

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

BEVERLY NELSON CURTIS, )  
 )  
           Petitioner, )  
 )  
 vs. )  
 )  
 STATE BOARD OF ADMINISTRATION, )  
 )  
           Respondent. )  
 \_\_\_\_\_ )

SBA Case No. 2022-0502

**FINAL ORDER**

On June 29, 2023, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Beverly Nelson Curtis, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by July 14, 2023, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that her forfeited unvested account balance be returned to her Florida Retirement System (“FRS”) Investment Plan account hereby is denied. Petitioner left creditable service before she was fully vested in the amount transferred from her FRS Pension Plan account to her FRS Investment Plan account, and she did not return to an

FRS-eligible position within the statutory deadline required to be met to avoid forfeiture of the unvested account balance.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

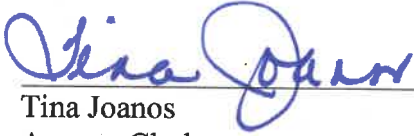
DONE AND ORDERED this 11<sup>th</sup> day of September 2023, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Daniel Beard**  
Chief of Defined Contribution Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Beverly Nelson Curtis, *pro se*, both by email transmission to [bynelsoncurtis@aol.com](mailto:bynelsoncurtis@aol.com) and by U.P.S. to 4940 NW 108<sup>th</sup> Terrace, Coral Springs, Florida 33076; and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and Ian White ([iwhite@ausley.com](mailto:iwhite@ausley.com)) and [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 11<sup>th</sup> day of September, 2023.



Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

BEVERLEY NELSON CURTIS,

Petitioner,

v.

CASE NO. 2022-0502

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on May 3, 2023, at 10:00 a.m., with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Beverley Nelson-Curtis, pro se  
4940 NW 108<sup>th</sup> Terrace  
Coral Springs, FL 33076

For Respondent: Ian C. White, Esq.  
Ausley McMullen, P.A.  
P.O. Box 391  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether an unvested account balance which Petitioner forfeited can be returned to her Florida Retirement System (FRS) Investment Plan account.

**EXHIBIT A**

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone, testified on her own behalf and presented no other witnesses. Respondent was represented telephonically by Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-4, including corrected Exhibit R-1, were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on May 24, 2023. The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. The following recommendation is based upon my consideration of the complete record in this case and all materials submitted by the parties.

## **PROPOSED FINDINGS OF FACT**

1. Petitioner began employment with the Florida Department of Children and Families, an FRS-participating employer, in December of 1987.
2. At that time, the only retirement plan available for eligible employees was the defined benefit Pension Plan.
3. In May of 1988, Petitioner's employment with the Department of Children and Families ended.
4. In April of 2006, Petitioner was employed with the Department of Health, an FRS-participating employer. At that time, both the Pension Plan and the defined contribution Investment Plan, established by the legislature in 2002, were available for eligible employees.
5. Petitioner had until September 29, 2006, to make an election between the Pension Plan and the Investment Plan.

6. The FRS Plan Choice Administrator has no record of receiving an election from Petitioner by this September 29, 2006 deadline, and Petitioner therefore defaulted into the Pension Plan effective October 1, 2006.

7. On February 24, 2009, Petitioner used her one-time second election to transfer from the Pension Plan to the Investment Plan, which established an Investment Plan effective date of March 1, 2009.

8. The retirement benefit amount that transferred from Petitioner's account in the Pension Plan to the Investment Plan was subject to a six-year vesting requirement.

9. Petitioner's creditable service under the FRS ended in July of 2010. At that time, she had 4.75 years of service credit with participating FRS employers.

10. In order to be fully vested in the benefit transferred from the Pension Plan, Petitioner would have had to work an additional 1.25 years (1 year and 3 months) in a retirement eligible position with an FRS participating employer, meet the six year vesting requirement of the funds which transferred.

11. An FRS Investment Plan-Confirmation of Forfeiture-Five Year form dated September 9, 2020, was sent to Petitioner at the address on file. This form advised that the unvested portion of Petitioner's FRS Investment Plan was subject to forfeiture because she was not fully vested in that portion, and she would have to return to an FRS-covered position before December 31, 2020 to avoid this forfeiture.

12. Petitioner did not return to an FRS-eligible position by the December 31, 2020, deadline and the nonvested portion of her retirement account was forfeited.

13. Some two years later, on or about November 2, 2022, Petitioner completed a Request for Intervention asking that the forfeiture be reversed and the funds returned to her Investment Plan account.

14. Petitioner's request was denied by Respondent, and on or about December 5, 2022, Petitioner filed a Petition for Hearing requesting the same relief and asserting she never received the September 9, 2020 letter.

### CONCLUSIONS OF LAW

15. When Petitioner used her second election to transfer from the Pension Plan to the Investment Plan, under Section 121.4501(f)(a)(1), the six year vesting requirement for her Pension Plan went with those funds.

