

STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
21 DST 03325

<p>Monica Lynette Pfeiffer Petitioner,</p> <p>v.</p> <p>NC Department of State Treasurer, Retirement Systems Division Respondent.</p>	<p><b>FINAL DECISION</b></p>
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THIS CAUSE coming on to be heard on May 13, 2022 on the virtual platform Webex before the undersigned Administrative Law Judge on the Parties' respective Motions for Summary Judgment. Both Parties filed responding papers.

**UNCONTESTED FACTS**

1. Petitioner has been a member of the Teachers' and State Employees' Retirement System ("TSERS") since 2005.
2. Petitioner was employed by Charlotte-Mecklenburg County Schools and then by Cabarrus County Schools during various periods from 2005 through 2017.
3. Petitioner began receiving short-term disability benefits from the Disability Income Plan of North Carolina (DIPNC) pursuant to N.C. Gen. Stat. § 135-105 in April 2017 and received those benefits through April 2, 2018.
4. On March 13, 2018, Respondent sent a notice to Petitioner which expressly states, "You have been approved for long-term disability benefits [which] benefits will become effective April 3, 2018."
5. Respondent's notice also states that "[t]o accept this benefit and initiate payment, you must submit the following ... Form 705 *Agreeing to Accept Long-Term Benefits through the Disability Income Plan of N.C.*"
6. By letter dated February 11, 2021, Respondent notified Petitioner that: Respondent conducted an audit of her account, 35 months after awarding long-term benefits; Respondent's audit had determined that she was not eligible to receive long-term benefits; Respondent had "incorrectly processed" her application; and "we sincerely apologize for this error."

7. In its Final Agency Decision, dated June 3, 2021, Respondent upheld its notice but acknowledged “the erroneous processing of your application that resulted in the initial incorrect approval for [long-term disability benefits].”

8. Respondent determined that Petitioner owed \$118,973.97, representing almost three years of long-term disability benefits and state health plan premiums totaling \$14,888.56 for the same three-year period.

9. Petitioner timely filed her petition for a contested case hearing on July 29, 2021.

### **CONCLUSIONS OF LAW**

1. The Undersigned has the authority to decide a motion for summary judgment pursuant to N.C. Gen. Stat. § 150B-34(e).

2. Pursuant to N.C. Gen. Stat. § 143-64.80(b), “n[o] State department, agency, or institution, or other State-funded entity may forgive repayment of an overpayment of State funds, but shall have a duty to pursue the repayment of State funds by all lawful means available, including the filing of a civil action in the General Court of Justice.”

3. The Undersigned only has those powers expressly stated in N.C. Gen. Stat. § 150B-33. These powers do not include the authority to grant equitable relief.

4. The Undersigned does not have the authority to grant the equitable relief that Petitioner seeks.

### **DISCUSSION**

The Undersigned raised issues about Respondent’s posture in this case with both Parties’ Counsel: first, Respondent’s position that the law requires Respondent to take action against Petitioner under these circumstances; second, Respondent offers no mitigation of the harm to Petitioner; and, third, Respondent’s position means that no State employee can rely upon official notices sent by Respondent.

### **ORDER**

It appearing to the Undersigned that there is no genuine issue as to any material fact and, for the reasons stated above, the Motion for Summary Judgment is granted in favor of Respondent.

### **NOTICE OF APPEAL**

**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 as indicated by 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.

**IT IS SO ORDERED.**

This the 1st day of June, 2022.



Selina Malherbe

Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 1st day of June, 2022.



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