

**MEMORANDUM**

**TO: Board of Trustees**  
**FROM: Benefit Review Committee**  
**DATE: August 26, 2021**  
**SUBJECT: Report of the Benefit Review Committee Meeting held on August 26, 2021**

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, August 26, 2021. Present at the meeting were Committee members Copper, Miller, and Stefan. Committee member Mitchell appeared via video conference. Trustee Kuehne was absent. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Dixon, Claussen, Osipczuk, and Hatfield.

(21-08-01) (Roll call)

Ms. Copper presided as chairperson and called the meeting to order at 1:00 p.m. Committee members Copper, Miller, Mitchell, and Stefan were present for roll call. Committee member Kuehne was not present.

(21-08-02) Approval of the committee meeting minutes from May 27, 2021.

Motion: Miller  
Second: Stefan  
Ayes: Copper, Miller, Mitchell, Stefan  
Nays: None  
Absent: Kuehne  
Motion Passed: 4-0

(21-08-03) Findings and Conclusion of the IMRF Hearing Officer – Helen Tsiopelas

Staff Attorney Carter presented the findings and conclusion of the IMRF Hearing Officer in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

**After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto.**

Motion: Miller  
Second: Stefan  
Ayes: Copper, Miller, Mitchell, Stefan  
Nays: None  
Absent: Kuehne  
Motion Passed: 4-0

(21-08-04) Findings and Conclusion of the IMRF Hearing Officer – Eloise Peters

Staff Attorney Carter presented the findings and conclusion of the IMRF Hearing Officer in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

**After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto.**

Motion: Miller  
Second: Mitchell  
Ayes: Copper, Miller, Mitchell, Stefan  
Nays: None  
Absent: Kuehne  
Motion Passed: 4-0

(21-08-05) Findings and Conclusion of the IMRF Hearing Officer – Larry Bauler

Staff Attorney Carter presented the findings and conclusion of the IMRF Hearing Officer in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

**After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case regarding the finding of an ERI violation. An alternative payment recovery schedule was proposed. The recommended findings and conclusions are attached hereto.**

Motion: Miller  
Second: Stefan  
Ayes: Copper, Miller, Mitchell, Stefan  
Nays: None  
Absent: Kuehne  
Motion Passed: 4-0

(20-12-06) Karen Pedigo – Denial of Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Ms. Pedigo was notified of the hearing but was not present.

**After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits to Ms. Pedigo. The Committee finds that the evidence presented does not demonstrate that Ms. Pedigo is unable to engage in any gainful activity because of a medically determinable physical or mental impairment. The Committee finds the Disability Reviewer Report to be persuasive. Therefore, the Committee finds that Ms. Pedigo has not meet the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150(a). The Committee further finds that Ms. Pedigo refused to submit to a reasonable examination by a physician approved by the Board by not completing the requested Functional Capacity Evaluation as required by Section 7-150(b)(4). The Committee finds that either basis, on its own,**

**is sufficient to deny Ms. Pedigo's appeal for total and permanent disability benefits.**

Motion: Miller  
Second: Mitchell  
Ayes: Copper, Miller, Mitchell, Stefan  
Nays: None  
Absent: Kuehne  
Motion Passed: 4-0

(21-08-07) Litigation Update

Associate General Counsel Shuliga presented an update regarding pending or recently concluded litigation. No final action was taken.

(20-12-08) Karen Lake – Denial of Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mrs. Lake appeared for the hearing via teleconference and represented herself. The Committee heard testimony from Mrs. Lake and her husband.

**After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits to Mrs. Lake. The Committee finds that the evidence presented does not demonstrate that Mrs. Lake is unable to engage in any gainful activity because of a medically determinable physical or mental impairment. The Committee finds the Disability Reviewer Report and the Functional Capacity Evaluation results to be persuasive. The Committee also considered the testimony of Mrs. Lake and her description of her activities of daily living. Therefore, the Committee finds that Mrs. Lake has not meet the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150(a).**

Motion: Miller  
Second: Stefan  
Ayes: Miller, Mitchell, Stefan  
Nays: Copper  
Absent: Kuehne  
Motion Passed: 3-1

(21-02-09) Public Comment

None

(21-02-10) Adjournment

Trustee Miller made a motion to adjourn at 3:11 p.m. Seconded by Trustee Stefan. Motion passed by unanimous roll call vote.

