

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14DST06732

<p>TRINA B PARKER PETITIONER,</p> <p>V.</p> <p>STATE OF NC DEPARTMENT TREASURER RETIREMENT DIVISION DISABILITY SECTION RESPONDENT.</p>	<p style="text-align: center;"><b>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</b></p>
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THIS MATTER coming on to be heard before Administrative Law Judge J. Randall May, on December 8, 2014 in Lillington, N.C; Petitioner, appearing pro se; and the North Carolina Department of State Treasurer, Retirement Systems Division, Teachers' and State Employees' Retirement System (TSERS) (hereinafter "the System"), being represented by Attorney General Roy Cooper through Assistant Attorney General Susannah Holloway.

The undersigned, after reviewing the Petition; the parties' Pre-Hearing Statements; the Respondent's Motion for Summary Judgment; the Petitioner's Response; and the arguments of Petitioner and counsel for Respondent, makes the following:

**FINDINGS OF FACT**

There is no genuine issue of material fact: This Court finds as fact that Petitioner has not been approved for and is not in receipt of a primary Social Security disability benefit, that Petitioner has received long-term disability benefits for 36 months, and that Petitioner did not have five years of membership service in the TSERS as of July 31, 2007; therefore, the legislative changes to N.C.G.S. § 135-106, effective August 1, 2007, apply to Petitioner: "After 36 months of long-term disability, no further benefits are payable under the terms of this section unless the member has been approved and is in receipt of primary Social Security disability benefits."

BASED ON THE foregoing FINDINGS OF FACT, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. Because Petitioner did not have five years of membership service in the TSERS as of July 31, 2007, the provisions of the legislative changes to N.C.G.S. § 135-106 effective August 1, 2007 apply to Petitioner: "After 36 months of long-term disability, no further benefits are payable under the terms of this section unless the member has been approved and is in receipt of primary Social Security disability benefits."

2. Because Petitioner has received long-term disability benefits for 36 months and has not been approved for and is not in receipt of a primary Social Security disability benefit, no further long-term disability benefits are payable.
3. Because of the express statutory provisions setting out the circumstances under which no further long-term disability benefits are payable from the Disability Income Plan, this forum lacks the authority to disregard the express provisions of the statute, and the express designation by the Legislature as to whom the legislative changes to the statute would apply, in order to craft any equitable remedy for Petitioner attempting to allow a payment from the Disability Income Plan of disability benefits, which would contravene these express statutory provisions which control expenditures from the Disability Income Plan.

### ACKNOWLEDGMENT

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative Hearings.

### FINAL DECISION

Based on the foregoing FACTS and the CONCLUSIONS OF LAW, the undersigned hereby ORDERS, ADJUDGES, and DECREES AS FOLLOWS:

Summary Judgment is granted in favor of the Respondent on the grounds that there is no genuine issue of material fact; that the Petitioner did not have 5 years of membership service in the TSERS as of July 31, 2007; that the Petitioner has been receiving long-term disability benefits for 36 months and that the Petitioner has not been approved for and is not in receipt of a primary Social Security Disability benefit and that, therefore, under N.C.G.S. § 135-106, no further long-term disability benefits are payable; the final agency decision of the Retirement Systems of July 21, 2014 is hereby upheld that the Petitioner's long-term disability benefits are to be suspended effective September 2014.

### 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 16<sup>th</sup> day of February, 2015.

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J. Randall May  
Administrative Law Judge