

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARING  
14DST03138

LUCY HAYES, )  
)  
                    Petitioner, )  
)  
                    v. )  
)  
DEPARTMENT OF STATE )  
TREASURER, RETIREMENT )  
SYSTEMS DIVISION )  
)  
                    Respondent. )  
\_\_\_\_\_ )

**FINAL DECISION**

This matter came on for hearing before the undersigned Administrative Law Judge on July 24, 2014, at 9:00 a.m. to determine two issues:

1. Whether Ed Hayes, a retired state employee, intended to designate his wife, Petitioner Lucy Hayes, as the beneficiary of his monthly retirement benefit but instead erroneously designated his sister, Mary Pat Hayes Zehr, as the beneficiary of that benefit?
2. If so, whether the law forbids Respondent from correcting its records to honor Ed's intention to provide for his wife upon his death?

Petitioner was represented by Edwin M. Speas of Poyner Spruill LLP and Respondent was represented by Special Deputy Attorney General Robert Curran. Petitioner Lucy Hayes and her sons William and John Hayes testified at the hearing. The sworn statements of Mary Pat Hayes Zehr, Kathy Nelson and Matthew Phillips were admitted in evidence by stipulation of the parties in lieu of their testimony. Garry Austin testified for Respondent.

**JURISDICTION**

The Office of Administrative Hearings has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 150B-22 as a consequence of Respondent's April 21, 2014, final agency decision denying Petitioner's March 26, 2014, request to Respondent to correct its records to honor her husband's intention to make his wife the beneficiary of his monthly retirement benefit.

Based on the evidence presented, the undersigned Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. Lucy and Ed Hayes had been married for 31 years when Ed died in February 2014. Their sons are William and John Hayes.

2. Lucy and Ed devoted their professional lives to the education of children with disabilities. Most of Lucy's work was in the public schools. Most of Ed's work was in the Department of Health and Human Services (DHHS).

3. Ed's health was not good. In 1995 he had surgery to replace his aortic valve. In April 2009 Ed had a heart transplant. These health problems forced Ed to retire from State service.

4. Ed and Lucy determined that for their mutual benefit upon their retirement from State service each should designate the other as the beneficiary of their monthly retirement benefits.

5. Ed's intention to make Lucy the beneficiary of his monthly retirement benefit was confirmed by the testimony of their sons William and John, by the testimony of Ed's sister, Mary Pat Hayes Zehr, by the testimony of Kathy Nelson, a Benefits Counselor with the Chapel Hill-Carrboro City Schools, who meet with Ed and Lucy to discuss Lucy's retirement, and by the testimony of Matthew Phillips, the insurance agent and counselor for the Hayes family.

6. The first actions Ed took in the retirement process confirm his intention to make Lucy the beneficiary of his monthly retirement benefit. On June 1, 2010, Ed completed Respondent's Form 6 listing Lucy as the beneficiary of his monthly benefit. On or about September 8, 2010, in response to a September 2, 2000 letter from Respondent requesting verification of his intended beneficiary's birth date, Ed sent Respondent Lucy's birth certificate.

7. On September 13, 2010, just five days after confirming his intention to make Lucy the beneficiary of his monthly retirement benefit, Ed completed Respondents Form 336 erroneously listing Lucy and his sons as the "principal beneficiaries" of his "Guaranteed Refund" and completed Respondents Form 6E, on which he elected Option 2, the 100% joint and survivor benefit, and erroneously listing his sister, Mary Pat Hayes Zehr, as his monthly retirement beneficiary.

8. Ed did not consult with Lucy or his sons before filing these documents and did not receive any advice or assistance from Respondent or DHHS in completing these forms.

9. The causes for Ed's error are clear and not disputed. As of September 13, 2010, Ed was taking 25 separate medications prescribed by his physicians to deal with complications resulting from his heart transplant. These medications all have side effects. During this time, Lucy, William and John all observed that Ed was confused, depressed, anxious, subject to mood changes and not attentive to his business affairs. For example, without consulting with Lucy, Ed prematurely cashed a certificate of deposit resulting in significant penalties and lost interest.

10. Reading and comprehending Forms 6E and 336 and understanding the subtle but critical differences between those forms is a difficult task for a person in good health not suffering from confusion and depression. In its answer to Petitioner's First Interrogatories, Respondent stated that it had used the Flesch Reading Ease method to gauge the difficulty an average person would face in reading and comprehending Forms 6E and 336. Petitioner presented evidence that reading and comprehending Forms 6E and 336 is comparable to reading and comprehending the Harvard Law Review.

11. Respondent admitted that it had no factual basis for disputing that Ed intended to make Lucy the beneficiary of Ed's monthly survivor benefits.

Based on these Findings of Fact, the undersigned Administrative Law Judges make the following:

### **CONCLUSIONS OF LAW**

1. The legal issue for resolution is whether statutes enacted by the General Assembly reflect an intention by the General Assembly to prohibit the Respondent from correcting an erroneous decision by a retired State employee to designate his sister rather than his wife as the beneficiary of his monthly retirement benefit. Sec, e.g., *State v. Blackstock*, 314 NC 232 (1985) (Cardinal rule that statutes must be read to accomplish the General Assembly's intention).

2. In support of its position that the General Assembly so intended, Respondent cites N.C. Gen. Stat. § 135-5 (g) which provides in pertinent as follows:

Except as provided in this section, the member may not change the members' retirement benefit option or the member's designated beneficiary for survivor benefits, if any, after the member has cashed the first retirement check or after the 25th day of the month following the month in which the first check is mailed, whichever comes first.

3. The interpretation of N.C. Gen. Stat. § 135-5(a) asserted here by Respondent is in fact in direct conflict with the position taken by Respondent through its Board of Trustees in an essentially identical case in 2008. On July 16, 2008, the Office of Administrative Hearings entered a decision granting summary judgment to Respondent affirming Respondent's decision that N.C. Gen. Stat. § 135-5(g) prohibited Respondent from correcting the erroneous decision of a retired State employee to designate his sister rather than his wife as the beneficiary of his monthly retirement benefit. At its meeting on October 16, 2008, Respondent's Board of Trustees concluded that the OAH decision was "incorrect as a matter of law" and that the law "does not prevent the Retirement System from allowing the Petitioner to change his beneficiary to his wife as the undisputed evidence indicates was his intent."

4. According to the evidence presented, Ed Hayes intended to designate his wife, Lucy Hayes, as the survivor beneficiary for his monthly retirement benefit, and the Form 6E on file with the Respondent reflects a mistake made by Ed Hayes in completing the form, and does not reflect the true intent of the member in designating his survivor beneficiary.

### **DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, pursuant to N.C. Gen. Stat. § 150B-34, the undersigned Administrative Law Judge, directs Respondent to take all actions necessary to correct its records to designate the Petitioner Lucy Hayes as the monthly retirement beneficiary of her husband Ed Hayes retroactive to the date of his retirement, and to pay Petitioner all benefits due and that will be due in the future.

### **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.

SO ORDERED, this the 27th of August, 2014

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Craig Croom  
Administrative Law Judge