**ILLINOIS MUNICIPAL RETIREMENT FUND**

**IN THE MATTER OF**  
**HELEN TSIPELAS,** ) **MID # 153-0520**  
**re: APPEAL OF BENEFITS AMOUNT** )  
**FROM A DECISION OF THE ILLINOIS MUNICIPAL** ) **Susan Davis Brunner**  
**RETIREMENT FUND ADMINISTRATIVE STAFF** ) **Hearing Officer**

---

**STATEMENT OF THE CASE AND FACTUAL BACKGROUND**

**HELEN TSIPELAS**, # 153-0520 (hereinafter referred to as “TSIPELAS”) worked from January 1992 to June 1992 for the Niles School District (hereinafter referred to as NILES), where she became an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as “IMRF”) and when she left in 1992 she requested and took a refund of her IMRF contributions. TSIPELAS subsequently returned to work for NILES from July 1998 to September 2002, where she again became an IMRF participant, and again took a refund when she terminated her employment there. Finally, TSIPELAS began working for the Antioch School District #117 (hereinafter referred to as ANTIOCH) in July 2013, at which time she reenrolled in IMRF participant, and earned six years and four months of service credit. In 2016, TSIPELAS applied for a reinstatement of her service credit and repayment of her refund money. At that time, IMRF informed TSIPELAS that as a Tier 1 IMRF member she was required to have at least eight years of service credit in order to vest for a pension and so she would need to reinstate at least 20 months of service credit if she wanted her IMRF pension to vest. Although TSIPELAS had first applied to reinstate her service credit during 2016, she made no payment at that time. IMRF provided TSIPELAS with payment schedules in 2016, 2017, and 2019 for the cost of the reinstatement of her service credit. TSIPELAS did not purchase the 20 months of service credit until December 30, 2020. Because she had not paid for and did not receive that service credit prior to her January 2020 birthday, she had not yet earned the service credit at the time of her 55<sup>th</sup> birthday.

Shortly thereafter, TSIPELAS retired and applied to receive her pension. She began receiving her pension in January of 2021. After she began receiving her pension benefits, TSIPELAS contacted IMRF to complain that she was supposed to receive pension payments retroactive to her 55<sup>th</sup> birthday which took place in January 2020, a date that predated her January 2021 retirement. IMRF responded that because she had not yet accrued eight months of service credit at the time of her 55<sup>th</sup> birthday TSIPELAS was ineligible to receive pension benefits back to her birthday even if she had paid for 20 months service credit in December of 2020. IMRF stated that per Illinois pension law, a Tier 1 participant cannot receive benefits prior to accruing eight years of service credit.

TSIOPELAS now maintains that IMRF had informed her that her pension would become effective as of February 2020, the month after she turned age 55, which is the minimum age to draw a Tier 1 regular pension. IMRF confirms that TSIOPELAS contacted IMRF multiple times prior to her retirement and that she had been given multiple pension estimates by IMRF, some of which assumed a pension start date of February 1, 2020, while others began at age 56 or 60. These written pension estimates were based on certain listed assumptions given to IMRF by TSIOPELAS, and certain listed conditions, one of them being the that payment for the past service credit would be made. In addition, the written estimates reiterated that they were estimates only and not binding. TSIOPELAS also spoke with several representatives via phone, and on at least one occasion in December 2020, was advised that she would be eligible for a retroactive benefit payment despite having insufficient service credit during the retroactive period. TSIOPELAS asserts that she would have paid for her 20 months service credit prior to her 55<sup>th</sup> birthday had she been properly informed about the IMRF rules and that she relied on information and advice given to her by IMRF. TSIOPELAS maintains that she was misled or at least not specifically told by IMRF that she needed to pay the refund prior to her 55<sup>th</sup> birthday in order to collect retirement benefits beginning February 2020 and that therefore, the requirements set forth in the Pension Code should not apply to her. TSIOPELAS maintains that had she been told that she needed to make payment by a certain date she would have done so. She now appeals the IMRF Staff decision based on her claim that she should be allowed to receive pension benefits retroactive to February 1, 2020, the month immediately following her 55<sup>th</sup> birthday.

The appeal was heard remotely by teleconference before Hearing Officer Susan Davis Brunner on May 7, 2021, at 9:00 a.m. TSIOPELAS appeared on behalf of herself, and Vladimir Shuliga, Associate General Counsel (hereinafter referred to as “SHULIGA”), appeared on behalf of IMRF.

### **ISSUES TO BE REVIEWED**

At issue in this case is whether TSIOPELAS is entitled to receive pension payments retroactive to February, 2020, which was the first month after her 55<sup>th</sup> birthday, when she did not have eight years of service credit at that time and did not pay the refund for the necessary service credit until December, 2020.

