BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
K. C.	)	OAH No. 25-1947-PER
	)	Agency No. 2025-003

DECISION ON SUMMARY ADJUDICATION

I. Introduction

K. C. is former State of Alaska employee who is a vested Tier II member of the Public Employees Retirement System ("PERS"). Based upon his years of service, he was eligible for a monthly pension of $1,501 per month when he reached 60 years of age in 2017. When Mr. C. reached age 60, however, he was living and working in Wisconsin and had no pressing need for this additional income. Believing that the amount of this monthly pension would steadily increase the longer he waited to begin collecting it – which is the case for Social Security – Mr. C. decided to postpone the start date for his PERS benefits to a future point in time.

Unfortunately for Mr. C., Alaska law provides that when PERS members eligible for a defined pension benefit reach their normal retirement age – which is age 60 for most – the amount of their monthly pension is fixed and does not increase regardless of when they begin drawing benefits (unless they are continuing to work for an employer that participates in PERS). This point is emphasized by the Division in its publications and website. Thus, Mr. C. missed out on eight years of PERS benefits without gaining anything in return.

Mr. C. learned of his mistake in 2025 when he contacted the Division of Retirement and Benefits (the "Division") to begin collecting his pension. Hoping to rectify matters, Mr. C. asked the Division for a retroactive payment equal to the total amount of pension benefits he would have obtained if he had applied to receive them in 2017, plus interest. The Division denied this request. Mr. C. then lodged this appeal. For the reasons covered below, the Division's rejection of Mr. C.'s request is AFFIRMED.

II. Facts

Mr. C. began working for the State of Alaska in July 1994, which placed him in the PERS Tier II Defined Benefit Plan.[1] Shortly thereafter, the Division asserts that – consistent with its standard operating procedures – it mailed Mr. C. a benefits handbook which included the following advisory:

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[1] Agency Record at 17.

> Vested members who have terminated PERS employment and have reached normal retirement age will not receive larger monthly benefits by waiting until they are older to retire.[2]

Mr. C. denies any recollection of receiving this handbook.[3]

Mr. C. left state service in May 2000,[4] and subsequently relocated to Wisconsin. Based upon his years of service, Mr. C. was eligible to receive a monthly pension upon reaching his normal retirement age of 60 in 2017.[5] Mr. C. acknowledges that after leaving state service, he received annual benefit statements from the Division advising that he would be "eligible for normal retirement" when he turned 60.[6] These statements – including the ones that Mr. C. received between 2017 and 2024 – consistently advised that his estimated monthly pension benefit remained fixed at $1,501.[7]

The Division additionally contends that Mr. C. was mailed another benefits handbook in 2003 that again advised that he would not increase his monthly pension payment by waiting to start drawing his benefits past his normal retirement age.[8] Mr. C. has no recollection of receiving this handbook.[9]

As will be discussed in greater detail below, the Division cannot begin paying retirement benefits unless an individual who is eligible to receive them first "applies for retirement."[10] When Mr. C. turned age 60 in 2017, he did not apply for retirement. This was a deliberate choice based upon Mr. C.'s mistaken belief that his monthly benefit would grow larger the longer he postponed his PERS retirement. According to Mr. C.:

> Most state public retirement systems, and the United States Social Security [System], increase pension payments if you wait until you are older in age to receive retirement distributions. It is reasonable to assume that Alaska PERS operates in a similar fashion.[11]

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2 Agency Record at 112.
3 Mr. C. Opposition to Motion for Summary Adjudication at 1.
4 Agency Record at 6.
5 Under AS 39.35.370(a)(1), a person with five years or more of credited service that is no longer working for an employer participating in PERS becomes eligible for a monthly retirement benefit upon turning age 60.
6 Mr. C. Opposition at 1.
7 Agency Record at 17-54 (collecting Mr. C.'s 2003-2024 PERS Annual Benefit Statements, each of which advised that, "Assuming no further service . . . your monthly benefit amount at normal retirement would be $1,501.35 or $18,016.20 annually.")
8 Agency Record at 7.
9 Mr. C. Opposition at 1.
10 *See* AS 39.35.370(e).
11 Mr. C. Opposition at 1.

