

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DST12408

<p>KAREN L STEWART EXECUTOR OF THURMAN A STEWART ESTATE PETITIONER,</p> <p>V.</p> <p>NC DEPARTMENT OF STATE TREASURER, RETIREMENT SYSTEMS DIVISION RESPONDENT,</p> <p>AND</p> <p>BETTY J. STEWART RESPONDENT.</p>	<p>FINAL DECISION</p>
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On September 26, 2013, Administrative Law Judge J. Randall May heard this contested case in High Point, North Carolina.

APPEARANCES

For Petitioner: Karen Stewart, Pro Se
195 Conrad Circle
Lewisville, NC 27023

For Respondent: Robert M. Curran
Special Deputy Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699

For Third Party Respondent: Betty Stewart, Pro Se
2987 Frank Dillard Road
West Jefferson, NC 28694

ISSUE

Whether the Retirement System is properly paying a monthly survivorship benefit to the Third-Party Respondent pursuant to the benefit option selected by the member/retiree at the time of retirement and on file with the Retirement System at the time of the member's death.

APPLICABLE STATUTES AND RULES

N.C.G.S. § 128-27(g).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: Ex. 1: Retirement Systems Form 6, Application for Retirement of Thurman A. Stewart, Jr.
Ex. 2: Retirement Systems Form 6E, Election of Benefits
Ex. 3: Retirement Systems Division Journal Report (6 pgs)
Ex. 4: General Power of Attorney with Register of Deeds Certification (3 pgs)

For Third-Party Respondent None

WITNESSES

For Petitioner: None

For Respondent: Garry Austin, Special Assistant to the Director of the Retirement System

For Third Party Respondent: None

FINDINGS OF FACT

1. Thurman A. Stewart, Jr. was a member of the Local Governmental Employees' Retirement System ("LGERS"), prior to the effective date of his retirement on December 1, 1994. At the time of Mr. Stewart's retirement, he chose Option Six-Two, 100% Joint and Survivorship, and named his then wife, Betty J. Stewart, as the beneficiary of the monthly survivorship benefit.

2. On his benefit election form, Mr. Stewart was informed that if he chose a joint and survivorship benefit and designated his spouse as the beneficiary, and if he later became divorced from that spouse, he could revoke his election and make a new benefit election.

3. Thurman Stewart and Betty J. Stewart subsequently divorced sometime in 2010.

4. According to Respondent's records, Petitioner called the Retirement System on September 20, 2012 to inquire about Thurman Stewart's benefits. Petitioner was advised that the Retirement System would need a power of attorney to be able to provide information to anyone other than the member, and that any such power of attorney should be accompanied by a letter specifying the information needed.

5. According to Respondent's records, it did receive a copy of a power of attorney, faxed to its offices on September 20, 2012, executed by Thurman A. Stewart, and naming Petitioner as his attorney-in-fact. No letter or other request accompanied the power of attorney, and the Retirement System's records show no further correspondence regarding Thurman Stewart prior to the report of his death.

6. Mr. Stewart died on or about November 14, 2012, without having changed his election. Respondent has been paying the Third-Party Respondent, Betty J. Stewart, the monthly survivorship benefit pursuant to the election that the member selected at the time of his retirement.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. N.C.G.S. § 128-27(g) provides that, under the Option 6-2 elected by the member at retirement, "[u]pon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. . . ."

3. While the member was entitled to change his benefit option and to designate a new beneficiary under the provisions of N.C.G.S. § 128-27(g), no such change was made or sought to be made prior to his death. Petitioner has presented no evidence that the member or herself, as attorney-in-fact for the member, sought to change the benefit option or beneficiary designation prior to the member's death.

4. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent must continue paying the Third-Party Respondent the monthly survivorship benefit pursuant to the benefit option selected by the member/retiree at the time of retirement.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby ORDERS that Respondent Retirement Systems Division pay to Betty J. Stewart the monthly survivorship benefit pursuant to the benefit option and beneficiary designation selected by Thurman A. Stewart, Jr. at the time of his retirement.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 7th day of November, 2013.

J. Randall May
Administrative Law Judge