### **DISCUSSION AND ANALYSIS**

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code (40 ILCS 5/7 et seq; hereinafter referred to as the Pension Code) authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations

set forth in the Illinois Administrative Code, the IMRF Board of Trustees (IMRF Board) has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The Pension Code gives the authority to the IMRF to interpret the intent of the Pension Code and make rules and regulations on participation and coverage it believes are necessary to efficiently administer the fund. To that end, the IMRF Board has passed numerous Resolutions and has also adopted the “Authorized Agent’s Manual” (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute the IMRF’S “administrative rules.” Administrative rules interpreting a statute can be used by the court as guides but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 2013 IL App (2d) 120456; also see *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 77 (2004)).

Section 7-141(a) of the Illinois Pension Code provides, in part, as follows:  
*Retirement annuities - Conditions. Retirement annuities shall be payable as hereinafter set forth:*

*(a) A participating employee who, regardless of cause, is separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities shall be entitled to a retirement annuity provided:*

*(1) He is at least age 55, or in the case of a person who is eligible to have his annuity calculated under Section 7-142.1, he is at least age 50;*

*(2) He is not entitled to receive earnings for employment in a position requiring him, or entitling him to elect, to be a participating employee;*

*(3) The amount of his annuity, before the application of paragraph (b) of Section 7-142 is at least \$10 per month;*

*(4) If he first became a participating employee after December 31, 1961, he has at least 8 years of service. This service requirement shall not apply to any participating employee, regardless of participation date, if the General Assembly terminates the Fund.*

Section 7-141(b)(2)

(b) Retirement annuities shall be payable:

\* \* \*

(2) Except as provided in item 3, upon receipt by the fund of a written application. The effective date may be not more than one year prior to the date of the receipt by the fund of the application

Sections 5/7-166 through 169(1)(a) of the Pension Code apply when an employee separates from an IMRF job and receives a refund of IMRF contributions. Section 5/7-169, as provided below, specifically applies when an employee has received a refund of IMRF contributions but wants to repay the contribution and reinstate that period of active IMRF participation.

*Sec. 7-169. Separation benefits; repayments.*

*(a) If an employee who has received a separation benefit subsequently becomes a participating employee, and renders at least 2 years of contributing service from the date of such re-entry, he may pay to the fund the amount of the separation benefit, plus interest at the effective rate for each year from the date of payment of the separation benefit to the date of repayment. **Upon payment his creditable service shall be reinstated and the payment shall be credited to his account as normal contributions.** Application must be received by the Board while the employee is an active participant in the Fund or a reciprocal retirement system. Payment must be received while the member is an active participant, except that one payment will be permitted after termination of participation in the Fund or a reciprocal retirement system.*

Section 5/7-169 of the Pension Code requires an application for a repayment of a separation refund to be received by the IMRF Board while the employee is still an active participant in the IMRF fund. It also states that creditable service will not be reinstated until payment is actually made.

In addition, Sections 5.50(F) and 6.40 of the IMRF Authorized Agent's Manual (Manual) apply to IMRF members who seek to reinstate IMRF credit by repaying a refund previously taken. Section 6.40 © states that "***Payment of the separation refund plus interest will reinstate service credit***".

In this case, TSIPELAS applied for her repayment of separation refund in 2016 but did not make her payment until December of 2020. Therefore, because payment is a listed condition before service credit can be reinstated, TSIPELAS' service credit was not reinstated until she made payment in December 2020, and it was only subsequent to her payment and reinstatement of service that she became eligible for retirement benefits under 5/7-141. Although TSIPELAS argues that once she did make payment and her service credit was reinstated, she should receive her retirement benefits retroactive to her minimum date of eligibility- when she turned 55. However, there is no provision in the Pension Code, and no IMRF rule or regulations that allows IMRF to pay retroactive retirement benefits back to a date when an individual did not meet the conditions for eligibility. If TSIPELAS wanted to start receiving retirement benefits immediately after her 55<sup>th</sup> birthday, she would have had to be deemed eligible at that time and would have already repaid her separation refund and reinstated her service credit.

TSIPELAS maintains that IMRF had informed her that her pension would become effective as of February 2020, the month after she turned age 55, which is the minimum age to be eligible to receive a Tier 1 regular pension. IMRF confirms that TSIPELAS contacted IMRF multiple times prior to her retirement and that she had been given multiple pension estimates by IMRF, some of which assumed a pension start date of February 1, 2020, while others began at age 56 or 60. These written pension estimates states that they were based on certain listed assumptions given to IMRF by TSIPELAS, and certain listed conditions, one of them being the that payment for the past service credit would be made. In addition, the written estimates reiterated that they were

estimates only and not binding. TSIOPELAS also spoke with several representatives via phone, and on at least one occasion in December 2020, was advised that she would be eligible for a retroactive benefit payment despite having insufficient service credit during the retroactive period. TSIOPELAS asserts that she would have paid for her 20 months service credit prior to her 55<sup>th</sup> birthday had she been properly informed about the IMRF rules and that she relied on information and advice given to her by IMRF.

