

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DST 06380

STEPHANIE T. TREJO,
Petitioner,

v.

NC DEPARTMENT OF STATE
TREASURER,
RETIREMENT SYSTEMS DIVISION,

Respondent.

**ORDER
GRANTING SUMMARY JUDGMENT
FOR RESPONDENT**

Respondent's Motion For Summary Judgment came on to be heard and was heard before the undersigned Chief Administrative Law Judge on 17 December 2014 in the Dare County Courthouse, Manteo, North Carolina. Petitioner was present and represented by counsel, Branch W. Vincent, III, and Respondent was present and was represented by Assistant Attorney General Susannah P. Holloway.

Before ruling on Respondent's Motion, the undersigned appointed a temporary administrative law judge to conduct an in-person settlement conference. The temporary administrative law judge conducted an in-person settlement conference, but the parties were not able to reach agreement. Subsequent informal settlement negotiations also failed.

After reviewing the pleadings, affidavits, memoranda, discovery responses, submissions and oral arguments of counsel, the undersigned has determined that there are no genuine issues of material fact and that, as a matter of law, judgment must be granted for Respondent.

It is undisputed and uncontroverted that Petitioner qualified for and received long-term disability benefits in the Disability Income Plan of North Carolina ("DIPNC") with an effective date of December 12, 2004 and that, thereafter, Petitioner did not receive Social Security disability benefits.

Under the authority of N.C.G.S. § 135-106, Respondent did not err in its calculations that after the expiration of the 36 months of long-term disability, the hypothetical Social Security offset was required to be applied to reduce Petitioner's monthly long-term disability benefit in the DIPNC. However, this hypothetical Social Security offset was not applied to reduce Petitioner's long-term disability as required by law. G.S. § 135-106. Petitioner continued to receive DIPNC benefits without reduction or setoff. The Respondent subsequently became aware of the excess payments, and Respondent sought to recover the amounts paid to Petitioner which Petitioner was not entitled to receive from the DIPNC. N.C.G.S. §147-68.

The DIPNC is a statutorily created and a statutorily governed trust fund. N.C.G.S. § 135-110. The statutes governing the DIPNC determine the eligibility of and amounts payable to beneficiaries under the Plan. Under N.C.G.S. § 135-106, the hypothetical Social Security offset must be applied after thirty-six months of benefits unless the beneficiary produces evidence of actual receipt of a Social Security Disability benefit and then the actual amount of the Social Security benefit must be offset. N.C.G.S. § 135-106.

The undersigned has no authority to create an individualized long-term disability benefit to allow Petitioner to retain these excess benefits under any statutory construction or even under any theory of equitable principles or equitable defenses, even if applicable. The State Treasurer cannot write warrants payable from the DIPNC fund to pay Petitioner funds in excess of the statutory benefits allowed.

Respondent paid funds to Petitioner in excess of what Petitioner was entitled by law to receive. To permit Petitioner to retain these monetary benefits in excess of what was statutorily allowed, and as acknowledged by Petitioner, would be to allow Petitioner to be enriched beyond what Petitioner was statutorily permitted to receive, notwithstanding Respondent's overpayment, until such time as the erroneous overpayment to Petitioner was lawfully terminated.*

FINAL DECISION

Judgment is properly granted on Respondent's Motion for Summary Judgment and Respondent is entitled to recoup from Petitioner the asserted amount of overpayment, without interest, or in the alternative, an amount that is mutually determined and agreed upon by the parties.

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.

*The overpayment of funds to Petitioner for an extended period of time created Petitioner's present dilemma. Respondent is admonished to provide Petitioner with a repayment schedule that reduces this hardship for Petitioner in making these repayments in any future repayment schedule.

IT IS SO ORDERED.

This the 8th day of May, 2015.

Julian Mann
Chief Administrative Law Judge