16. At the time of her account transfer, Petitioner had 4.75 years of FRS-covered service, not the six years required to vest in those funds.

17. Although she had been employed by participating FRS employers in the interim, the positions she held were Other Personnel Services (OPS) and not eligible for FRS service credit, so she did not earn the additional service credit she needed to vest in the funds transferred to her account from her previous Pension Plan account.

18. Vesting for the benefit transferred into the Investment Plan from the Pension Plan is controlled by Section 121.4501(6)(c) and (d), Florida Statutes. This section states, in pertinent part as follows:

(c) 1. With respect to amounts contributed by an employer and transferred from the pension plan to the investment plan, plus interest and earnings, and less investment fees and administrative charges, a member shall be vested in the amount transferred upon meeting the vesting requirements for the member's membership class as set forth in s. 121.021(45). . . .

2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in the suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's accounts any amount previously transferred from the member's accounts to the suspense account, plus the actual earnings on such amount while in the suspense account.

(d) Any nonvested accumulations transferred from a member's account to the state board's suspense account shall be forfeited, including accompanying service credit, by the member if the member is not reemployed as an eligible employee within 5 years after termination.

19. Pursuant to Section 121.4501(6)(d), Florida Statutes, all nonvested retirement monies which are transferred from a member's account to the SBA's suspense account are to be forfeited, including accompanying service credit, if the member is not reemployed as an eligible employee within five years. Petitioner's nonvested retirement monies were transferred to the state board's suspense account, but not forfeited until over ten years later.

20. An FRS Investment Plan-Confirmation of Forfeiture-Five Year form notifying Petitioner of the impending forfeiture was sent to the address on file on September 9, 2020, advising that she needed to return to an FRS eligible position by December 31, 2020, to avoid the forfeiture. Although referred to as a "Five Year" form, the notice set out a forfeiture date that resulted in Petitioner having ten years to return to FRS covered employment.

21. Petitioner asserts that she did not receive the form because it was sent to the wrong address, and that she provided an updated address to her employer, but there is no record of either Petitioner or her employer providing an updated address to Respondent.

22. The FRS Investment Plan Employee Handbook details how a member can provide updated address information. Members who are no longer actively involved in an FRS eligible



position can either log in to [MyFRS.com](http://MyFRS.com) or call the Investment Plan Administrator. The number for the Investment Plan Administrator is provided.

23. Petitioner also states that she was given erroneous information by an employer human resources representative. Even if this assertion were proven, pursuant to Section 121.021(10), Florida Statutes, employers are not agents of Respondent and Respondent is not responsible for erroneous information provided by representatives of employers.

24. After she left her FRS eligible position in 2010, and prior to the unvested portion of her retirement account being forfeited, Petitioner contacted the MyFRS Financial Guidance line on July 10, 2012, September 3, 2013, May 5, 2014, September 1, 2020, and December 17, 2020. Petitioner's inquiries during these conversations concerned the vesting requirement, whether she could purchase the 1.25 years of service, and about her vested and unvested balances. Petitioner was informed that she could not purchase the 1.25 years of service. Neither Respondent nor its agents made any material misstatement to Petitioner during these calls.

25. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep't of Community Affairs*, 625 So. 2d 831 (Fla. 1993); *Dep't of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

26. Respondent is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. *Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement*, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

27. Respondent's construction and application of Chapter 121 will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. *Level 3 Communications v. C.V. Jacobs*, 841 So. 2d 447, 450 (Fla. 2002); *Okeechobee Health Care v. Collins*, 726 So. 2d 775, 778 (Fla. 1st DCA 1998).

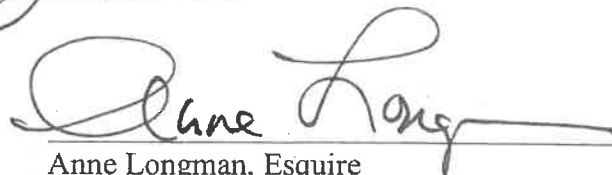
28. Respondent, as an administrative entity of the State of Florida, has only those powers conferred upon it by the legislature. *See, e.g., Pesta v. Dep't of Corrections*, 63 So.3d 788 (Fla. 1st DCA 2011). The Florida Administrative Procedure Act expressly provides that statutory language describing the powers and functions of such an entity are to be construed to extend "no further than...the specific powers and duties conferred by the enabling statute." §§ 120.52(8) and 120.536(1), Fla. Stat.

29. It is unfortunate that Petitioner was unable to secure FRS-covered employment to avoid the forfeiture she contests, but I see nothing in the record here which would permit any other result.

#### RECOMMENDATION

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

DATED this 29<sup>th</sup> day of June 2023.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
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COPIES FURNISHED via email and U.S. mail to:

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*Petitioner*

and via electronic mail only to:

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