Even if IMRF made a mistake or an IMRF agent or staff did not provide TSIOPELAS with information about the need to repay her separation benefits and reinstate her service credit prior to her 55<sup>th</sup> birthday, the Pension Law and IMRF Manual make clear that the rule is that service credit is not reinstated until payment is made and Tier 1 employees must have eight years of service credit to vest and there is no mechanism to backdate the service credit reinstatement date. IMRF must abide by the law as written and cannot carve out an exception to the law as this is the responsibility of the legislature. IMRF also has brochures, handouts, newsletters, which provide information regarding the refund and the repayment of refund of separation benefits. TSIOPELAS was given numerous pension estimates based on information provided by her to IMRF and, given that she had already applied to repay her refund and reinstate her service credit, these estimates also assumed there would be a payment of refund as required.

In the case of *Sheahan v. the Illinois Municipal Retirement Fund Board of Trustees*, 2016 IL App (2d) 151127, IMRF had erroneously informed the Plaintiff that he could retire from his position with the Oakbrook Police and qualify for a SLEP pension by transferring his funds from the Deerfield Police Pension Fund (Deerfield Fund) and the Municipal Employees' Annuity Benefit Fund of Chicago (MEABF) to his IMRF account, and this decision was upheld by the Board of Trustees. Plaintiff then retired from Oakbrook and started receiving SLEP benefits based on the amount of the combined funds. However, when Oakbrook received an invoice of approximately \$700,00.00 from IMRF for Sheahan's unfunded pension liability, Oakbrook appealed the IMRF decision (see *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810). The Sheahan court ruled that Sheahan had transferred his funds improperly, based on an erroneous interpretation of the law by IMRF. The Court ruled that the IMRF Board did not have the authority to continue paying plaintiff SLEP pension benefits, stating that the board of trustees of a retirement system "is a creature of statute and, as such, has only the authority that is conferred upon it by law." *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 21. Therefore, even though Sheahan had been given incorrect information by IMRF, had transferred his funds, had retired, and had been paid some benefits, IMRF was not and could not be bound by its mistaken decision to authorize the transfer of funds.

Similarly, IMRF has no legal authority to allow TSIOPELAS to receive retirement benefits beginning February 2020 when she did not have eight years of service credit at that time and therefore, was ineligible under the requirements of 5/7-141. IMRF must obey the law. As the Court stated in the case of *Wood Dale Fire Protection District*, 395 Ill. App. 3d at 527-28 "an administrative agency's authority derives from its enabling statute, and the agency has no inherent or common-law authority. Consequently, if an agency's rules go beyond the scope of the legislative grant of authority or conflict

with the enabling statute, the rules are invalid". The Pension Code provides no legal exception to the requirements of section 5/7-141. When construing a statute, the primary objective is to give effect to the intent of the legislature. The language of the statute is the best indicator of legislative intent, and the language should be given its plain and ordinary meaning whenever possible. *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). Moreover, pension estimates are indeed estimates. Although it is unfortunate that IMRF may have erred in phone conversations when providing the earlier estimates, there is no law or rule which binds IMRF to its estimation mistakes.

I recommend that the Board affirm the IMRF staff decision to deny TSIOPELAS' request to pay her retirement benefits beginning February 2020. IMRF is authorized by statute, and must abide by that statute, which states that service credit is not reinstated until payment of the refund is made and TSIOPELAS' service credit cannot be retroactively applied so that retirement benefits can predate her payment.

/s/ Susan Davis Brunner

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings and Decision are adopted this \_\_\_\_ day of \_\_\_\_\_, 2021, by the following roll call vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

Being parties to these proceedings.

\_\_\_\_\_

President, Board of Trustees  
Illinois Municipal Retirement Fund

ATTEST:

\_\_\_\_\_

Secretary, Board of Trustees  
Illinois Municipal Retirement Fund

**ILLINOIS MUNICIPAL RETIREMENT FUND**

**IN THE MATTER OF**

<b>ELOISE PETERS,</b>	)	<b>MID # 124-6353</b>
<b>re: APPEAL OF BENEFITS AMOUNT</b>	)	
<b>FROM A DECISION OF THE ILINOIS MUNICIPAL</b>	)	<b>Susan Davis Brunner</b>
<b>RETIREMENT FUND ADMINISTRATIVE STAFF</b>	)	<b>Hearing Officer</b>

---

**STATEMENT OF THE CASE AND FACTUAL BACKGROUND**

**ELOISE PETERS, # 124-6353** (hereinafter referred to as “PETERS”) worked as a teacher’s aide at Lyon School District #103 from 2000 to 2004, where she became an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as “IMRF”) and earned four years and two months of IMRF service credit. PETERS subsequently worked at Morton College and earned 1.25 years of service credit with the State Universities Retirement System (hereinafter referred to as “SURS”). Finally, PETERS worked for the Berwyn and Cicero School Districts and earned 3.342 years of service credit with the Teachers Retirement System (hereinafter referred to as “TRS”). IMRF informed PETERS that as a Tier 1 IMRF member she was required to have at least eight years of service credit in order to vest for a pension. PETERS stopped working in her TRS position in 2019 and applied for her IMRF reciprocal pension benefits in February of 2020. PETERS subsequently determined that she had actually earned eight years of service credit back in 2014, and not in 2019 as she had believed.

