

**To: New Jersey Law Revision Commission**  
**From: Chris Mrakovic**  
**Re: Disability Benefits After Leaving Public Employment**  
**(*Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019))**  
**Date: January 11, 2021**

## MEMORANDUM

### Executive Summary

In New Jersey, most State employees are eligible for membership in the Public Employees' Retirement System (PERS). N.J.S. 43:15A-42 allows eligible members of PERS to receive ordinary disability retirement benefits (ODRB) so long as they meet service credit minimums.<sup>1</sup> The text of this statute, however, is silent regarding the eligibility of an employee who leaves public sector service prior to becoming disabled but retains membership in PERS. This question was addressed by the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*<sup>2</sup>

### Statute Considered

N.J.S. 43:15A-42 provides, in pertinent part:

A member, under 60 years of age, who has 10 or more years of credit for New Jersey service, shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

### Background

The petitioner began employment with the Wall Township Board of Education in 1999.<sup>3</sup> In 2006, she was terminated from her employment.<sup>4</sup> However, she was reinstated in 2009 after a successful unfair labor practice charge, and was awarded back pay.<sup>5</sup> In 2012, the petitioner signed a settlement agreement with her employer, ending her employment in exchange for \$485,000.<sup>6</sup> She obtained work in the private sector, but maintained her membership in PERS.<sup>7</sup>

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<sup>1</sup> N.J.S. 43:15A-42.

<sup>2</sup> *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019).

<sup>3</sup> *Id.* at \*1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

In 2013, the petitioner became totally and permanently disabled.<sup>8</sup> She applied to PERS for disability benefits under N.J.S. 43:15A-42.<sup>9</sup> PERS denied the application and the petitioner appealed; the case was transferred to an administrative law judge (ALJ) for resolution.<sup>10</sup> The petitioner argued that she was eligible for benefits under the text of N.J.S. 43:15A-42 because “it was not disputed she was still a member of PERS, under sixty years of age, had provided over ten years of service for the State, and was totally and permanently disabled when she applied for ODRB benefits.”<sup>11</sup> PERS argued that the petitioner was not entitled to benefits because she did not have the disability when she resigned from her public sector employment.<sup>12</sup>

The ALJ found in favor of the petitioner, noting that the text of the statute does not require a claimant become disabled from public sector employment in order to receive benefits.<sup>13</sup>

### **Analysis**

The Appellate Division reversed, denying benefits to the petitioner.<sup>14</sup> The Court conceded that deference is ordinarily given to decisions of administrative agencies.<sup>15</sup> However, it noted that extrinsic evidence can be used to aid in statutory interpretation when a statute is facially ambiguous.<sup>16</sup> The Court found that N.J.S. 43:15A-42 is ambiguous and that a determination of legislative intent is required to render a decision in this case.<sup>17</sup> The Appellate Division determined that the phrases “for the performance of duty” and “should be retired” in N.J.S. 43:15A-42 indicate Legislative intent that the performance of duty be for a public sector entity.<sup>18</sup> The Court supported this finding by citing the PERS rehabilitation statute, which requires an employee who recovers from a disability to return to public sector service.<sup>19</sup> Taken together, the Court held that an employee must be disabled from public sector employment in addition to the other eligibility requirements listed in N.J.S. 43:15A-42 in order to receive ordinary disability benefits.<sup>20</sup>

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach to determine whether or not it would be useful to modify N.J.S. 43:15A-42 to state that it permits or prohibits the extension of ordinary disability retirement benefits to eligible PERS members who leave public sector employment before the onset of disability. The purpose of this proposal is to address the ambiguity identified by the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp. 's Ret. Sys.*

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<sup>8</sup> *Murphy*, 2019 WL 1646371 at \*1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*2.

<sup>14</sup> *Murphy*, 2019 WL 1646371 at \*3.

<sup>15</sup> *Id.* at \*2.

<sup>16</sup> *Id.* at \*3 (citing *State v. Smith*, 197 N.J. 325, 333 (2009)).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing N.J.S. 43:15A-42).

<sup>19</sup> *Id.* (citing N.J.S. 43:15A-44.).

<sup>20</sup> *Murphy*, 2019 WL 1646371 at \*3.