May 11, 2017

**BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED**

Louis F. Malzone

Plan Administrator

Massachusetts Service Employees’ Pension Plan

26 West Street, 3rd Floor

Boston, MA 02111

Re: Maria Jones Soc. Sec. No.: XXX-XX-XXXX

73 Polk St. Apt. 37 D/O/B: 10/23/1948

Charlestown, MA 02129

(Surviving spouse of Eduardo Lopez, SSN XXX-XX-XXXX

Dear Mr. Malzone:

As you may know, Maria Jones has requested the assistance of the New England Pension Assistance Project with respect to the issue of receiving her survivor pension benefit pursuant to the Massachusetts Service Employees Pension Plan (“the Plan”). **This letter is a claim for survivor benefits pursuant to the Plan. Enclosed as Exhibit A is a Release form signed by Ms. Jones authorizing this office to act on her behalf.**

Factual Background

Eduardo Lopez and Maria Jones were married on August 26, 2000. See copy of marriage certificate, enclosed as Exhibit B. Eduardo Lopez worked in covered employment as a member of SEIU, Local 615, from approximately 1986 through 2016.

On August 9, 2016, Mr. Lopez completed benefit election forms at the Fund’s office. He completed an election form stating that he chose a single-life annuity of $680 per month. A copy of this form is enclosed as Exhibit C. At the same time, his wife, Maria Jones, completed a Spousal Consent form, which stated that she consented to the distribution selected by Mr. Lopez. A copy of this form is enclosed as Exhibit D. This form is written in English. Ms. Jones speaks Spanish; she does not speak or read English.

On August 10, 2016, the day after these forms was completed, and before any benefits had been paid to Mr. Lopez by the Plan, he died. See copy of his death certificate, enclosed herein as Exhibit D. Following Mr. Lopez’ death, Ms. Jones, with her son’s assistance, approached the plan about rescinding the election in early September, but was told that she could not do so.

As will be argued below, the benefit election process in this case was inherently flawed and did not constitute an effective waiver of Ms. Jones’s right to a Qualified Joint and Survivor Annuity. Moreover, as Mr. Lopez did not live to his annuity start date, she is automatically entitled to a Qualified Pre-Retirement Survivor Annuity.

Argument

*Flawed election process renders the benefit election invalid*

The Employee Retirement Income Security Act (hereinafter, “ERISA”) is a comprehensive statute whose principal object is the protection of plan participants and beneficiaries. See Shaw v. Delta Air Lines, Inc., 463 U.S. 85, at 90 (1983). In furtherance of this principle, ERISA requires that every plan which pays benefits in the form of a monthly annuity must include an 50% annuity payable to a nonparticipant surviving spouse, which may only be waived through strict compliance with the requirements set forth in ERISA § 205.

Pursuant to Section 205(c) of ERISA, an effective waiver of a spouse’s right may only occur where: (1) the participant’s spouse consents in writing to such an election, and (2) the consent acknowledges the effect of the election, and (3) the consent is witnessed by a plan representative or notary public. Pursuant to Section 205(c) (3), the parties must be notified of their right to rescind any such election made during the “applicable election period”.

Pursuant to the Internal Revenue Code and Treasury regulations promulgated in furtherance of ERISA, certain explanatory materials must be provided to the plan participant and his spouse in advance of the benefit election. These must be provided within 90 days of the annuity start date, and must specifically apprise the parties of their right to revoke the election until the annuity start date. See I.R.C. §417(a) (3) (A) (iv) and Treasury Reg. 1-417(e)-1(b) (3) (ii) (B).

The materials provided to Mr. Lopez and Ms. Jones completely failed to comply with the procedural protections afforded by ERISA in very significant respects. First, neither the election forms completed by Mr. Lopez nor the Spousal Consent form completed by Ms. Jones notify them of their right to rescind the benefit election. The plan failed to comply with ERISA and the Internal Revenue Code in failing to notify the couple of this right.

Moreover, Mr. Lopez’ death clearly occurred within the federally-required rescission period, since he died the day after completing the election forms at issue here. Ms. Jones, with her son’s assistance, approached the plan about rescinding the election in early September, but was told she could not do so. This was clearly in violation of ERISA and the IRC.

An additional defect in the election process was the fact that Ms. Jones was required to complete the Spousal Consent form in English, a language she neither speaks nor reads. The Plan is aware that many of its participants and their families do not speak English, as it produces its Summary Plan Description and its benefit election forms in English, Spanish and Portuguese, available on the Plan’s website. The fact that the Plan clearly has available benefit election forms written in Spanish, but did not provide such forms to Ms. Jones, indicates a failing on the part of the Plan to secure Ms. Jones’s informed consent to the benefit election.

All of these deficiencies are sufficient to negate Ms. Jones’s spousal waiver and require that she be paid the survivor benefit pursuant to the Plan.

*Plan must pay the automatic pre-retirement survivor benefit to Ms. Jones*

ERISA Section 205(a) (2) requires that, where a vested participant dies prior to the commencement of his benefit payments, his spouse is automatically entitled to a 50% pre-retirement survivor benefit. The language is mandatory and reads as follows:

in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity **shall be provided** to the surviving spouse of such participant (emphasis supplied)

In the instant case, Mr. Lopez died the day after completing benefit election paperwork, before his benefit payments could begin. His death therefore must be considered as a pre-retirement death. Accordingly, his widow, Ms. Jones, is automatically entitled, pursuant to Section 205(a) (2) of ERISA, to a 50% pre-retirement survivor annuity.

Conclusion

Ms. Jones’s entitlement to a survivor benefit is well-documented by the evidence submitted herein. The benefit election process which the Plan undertook with Mr. Lopez and Ms. Jones was inherently flawed, as argued above. Moreover, Mr. Lopez’ death must be considered a pre-retirement death, which compels the plan to pay an automatic 50% pre-retirement survivor annuity to Ms. Jones.

For the reasons discussed above, we hereby request that the Plan calculate and pay the benefit to which Ms. Jones is entitled pursuant to the Plan. Please direct your written response to us at: New England Pension Assistance Project, Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd., Boston, MA 02125. Please feel free to call me at 617-287-7332 or to email me at [Jeanne.medeiros@umb.edu](mailto:Jeanne.medeiros@umb.edu) if we can provide you with any further information.

Thank you for your timely response to this claim for benefits.

Sincerely,

Jeanne M. Medeiros, Esq.

Managing Attorney

Enclosures:

Ex. A – Ms. Jones’s Release form

Ex. B – Certificate of Marriage

Ex. C – Pension Benefit Election form, dated August 9, 2016

Ex. D – Spousal Consent Form, dated August 9, 2016

Ex. E - Certificate of Death, dated August 10, 2016

cc: Maria Jones