PETERS now maintains that IMRF and TRS and SURS failed to inform her in 2014 that she was eligible for her reciprocal pension, as that is when she earned the requisite eight years of service credit and that is, therefore, when her pension first vested. PETERS asserts that she would have stopped working in 2014 had she been informed of her eligibility and that she relied on information and advice given to her by IMRF. PETERS maintains that she did not realize that she was responsible for determining her earned service credit in SURS, TRS and IMRF, and that she had assumed the retirement systems all worked together to determine her service credit. She states that she should have been informed by IMRF that it was not the responsibility of IMRF to determine when her pension would vest as she assumed IMRF would know this. PETERS maintains that the requirements set forth in the Pension Code should not apply to her. PETERS asserts that had she been told she had earned eight years of service credit in 2014, she would not have continued to work and would have applied for her reciprocal retirement at that time. She now appeals the IMRF Staff decision based on her claim that she should be allowed to receive pension benefits retroactive to 2014, the year that she earned a combined total of eight years of service credit in her three participating reciprocal retirement systems.

The appeal was heard remotely by teleconference before Hearing Officer Susan Davis Brunner on May 7, 2021, at 11:00 a.m. PETERS appeared on behalf of herself, and Elizabeth Carter and Vladimir Shuliga, Associate General Counsel, appeared on behalf of IMRF.

### **ISSUES TO BE REVIEWED**

At issue in this case is whether PETERS is entitled to receive pension payments retroactive to 2014, which was the first year she earned eight years of service credit and is the minimum number of years needed to vest in her reciprocal IMRF pension benefits, even though she did not file an application to retire with a reciprocal pension until February of 2020.

### **DISCUSSION AND ANALYSIS**

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code (40 ILCS 5/7 et seq; hereinafter referred to as the Pension Code) authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations set forth in the Illinois Administrative Code, the IMRF Board of Trustees (IMRF Board) has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The Pension Code gives the authority to the IMRF to interpret the intent of the Pension Code and make rules and regulations on participation and coverage it believes are necessary to efficiently administer the fund. To that end, the IMRF Board has passed numerous Resolutions and has also adopted the “Authorized Agent’s Manual” (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute the IMRF’S “administrative rules.” Administrative rules interpreting a statute can be used by the court as guides but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 2013 IL App (2d) 120456; also see *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 77 (2004)).

IMRF is one of a group of thirteen public pension systems that are covered under the Illinois Retirement Systems Reciprocal Act (hereinafter referred to as The Reciprocal Act). The Reciprocal Act is optional, and allows an employee to receive continuous pension credit by combining eligible service credit between the state’s public retirement systems. Under the Reciprocal Act, when an employee retires, each system pays a separate monthly benefit and uses its own benefit formula to calculate the employee’s pension amount. Service credit earned under any one of the reciprocal systems remains with that system so that there is no actual transfer and no merging of the credit.

Therefore, when an employee retires, although each system exchanges information about the employee's service credit and earnings, the service credit and contributions remain with the original system. To retire under the Reciprocal Act, the participant must retire under all systems at the same time.

Section 115 of the Reciprocal Act, 40 ILCS provides as follows

*20-115. Eligibility for a proportional annuity.*

*Any person who has pension credit in 2 or more participating systems shall be entitled to a proportional retirement annuity, and his survivors shall be entitled to a survivor's annuity in accordance with the provisions of this Article, if his combined pension credit is at least equal to the longest minimum qualifying period prescribed by any of such systems. The qualifying period of each of these systems shall be that which was in effect on the date of the employee's latest withdrawal from service covered by any of these systems.*

Therefore, in order to be eligible to retire under the Reciprocal Act, an employee's total service credit with all retirement systems must meet or exceed the vesting requirements of each system. The employee's total service credit must meet the longest vesting period of each of the systems under which the employee plans to retire. Under Tier 1, an IMRF member needs at least eight years of service credit and must be at least 55 years old to qualify for an IMRF retirement pension.