Since Mr. C. continued to be employed on a full-time basis throughout the 2017 – 2025 timeframe, he had less need for this additional income. Given this, Mr. C. believed it made sense to postpone collection of his PERS benefits and thereby increase the amount he received each month once he was no longer working.[12]

Notably, there is nothing in the record suggesting that Mr. C.'s assumption on this key point was based upon any communications that he had with any Division employees, or any publication distributed by the Division. Nor is there any indication that Mr. C. checked the PERS web site to verify the validity of his assumption. Had he done so, he would have seen the following highlighted advisory:[13]

> Notice: If you are no longer working, waiting to apply for retirement past your **normal retirement** age will not increase your retirement benefit. Benefit payment will begin the first day of the month after you meet eligibility requirements and will not be retroactive.

This advisory has been included on the Division's website since 2013.[14]

In April 2025, Mr. C. contacted the Division to begin the retirement application process.[15] The record shows that this was the first communication Mr. C. initiated with any Division employee following his departure from state service in 2000. After learning that he had missed out on years of PERS pension benefits with no corresponding gain, Mr. C. requested a retroactive payment of the payments that he would have received between 2017 and 2025 had he timely applied to receive them, plus interest.[16] Mr. C. claims he is entitled to this payment since the annual benefit statement he received from the Division did not contain a warning similar to that found on the Division's website.[17] The Division rejected Mr. C.'s request, and this appeal followed.

III. Discussion

A. Summary Adjudication Standard

Summary adjudication, which is the administrative law equivalent of summary judgment, is a means by which a party can obtain a ruling in its favor without an evidentiary hearing.[18] To

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[12] Agency Record at 15.

[13] *See* https://drb.alaska.gov/employee/dbrplan.html#pension (accessed October 16, 2025).

[14] *See* Division's Motion for Summary Adjudication at 5, n. 12.

[15] Agency Record at 15.

[16] *Id.*

[17] *Id.*

[18] *Smith v. State, Dep't. of Revenue*, 790 P.2d 1352, 1353 (1990) (noting that a statutory right to a hearing "does not require development of facts through an evidentiary hearing in the absence of a factual dispute"); *Alborn*

obtain summary adjudication, the moving party must show that (1) there is no genuine dispute of material fact that would require a hearing to resolve; and (2) it is entitled to a ruling in its favor when the proper legal standards are applied to those undisputed facts.[19]

Here, at an early-stage conference in this case, the parties agreed that the pivotal facts here were undisputed, and that issues were appropriately resolved through motions practice. The Division's motion for summary adjudication followed. While there is a factual point that remains unresolved – specifically, whether Mr. C. received the 1993 and 2003 benefit handbooks that the Division claims to have mailed him – as covered below, this is an immaterial point that does not require a hearing to resolve.

B. Mr. C. is not entitled to recover any PERS benefits for the time that passed prior his 2025 retirement application..

For individuals vested in the PERS defined benefit plan who have 10 years or less of service, the amount of their monthly benefit is set by AS 39.35.370(c)(1) as "two percent of the average monthly compensation times all years of service." Language appearing later in this statute sets out the requirements that must be met before the Division can commence disbursement of monthly pension payments:

> Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; *and (3) the member applies for retirement*. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which a benefit is payable under this section. (Emphasis added.)[20]

Nothing within the text of AS 39.35.370 or its accompanying provisions grants the Division discretion to increase a monthly pension benefit beyond that mandated by the formula set by the legislature. Equally important, the statute makes it clear that (1) pension benefits are not payable until they accrue; and (2) these benefits do not start to accrue until the first full month *after* a member has applied for retirement.

At first blush, requiring PERS members to apply for retirement benefits guaranteed to them by Alaska law might seem a questionable formality. However, closer analysis reveals sound

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Constr., Inc. v. Dep't of Lab. & Workforce Dev., 507 P.3d 468, 473 (Alaska 2022) (motions for summary adjudication before OAH are the equivalent of summary judgment motions in a civil lawsuit).

19 2 AAC 64.250(a).

20 AS 39.35.370(e).

reasons for the legislature's insistence on this point. This follows from the fact that a retirement application requires PERS members to make a series of critical decisions that will significantly impact the rest of their lives, and the lives of their spouses and dependents. Until members communicate these decisions to the Division through a completed retirement application – a somewhat complex document that is currently nine pages in length – it is effectively impossible for the Division to begin paying benefits.[21]

To understand why this is so, it is important to recognize that the Division does more than just send a monthly check to PERS retirees for the balance of their lives. For vested members entitled to Tier I, II or III retirement benefits, PERS can also provide the surviving spouses of deceased members with medical insurance and varying levels of lifetime income.[22] In exchange for these "survivor benefits," retirees must accept a reduced pension for the rest of their lives.[23] This is considered such an important aspect of PERS benefits that spouses of retired members must receive a base level of survivor benefits – regardless of the wishes of the member spouse – unless they sign a notarized waiver form that is submitted with the member's retirement application.[24] This means that Mr. C.'s estimated monthly benefit of $1,501 per month would be reduced to a lower figure unless he and his wife opted to waive her entitlement to survivor benefits.

