Legal Services of NORTHERN CALIFORNIA

Senior Legal Hotline
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February 27, 2012

CalPERS
Benefit Services Division, Unit 470
P.O. Box 942711
Sacramento, CA 94229

Re: Supplemental Appeal for Jane Smith

To Whom It May Concern:

I am writing on behalf of CalPERS recipient Jane Smith to supplement the overpayment appeal filed on December 15, 2011, by Legal Services of Northern California.

Statement of Facts

On November 18, 2011, CalPERS sent Ms. Smith a letter informing her that CalPERS was going to deduct $93.52 from her monthly retirement benefit to recoup $6,769.96 that had been paid to Ms. Smith by Ms. Smith's former employer, the State Personnel Board.[1] Effective July 1, 2011, CalPERS began deducting $93.52 from Ms. Smith's monthly retirement benefit.

CalPERS Does Not Have Authority to Deduct Ms. Smith's Benefit Because the Funds at Issue Were Not Paid by CalPERS

Pursuant to California Government Code § 20163, CalPERS may recover overpayments of retirement benefits to its members. California Government Code § 20163(a) provides in pertinent part that adjustments to correct overpayment of a retirement allowance may be made by adjusting the allowance so that the retired person or the retired person and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled, or by direct cash payments. Thus, CalPERS may recover an overpayment of retirement benefits by adjusting future retirement benefits.[2]

[1] The letter, dated April 21, 2011, was initially sent to the wrong address. Ms. Smith did not receive the April 21, 2011 letter. The letter was resent on November 18, 2011. Copies of the April 21, 2011, letter and the November 18, 2011, envelope that it was resent in were included in the Appeal filed December 15, 2011.

[2] "Adjustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person or the retired person and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled." California Government Code § 20163(a).

However, to be justified in seeking overpayment recovery under California Government Code § 20163(a), CalPERS must be seeking a repayment of retirement benefits that were paid by CalPERS.

The funds at issue were not retirement benefits. Between July 2005 and January 2006, Ms. Smith's previous employer, the State Personnel Board, paid Ms. Smith these funds as "salary advances." Furthermore, these funds were not paid to Ms. Smith by CalPERS. The funds were paid to Ms. Smith by her previous employer, the State Personnel Board. Thus, CalPERS is reducing Ms. Smith's CalPERS retirement benefit to recover funds that CalPERS never paid to Ms. Smith.

Because the funds at issue in Ms. Smith's case are not retirement benefits and were not paid by CalPERS, recovery pursuant to California Government Code § 20163 is not authorized. Therefore, CalPERS is not justified in deducting Ms. Smith's CalPERS retirement benefits.

CalPERS Does Not Have Authority to Deduct Ms. Smith's Monthly Benefit Because the Statute of Limitations Has Run

The funds at issue were not paid by CalPERS, thus, recovery is not authorized under California Government Code § 20163. Even if the funds at issue had been paid by CalPERS and overpayment recovery was justified under California Government Code § 20163(a), CalPERS does not have authority to recover the funds because the statute of limitations has run.

Pursuant to California Government Code §20164, "the period of limitation of actions shall be three years, and shall be applied as follows: (1) In cases where this system makes an erroneous payment to a member or beneficiary, this system's right to collect shall expire three years from the date of payment."

According to the overpayment notice letter, the funds at issue were paid to Ms. Smith between July 2005 and January 2006. Pursuant to California Government Code §20164, CalPERS' right to collect the overpayment expired three years from the date of payment. Therefore, CalPERS' right to collect expired January of 2009.

Because CalPERS recovery of these funds is barred by the statute of limitation, CalPERS may not pursue recovery from Ms. Smith's current benefits.

Conclusion

For CalPERS to seek recovery from Ms. Smith under California Government Code § 20163(a), there must be an overpayment of CalPERS funds. CalPERS may not seek recovery of the funds at issue because the funds at issue are not CalPERS funds and were not paid by CalPERS. Therefore, CalPERS is not justified in recovering a non-CalPERS overpayment from Ms. Smith's CalPERS benefit.

Furthermore, even if the funds were CalPERS funds, the statute of limitations bars CalPERS from recovering the funds. *See* California Government Code §20164. Therefore, CalPERS is barred from deducting Ms. Smith's current benefit.

We respectfully request that CalPERS terminate this overpayment recovery, reinstate Ms. Smith's full monthly benefit, and reimburse Ms. Smith for the amount that has been collected from her since July 2011.

Please consider this as a supplement to Ms. Smith's request for an appeal submitted on December 15, 2011, by Legal Services of Northern California. If this matter is not resolved, we request that a hearing be scheduled as expeditiously as possible.

Please contact me at (916) 930-4943 or my colleague, Stephen E. Goldberg, at (916) 551-2150 within ten (10) days of receipt of this letter.

Sincerely,

Parisa Ijadi-Maghsoodi
Staff Attorney, Western States Pension Assistance Project
Legal Services of Northern California

Cc: Jane Smith

CalPERS

Benefit Services Division
P.O. Box 942711
Sacramento, CA 94229-2711
TTY for Speech and Hearing Impaired: (916) 795-3240
888 CalPERS (or **888**-225-7377); FAX (916) 795-3933

Reply to: 410
Refer to: 1379023640

May 15, 2012

Parisa Ijadi-Maghsoodi
Attorney at Law
Legal Services of Northern California
444 North 3rd Street, Suite 312
Sacramento, CA 95811

Dear Ms. Ijadi-Maghsoodi:

This letter is in response to your correspondence regarding CalPERS' authority to recover [redacted] Temporary Disability Advanced Payments (TDAP) paid to her by her former employer.