Section 5/7-141(a) of the Illinois Pension Code provides, in part, as follows:

*Retirement annuities - Conditions. Retirement annuities shall be payable as hereinafter set forth:*

*(a) A participating employee who, regardless of cause, is separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities shall be entitled to a retirement annuity provided:*

*(1) He is at least age 55, or in the case of a person who is eligible to have his annuity calculated under Section 7-142.1, he is at least age 50;*

*(2) He is not entitled to receive earnings for employment in a position requiring him, or entitling him to elect, to be a participating employee;*

*(3) The amount of his annuity, before the application of paragraph (b) of Section 7-142 is at least \$10 per month;*

*(4) If he first became a participating employee after December 31, 1961, he has at least 8 years of service. This service requirement shall not apply to any participating employee, regardless of participation date, if the General Assembly terminates the Fund.*

Section 7-141(b)(2)

(b) Retirement annuities shall be payable:

\* \* \*

(2) Except as provided in item 3, upon receipt by the fund of a

written application. The effective date may be not more than one year prior to the date of the receipt by the fund of the application.

PETERS stopped working in her TRS position in October of 2019 and first applied for IMRF reciprocal benefits in February of 2020, and listed SURS and TRS, at which time IMRF was certified by SURS that PETERS had earned 1.25 years of credit and certified by TRS that she had earned 3.342 years of service credit. Since PETERS also was determined by IMRF to have 4.167 years of IMRF credit at that time, she had earned a total of 8.759 years of service from all three retirement systems and thus was eligible to retire with a proportional IMRF annuity.

PETERS now maintains that she should be able to receive retirement benefits retroactively to 2014, as this was the year that she actually earned her eight years of service credit, which was the minimum necessary for her to vest her pension. She maintains that either SURS or TRS or IMRF should have informed her when she reached her vesting date back in 2014. IMRF argues that per the requirements set forth in 5/7-141(a) an employee is not eligible for reciprocal retirement benefits unless and until the employee terminates employment from all of the participating reciprocal systems. In this case, PETERS continued to work in her TRS position until October 2019, so the earliest date that IMRF was able to start her benefits was November 1, 2019.

IMRF confirms that PETERS contacted IMRF a few times throughout the years, but not at any time between 2011 and 2014. Therefore, IMRF argues, PETERS could not have relied on information given to her in 2014 when she first accrued eight years of service credit. IMRF also states that while PETERS had periodically been given reciprocal pension information and estimates by IMRF, any information and estimates pertaining to SURS or TRS was only based on information and assumptions given to IMRF by PETERS herself, since IMRF did not have any of PETERS' service credit information from either SURS or TRS until she applied for her retirement. IMRF further states that its reciprocal pension information and its Reciprocal Act Brochure state that IMRF may be aware that a member has reciprocal service but does not know the amount of service credit the member has in the other systems and will not know until the other systems certify the member's service. The brochure further warns that "is your responsibility to be aware of the dates of your service credit between systems".

PETERS does not dispute that the Pension Code states the above, or that normally the Pension Code and Reciprocal Act, the IMRF Manual, and the IMRF Brochures would apply. PETERS also acknowledges that it is not her IMRF service credit that is at issue here, but instead pertains only to her accrued TRS service credit. PETERS did not know that she had earned enough TRS service credit to reach a combined eight years credit in 2014. However, PETERS maintains that IMRF should have known when she accrued TRS credit and had when she attained eight years of service credit, and that IMRF therefore had a duty to discover the date her reciprocal pension vested and advise her of the same. She maintains that either TRS and IMRF made a mistake, so she should not be bound by the normal rules and should be given retroactive retirement back to 2014, since she would have stopped working in 2014 had she known. IMRF argues that it was TRS'

mistake, if anyone, and IMRF owed no duty to PETERS to discover the date she accrued eight years of combined service credit by adding the amounts she had earned in SURS, TRS and IMRF, and, in fact, has no ability to discover these amounts until service credit is certified by the system. IMRF further states that IMRF is created by statute, and derives its authority only from these statutes, so cannot give PETERS a pension retroactive to 2014. IMRF denies it made any mistake, but maintains that even if it had, it cannot authorize a pension amount that is not based on statutory rules

Section 127 of the Reciprocal Act, as provided below, provides that while a participating system must provide information and data as requested by another participating system, it has no duty to initiate an inquiry to establish the participant's service credit, and, moreover cannot do so without a specific request and accompanying information provided by the employee.

