary Blair and passed unanimously.

There being no further business to be brought before the Committee, the meeting was adjourned at 10:52 a.m.

The next meeting of the Executive Committee is scheduled for April 13, 2023, in the System's Springfield office.

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Marvin Becker, Chairperson

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Tad Hawk, SERS Trustee

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Timothy Blair, Executive Secretary