California Government Code section 19253.5(i)(1) states that if an employer concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible, the employer shall file an application for disability retirement on the employees behalf. When a State employee is placed on involuntary leave status by their employer, such as [redacted] the employer is required by law to advance retirement monies (TDAP) to the member. Ms. [redacted] former employer, State Personnel Board, informed CalPERS that she was paid TDAP for the period July 2005 through January 2006 in the amount of $6,769.96.

CalPERS is granted the authority to recover these payments from the member under Government code section 19253.5(i)(3). Government Code 19253.5(i)(3) states "If the application for disability retirement is subsequently granted, the retirement system shall reimburse the appointing power (employer) for the temporary disability allowance which shall be deducted from any back disability retirement benefits otherwise payable to the employee." Furthermore, Government Code 21419.5 states "the system shall deduct the amount of interim disability allowance made to a state member pursuant to subdivision (i) of section 19253.5 from the members retroactive disability allowance, and reimburse the state agency that has made the interim disability allowance payments. If the retirement disability allowance is not sufficient to reimburse the total interim disability allowance payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the state agency until the total interim disability allowance payments have been repaid."

When Ms. [redacted] was initially placed on the disability retirement roll, she received a one-time retroactive amount of $105.85. A portion of the TDAP should have been

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recovered from the retroactive amount ($105.85) and monthly deductions should have been set up to collect the remaining balance. Our letter dated June 13, 2011 explained to Ms. [redacted] that her former employer informed CalPERS that they had paid Ms. [redacted] TDAP and that the payments had not been repaid. In this letter we informed Ms. [redacted] that we would set up monthly deductions equal to 10 percent of her monthly gross allowance beginning July 1, 2011 to recover the TDAP paid to her by her former employer. Ms. [redacted] contacted CalPERS on June 27, 2011 to inquire about the letter and again on July 5, 2011 to request we reduce the amount of the monthly deduction. CalPERS agreed to reduce the monthly deduction from $93.52 to $46.76 per month effective August 1, 2011.

TDAP paid to a member is a requirement of law and is an advancement of disability retirement monies. The 3-year statute of limitations under Government Code 20164 applies only to corrections made to a member's account as a result of Government Code 20163, 20160, or Government Code 20532. TDAP is not due to a result of the Government Codes listed above; therefore, Government Code 20164 does not apply.

Thank you for the opportunity to respond to your concerns regarding this issue. If you have further questions regarding the recovery of Ms. [redacted] Temporary Disability Advanced Payments, please contact Rosemary DaSilva Elliott (916) 795-9721.

Sincerely,

Geri Romeo

GERI ROMEO
Staff Services Manager I
Retirement Calculation and Adjustments

cc: [redacted]

California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
TTY: (877) 249-7442
(916) 795-3675 phone • (916) 795-3659 fax
www.calpers.ca.gov

Ref. No. 2012-0784

October 5, 2012

Parisa Ijadi-Maghsoodi
Legal Services of California
444 North 3rd Street, Suite 312
Sacramento, CA 95811

Subject: NOTICE OF CASE ASSIGNMENT - In the Matter of the Overpayment of Temporary Advanced Disability Payments to [redacted], Respondent

Dear Ms. Ijadi-Madhsoodi:

This is to acknowledge that the above case was received in the California Public Employees' Retirement System's (CalPERS') Legal Office on October 4, 2012. Elizabeth Yelland, Senior Staff Attorney has been assigned to represent the California Public Employees' Retirement System (CalPERS) in this matter. Please send all future correspondence regarding this matter to the above post office box.

CalPERS will request a hearing date from the Office of Administrative Hearings, and will serve you with our Statement of Issues and a Notice of Hearing.

If you have any questions, you may contact Ms. Yelland at telephone number (916) 795-1101.

Sincerely,

Margie Smith

Margie Smith
CalPERS Legal Office

MAS:tim

cc: Jeanette Johnston

CalPERS
California Public Employees' Retirement System
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Ref. No. 2012-0784

November 6, 2012

Parisa Ijadi-Maghsoodi, Esq.
Legal Services of California
444 North 3d Street, Suite 312
Sacramento, CA 95811

Subject: In the Matter of the Overpayment of Temporary Advanced Disability Payments to [redacted], Respondent

Dear Ms. Ijadi-Madhsoodi:

The above case was recently assigned to the Legal Office.

Upon review, it is determined that CalPERS' claim for reimbursement of the overpayment of TDAP to [redacted] barred by operation of the statute of limitations (Gov. Code section 20164).

For that reason, CalPERS will make no further collection efforts. The amount that has been automatically deducted from [redacted] warrants so far ($841.68) will be reimbursed to Ms. [redacted] This case will then be closed.

Please give me a call with any questions. Thank you.

Sincerely,

Elizabeth Yelland

ELIZABETH YELLAND
Senior Staff Attorney

EAY:lmo

cc: [redacted]