*Section 40 ILCS 5/20-127 Responsibility of Employee*

*It shall be the duty and responsibility of an employee having pension credit in any participating system to make available such information or any other required data relating thereto, to the participating systems in which he has pension credits, in order that the pension credit may be applied in the manner herein provided. A participating system shall be under no obligation or responsibility to initiate any inquiry or investigation for the purpose of establishing pension credit in the case of any employee, in the absence of a request from the employee, accompanied by sufficient facts bearing upon the credit.*

In this case, PETERS did not retire and apply for her pension until October of 2019. Therefore, because retirement is a listed condition under 5/7-141 before a retirement benefit can be paid by IMRF, it was only subsequent to her retirement from her IMRF, SURS and TRS jobs and application for her pension that she became eligible for retirement benefits under 5/7-141. Although PETERS argues that once she did retire and apply for a pension, she should have received her retirement benefits retroactive to her minimum date of eligibility- when she earned eight years of service credit in 2014. However, there is no provision in the Pension Code, and no IMRF rule or regulations that allows IMRF to pay retroactive retirement benefits back to a date when an individual did not meet the conditions for eligibility. If PETERS wanted to start receiving retirement benefits immediately after earning eight years of service credit, she would have had to be deemed eligible at that time by retiring and applying for a reciprocal pension. Moreover, section 5/7-141 of the Pension Code makes clear that even if an employee is eligible to retire from IMRF under the Reciprocal Act, the effective date of that IMRF pension cannot be more than twelve months before the date IMRF receives the application for retirement. Although PETERS may have accrued eight years of service credit in 2014, she had not retired, and continued to work for TRS until 2019. There is no mechanism in the law to backdate PETER'S retirement date more than twelve months just because she became vested and was eligible to retire at an earlier date. IMRF must abide by the law as written and cannot carve out an exception to the law as this is the responsibility of the legislature.

Similarly, IMRF had no legal duty to investigate or determine when PETERS accrued eight years of service credit and there was no evidence presented to indicate that she made any such request to IMRF to investigate or request information from SURS or TRS circa the year 2014. IMRF also has brochures, handouts, newsletters, which provide information on how to retire with a reciprocal pension. IMRF must obey the law. As the Court stated in the case of Wood Dale Fire Protection District, 395 Ill. App. 3d at 527-28 “an administrative agency’s authority derives from its enabling statute, and the agency has no inherent or common-law authority. Consequently, if an agency’s rules go beyond the scope of the legislative grant of authority or conflict with the enabling statute, the rules are invalid”. The Pension Code provides no legal exception to the requirements of section 5/7-141 or the Reciprocal Act. When construing a statute, the primary objective is to give effect to the intent of the legislature. The language of the statute is the best indicator of legislative intent, and the language should be given its plain and ordinary meaning whenever possible. Roselle Police Pension Board v. Village of Roselle, 232 Ill. 2d 546, 552 (2009).

For all of the above reasons I recommend that the Board affirm the IMRF staff decision to deny PETERS’ request to pay her retirement benefits retroactive to 2014.

/s/ Susan Davis Brunner

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings and Decision are adopted this \_\_\_\_ day of \_\_\_\_\_, 2021, by the following roll call vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

Being parties to these proceedings.

\_\_\_\_\_  
President, Board of Trustees  
Illinois Municipal Retirement Fund

ATTEST:

\_\_\_\_\_  
Secretary, Board of Trustees  
Illinois Municipal Retirement Fund

**BEFORE THE BOARD OF TRUSTEES OF THE  
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of	)	
Larry Bauler (MID# 185-6430)	)	
[Appeal of Early Retirement Forfeiture]	)	Hearing July 23, 2021

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Larry Bauler, a retiree of the Wheaton Park District (“Bauler”) and annuitant of the Illinois Municipal Retirement System (“IMRF”), appealed an IMRF staff determination that he had forfeited his Early Retirement Incentive (“ERI”) age enhancement when he returned to work as a crossing guard for the City of Wheaton. As a result, IMRF staff determined that Bauler was required to repay the benefits received from IMRF that are attributable to the ERI age enhancement, as set forth in Section 7-141.1(g) of the Illinois Pension Code (40 ILCS 5/7-141.1(g)).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on July 23, 2021, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. (See **Transcript of Proceedings had in Illinois Municipal Retirement Fund Appeal of Early Retirement Forfeiture Taken on July 23, 2021** (hereinafter, “**Transcript**”). Bauler was given proper notice of the hearing and appeared at the hearing with his attorney, John Kreamer. Staff Attorney Elizabeth Carter and Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF. Also present at hearing were Larice Davis, a paralegal with IMRF, and Holly Schulz, Director of Human Resources with the City of Wheaton, who testified at the request of Bauler.

