

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ANGELA REED,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2019-0383
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On March 11, 2020, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Angela Reed, and upon counsel for the Respondent. This matter was decided after an informal proceeding. The presiding officer issued her Recommended Order upon her consideration of the case record and all materials submitted by the parties. 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

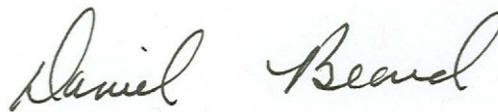
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request for a hardship distribution from her Florida Retirement System (“FRS”) Investment Plan account while she is actively employed hereby is denied.

Section 121.591(1), Florida Statutes, specifically prohibits the type of distribution
Petitioner has requested.

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 23rd day of April, 2020, 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 Angela Reed, pro se, both by email transmission, [REDACTED] and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@auslev.com; jmcvaney@ausley.com). Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 23rd day of April, 2020.



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

ANGELA REED,

Petitioner,

vs.

CASE NO. 2019-0383

STATE BOARD OF ADMINISTRATION.

Respondent.

RECOMMENDED ORDER

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding on January 21, 2020, in Tallahassee, Florida, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Angela Reed, pro se



For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner may take a distribution from her Florida Retirement System (FRS) Investment Plan account based on hardship or life emergency.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent attended the hearing in person and presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-3 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on February 6, 2020. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. At the time of the hearing, the Petitioner was employed in an FRS qualifying position with the Port St. Lucie Public Schools.
2. Petitioner is a vested member of the defined contribution FRS Investment Plan.
3. By email of September 26, 2019, Petitioner detailed her current life circumstances and her dissatisfaction with her FRS retirement account and specifically the provisions which prohibit her accessing funds she needs now. Respondent treated this letter as request for intervention.
4. On September 27, 2019, Respondent informed Petitioner that pursuant to Section 121.591(1), Florida Statutes, it could not allow her to take a distribution of funds while she was actively employed with an FRS-participating employer.

5. Petitioner filed a Petition for Hearing requesting that she be allowed to receive an emergency or hardship distribution from her Investment Plan account.

6. At the hearing, Petitioner acknowledged her understanding of the requirements of Section 121.591(1), Florida Statutes, but wanted to express her objection to the applicable statutory requirements governing her account.

CONCLUSIONS OF LAW

7. Section 121.591(1), Florida Statutes dictates how and when benefits can be distributed for an Investment Plan Account. Specifically, in pertinent part, this section states:

8. Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. ...

(1) NORMAL BENEFITS. —Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39)

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021, ...

§ 121.591(1), Fla. Stat. (emphasis added).

9. The language of this provision expressly prohibits the type of distribution requested.

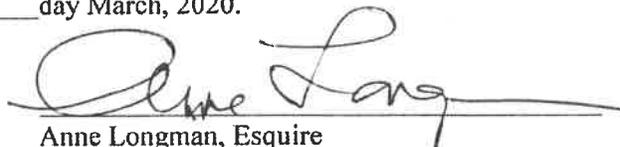
10. Respondent is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2,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

11. Accordingly, Respondent does not have the authority to make an emergency or hardship distribution from Petitioner's Investment Plan account, and therefore cannot grant the relief requested.

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.

RESPECTFULLY SUBMITTED this 11th day March, 2020.



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

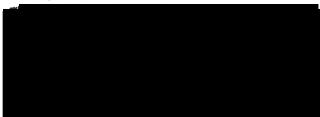
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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
mini.watson@sbafla.com
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Angela Reed



and via electronic mail only to:

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