Thus, submission of a retirement application requires married PERS members to carefully evaluate the extent to which they want to maximize their retirement income while they are still alive, or alternatively protect their spouses in the event they should predecease them.[25] Important choices must be made even by PERS members who are unmarried at the time of retirement, or whose spouses waive their entitlement to survivor benefits. For example, PERS members that do not choose survivor benefits, and whose covered employment began prior to 1996, have the option of frontloading their pension payments to maximize the income they receive in the years before they are eligible for Social Security.[26]

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21 *See* https://drb.alaska.gov/docs/booklets/persRetirementApplication.pdf.

22 These options are set out in AS 39.35.450. A useful summary of the survivor benefits available to Tier II members can also be found at https://drb.alaska.gov/docs/brochures/pers056.pdf. The agency record here shows that Mr. C. is presently married.

23 As the Alaska Supreme Court noted in *Kingik v. State, Dep't of Admin., Div. of Ret. & Benefits*, 239 P.3d 1243, 1246 n.1 (Alaska 2010), all the choices available to PERS retirees have the same actuarial value and are therefore projected to cost the Division the same amount.

24 AS 39.35.450.

25 In this regard, it is worth noting that a retirement application is the method by which PERS members advise the Division of their marital status at the time of their retirement.

26 *See* AS 39.35.460 (repealed by ch. 4, FSSLA 1996).

These difficult choices must be made by PERS members before the Division begins paying retirement benefits. Once payment of benefits begins, these choices become irrevocable.[27]

Additionally, as part of the retirement application process the Division calculates the benefits payable to ex-spouses under qualified domestic relations orders.[28] Finally, as part of the retirement application process, defined benefit retirees may select a reduced monthly benefit in exchange for varying levels of long-term care insurance, or optional dental and vision insurance coverage.[29]

This application process also allows PERS members to adjust the timing of their retirement to accommodate major life events such as marriage or divorce. For example, the benefits available to the spouses of Tier I, II and II retirees can vary dramatically depending on whether they were married before or after the date of retirement.[30] Thus, a member who is single but contemplating marriage might prefer to postpone retirement to a point after he or she is married. Conversely, since retirees cannot unilaterally waive a spouse's survivor benefits, those considering divorce might choose to postpone their retirement until those proceedings have been concluded.

Thus, PERS retirement applications do more than just provide the Division with a member's address and tax information. Until a retirement application has been completed and submitted, the Division cannot calculate the monthly pension payments a member is entitled to receive. It cannot determine the extent to which it may have future obligations to surviving spouses, or the amount (if any) that must be paid to former spouses under qualified domestic relation orders. Nor can the Division calculate what retired members owe for optional insurance coverages. Finally, the application process allows PERS members to begin their retirement at a point most advantageous to their personal circumstances. In short, there are a multitude of sound reasons justifying the legislature's decision to make the submittal of a retirement application an absolute prerequisite for the accrual of PERS retirement benefits.

Issues of fundamental fairness would also be implicated if Mr. C. and similarly situated retirees were allowed to retroactively recover PERS pension benefits. Such recovery could conceivably allow retirees to obtain a lump sum payment equal to years of past pension benefits without any deductions for items such as survivor benefits or long-term care insurance that might be selected when they finally decided to apply for retirement. It would also allow PERS members

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27 AS 39.35.450(e) ("[o]nce the employee is appointed to retirement, the election is irrevocable").
28 AS 39.35.455.
29 *See* https://drb.alaska.gov/retiree/ltc.html#enrollment.
30 AS 39.35.450(a).

to postpone, without risk of any financial penalty, critical decisions regarding future benefits and insurance to a later point when they would presumably have greater insight regarding the need for those things.

Given these considerations, the absence of any text within AS 39.35.370 (or any related statutes) that would allow the Division to grant the relief sought by Mr. C. must be viewed as a deliberate legislative choice that cannot be ignored by this tribunal. Thus, the Division cannot pay retroactive benefits to Mr. C. because those benefits did not accrue prior to the filing of his retirement application in 2025.

