

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

MAYRA MATOS,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2023-0023
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On June 12, 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, Mayra Matos, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by June 27, 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 she currently be paid the amount that already had been distributed to her in 2007 from her FRS Investment Plan Hybrid Option account, hereby is denied. Petitioner claimed that she did not request the 2007 distribution and she had no knowledge of it. However, Petitioner produced no evidence to support her assertion that

she had not received the 2007 distribution. As such, Petitioner is not entitled to the relief she 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 11th 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

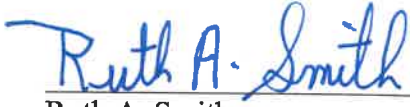
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Mayra Matos, *pro se*, both by email transmission to Mayramatos@hotmail.com and by U.P.S. to 16270 S.W. 47th Manor, Miramar, Florida 33027; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ian White, Esq. (iwhite@ausley.com); jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 11th 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

MAYRA MATOS,

Petitioner,

vs.

CASE NO. 2023-0023

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on May 2, 2023, 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: Mayra Matos, pro se
16270 Southeast 47th Manor
Miramar, FL 33027

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 Petitioner is entitled to be paid the amount formerly in her Hybrid Plan account with the Florida Retirement System (FRS) Investment Plan, even though a total distribution was made from that account in 2007, leaving a zero balance.

EXHIBIT A

PRELIMINARY STATEMENT

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

A transcript of the hearing was made, filed with the agency, and provided to the parties on May 8, 2023. The parties were invited to submit proposed recommended orders within 30 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. Petitioner began her employment with the Department of Children and Families, an FRS-participating employer, in 1995.
2. At that time, the only retirement plan available for eligible employees was the defined benefit Pension Plan.
3. In 2002, with the advent of defined contribution plan options, Petitioner had until August 31, 2002 to elect to stay in the Pension Plan or enroll in the Investment Plan or the Hybrid Option of the Investment Plan.
4. On August 31, 2002, Petitioner elected to enroll in the Hybrid Option of the Investment Plan, which established an effective date of September 1, 2002.
5. On July 1, 2005, Petitioner terminated her employment with the Department of Children and Families.
6. On March 5, 2007, a total distribution was processed from Petitioner's Hybrid Plan account (check #1164455), bringing her account to a zero balance.

7. Petitioner states that she never requested a distribution from her FRS Hybrid Plan account and first learned of the distribution when she contacted the MyFRS Financial Guidance Line on December 17, 2022, to check the status of her account.

8. On or about January 19, 2023, Petitioner completed a Request for Intervention asking Respondent to return funds to her Hybrid Plan account.

9. Respondent denied Petitioner's request.

10. On or about February 16, 2023, Petitioner filed a Petition for Hearing asking Respondent to distribute retirement funds she asserts should have still been in her FRS account.

CONCLUSIONS OF LAW

11. A total distribution from Respondent's FRS Hybrid Plan account occurred on March 5, 2007.

12. Petitioner asserts that she only became aware of this distribution on December 16, 2022, and that she never requested nor received it.

13. The distribution from Respondent's account occurred through a prior FRS Plan Administrator (Voya). Given the date the distribution was made, most of the documentation Petitioner seeks is no longer available, and there are no call summaries from the FRS Guidance Line.

14. Ms. Olson testified at the hearing that she had investigated and obtained all of the information regarding Respondent's distribution that the prior Plan Administrator had available.

15. As a matter of law, and pursuant to Section 121.4501(8)(g), Florida Statutes, the distribution from Petitioner's account is presumed to have been made at Petitioner's request and with her full knowledge and consent. This section states, in pertinent part:

(g) The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. **It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member with the member's full knowledge and consent.** To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

§ 121.4501(8)(g), Fla. Stat. (emphasis added).

16. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before any relief may be granted. *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).

17. Respondent's records indicate that a total distribution was made from Petitioner's Hybrid Plan account over 15 years ago. Respondent does not have the ability to provide Petitioner a new check from an account that reflects a zero balance. Nor does Respondent have the ability, or the authority, to return monies to Petitioner's account in the absence of documentary evidence to overcome the presumption in section 121.4501(8)(g).

18. 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").

19. 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).

20. 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.

21. I do not question Petitioner’s assertion that she never received the disputed distribution, but she has not been able to demonstrate entitlement to the relief she has requested under the applicable law.

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 12th day of June 2023.

s/Anne Longman
Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
106 East College Avenue, Suite 1500
Tallahassee, FL 32301-1872
alongman@llw-law.com

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 Boulevard, 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:

Mayra Matos
16270 S.W. 47th Manor
Miramar, FL 33027
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and via electronic mail only to:

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