C. Mr. C. is not entitled to any relief under the legal doctrine of equitable estoppel.

Mr. C. argues that he is entitled to the retroactive payment he seeks based on the Division's failure to adequately inform him that he would not receive an increased monthly benefit by waiting to apply for retirement. This argument implicates the doctrine of equitable estoppel, which provides that a state agency is bound by representations made by its employees if the following four elements are present:

> (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.[31]

Under this last element, it has been held that equitable estoppel cannot be used to compel a state agency "to take unlawful or otherwise unauthorized action."[32] This doctrine is intended to protect private parties from harm when they reasonably rely to their detriment upon official guidance that ultimately proves to be misleading or inaccurate.[33] The party asserting an estoppel claim bears the burden to establish its elements.[34]

Mr. C. is not entitled to any relief under this doctrine since there is no evidence in the record of any written or verbal communication where he was arguably misled by the Division in some manner. Indeed, there is no indication that Mr. C. attempted to communicate with the Division prior to April 2025, or that he made any effort to educate himself regarding the PERS defined benefit plan prior to that date.[35] While Mr. C. argues that the annual benefit statements

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31 *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997).
32 *Alaska Trademark Shellfish, LLC v. State, Dep't of Fish & Game*, 91 P.3d 953, 960 (Alaska 2004).
33 *See, e.g., Veco International, Inc. v. Alaska Public Offices Comm'n*, 753 P.2d 703, 709-710 (Alaska 1988).
34 *State, Dept. of Commerce and Economic Development, Div. of Ins. v. Schnell,* 8 P.3d 351, 356 (Alaska 2000).

35 Agency Record at 4-5.

he received between 2003 and 2024 should have explicitly advised that he would gain nothing by postponing his retirement past 2017, the bare allegation that the Division could have provided more information than it did does not entitle him to any relief in a context where there was no statute or regulation specifically requiring it to do so.[36] The doctrine of equitable estoppel cannot be stretched to the point of obligating a state agency to correct mistaken assumptions held by individuals who make little meaningful effort to educate themselves regarding an agency's rules and procedures.

If anything, the annual benefit statements that Mr. C. received should have raised suspicions on his part that the PERS defined benefit plan does not operate in the same manner as Social Security. Every statement that Mr. C. received after he reached age 60 consistently advised that his estimated monthly benefit remained fixed at $1,501.[37] The fact this estimate did not change by even a single dollar between 2017 and 2024 was sufficient to place him on notice that some inquiry into the matter was needed. What makes this so noteworthy is that a review of the Division's website would have quickly disclosed the prominent warning which advises that PERS members entitled to defined pension benefit will not increase their monthly payments by delaying their retirement.[38] A telephone conversation with Division staff would have disclosed this information as well, as demonstrated by the way Mr. C. was promptly informed of the mistake he had made the first time he spoke with a Division employee in 2025.[39]

Resolution of these issues in the Division's favor eliminates any need to resolve the disputed factual question of whether Mr. C. was mailed a benefits handbook in 1994 and 2003. Even if this issue was resolved in Mr. C.'s favor, it would not alter the outcome here.

IV. Conclusion

It is extremely unfortunate that Mr. C. missed out on roughly eight years of PERS benefits based on his mistaken belief that he would gain a greater monthly pension by postponing his retirement. However, Mr. C.'s assumption on this point was not based on any communications that he had with the Division, or anything found in the Division's website or

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36 *See generally Alaska Limestone Corp. v. Hodel*, 614 F. Supp. 642, 647 (D. Alaska 1985) (citing *Lavin v. Marsh*, 644 F.2d 1378, 1382 (9th Cir. 1981)). *See also United States v. Ven-Fuel, Inc*., 758 F.2d 741, 761 (1st Cir. 1985) (a "reluctance to be of assistance" on the part of an agency or its employees is generally an insufficient basis for invoking the doctrine of equitable estoppel).

37 Agency Record at 17-30.

38 In a May 2025 letter to the Division, Mr. C. acknowledged the prominent nature of this advisory on the Division's website. *See* Agency Record at 4.

39 *Id.*

publications. Given this, the legislative mandate that PERS members must apply for retirement before they begin to accrue their pension benefits is controlling here. Accordingly, the Division's decision to deny Mr. C.'s request for a retroactive lump sum payment of retirement benefits he never applied to receive between 2017 and 2025 is AFFIRMED.

DATED: January 22, 2026.

By: *Signed*
Signature
Max Garner
Name
Administrative Law Judge
Title

ADOPTION

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 18th day of February, 2026.

By: *Signed*
Signature
Max Garner
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]