Copies of all documentation submitted by IMRF and Bauler were admitted into evidence for the administrative record as **Bauler Supporting Documents** (pages 1 through 226) (hereinafter, “**Documents**”). Testimony was received from Bauler and Schulz, who testified

under oath and were subject to cross examination. As a result of the hearing, the Board of Trustees of IMRF finds and determines as follows:

**A. REVIEW OF APPLICABLE STATUTES**

1. Section 7-141.1 of the Illinois Pension Code provides an “Early Retirement Incentive” (“ERI”) program that IMRF employers may, in their sole discretion, adopt with a goal to create cost savings by targeting highly paid senior employees to retire early. (40 ILCS 5/7-141.1(a))

2. Section 7-141.1(b) provides that an employer creating an ERI program must adopt a resolution or ordinance providing for the ERI program, “in substantially the [following] form” set forth in the statute, which states, among other language, that, “In order to help achieve a true cost savings, *a person who retires under the early retirement incentive program shall lose those incentives if he or she later accepts employment with any IMRF employer in a position for which participation IMRF is required or is elected by the employee.*” [emphasis added] (40 ILCS 5/7-141.1(b))

3. To be eligible for an ERI, an employee must have attained age 50 and have at least 20 years of creditable service by his or her retirement date. (40 ILCS 5/7-141.1(c)(4) and (5)) Under ERI, eligible employees may then purchase five years of service to receive an “age enhancement” which permits retirement prior to age 55. (40 ILCS 5/7-141.1(e))

4. Furthermore, Section 7-141.1(g) provides in relevant part that:

An annuitant who has received any age enhancement or creditable service under this Section and *thereafter accepts employment with or enters in a personal services contract with an employer under this Article thereby forfeits that age enhancement and creditable service . . .*

A person forfeiting early retirement incentives under this subsection (i) *must repay to the Fund that portion of the retirement annuity already received which is attributable to the early retirement incentives that are being forfeited*, (ii) shall not be eligible to participate in any future early retirement program adopted under this Section, and (iii) is entitled to a refund of the employee contribution paid under subsection (f). The Board shall deduct the required repayment from the refund and may impose a reasonable payment schedule for repaying the amount, if any, by which the required repayment exceeds the refund amount. [emphasis added] (40 ILCS 5/7-141.1(g))

## B. FINDINGS OF FACT

5. Bauler is an IMRF annuitant who began working at the Wheaton Park District on August 13, 1980. Originally, Bauler was hired as a general maintenance worker for the Wheaton Park District. He moved up to carpenter and later became the carpenter supervisor. (See Documents, pp. 60 and 99; Transcript, p. 15)

6. Bauler testified he never received any presentations, training or counseling at the Wheaton Park District regarding his IMRF benefits. (See Transcript, p. 49)

7. On November 15, 2000, the Wheaton Park District Board of Trustees passed a resolution adopting an ERI program under Section 7-141.1 of the Illinois Pension Code (40 ILCS 5/7-141.1). The resolution adopted by the Wheaton Park District Board was on a standard form provided by IMRF and stated in relevant part, “[A]n employee who retires under the early retirement incentive program shall lose those incentives *if he or she later accepts employment with any IMRF employer in any position.*” [emphasis added] (See Documents, p. 6)

8. Five days after the Wheaton Park District approved the ERI resolution, Bauler submitted his intention to retire under the ERI program on November 20, 2000, on a standard form provided by IMRF, entitled “Notice of Intent to Retire Under Employer’s IMRF Early Retirement Incentive” (“Notice of Intent Form”). In addition to the declaration of intent, the form specifically sets forth “Acknowledgements” in which it states, in relevant part:

I have read, understand, and have been allowed to inquire regarding the following conditions of this early retirement incentive:

...

*If I return to work for any IMRF employer in any position, my IMRF pension will be suspended (from the date of employment), and I will repay IMRF any enhanced pension I received from this early retirement incentive. (For example, you retire at age 50. At age 60 you return to work for any IMRF employer. You would repay to IMRF all the pension payments you received until age 55 and that portion of your pension attributable to this early retirement incentive you received until age 60.)* [emphasis added] (See Documents, p. 8)

9. At the hearing, Bauler testified that he did not remember being presented with the Notice of Intent Form. Furthermore, he did not recall signing the document. Bauler testified that no one discussed any of the information contained within that document with him, and that this document was never in his possession. (See Transcript, pp. 18-19)

10. On cross examination, Bauler denied completing the Notice of Intent Form. When provided an unredacted copy of the form for review at the hearing so that it would show his full address, Social Security number, date of birth, and his signature, Bauler agreed the information on the form was his information, but he denied having completed the form and denied signing it.<sup>1</sup> (See Transcript, pp. 27-33; 49-50)

11. On December 8, 2000, IMRF Member Services Supervisor Connie Fox sent Bauler a letter, acknowledging receipt of his Notice of Intent to Retire under the IMRF Early Retirement Incentive. Enclosed with the letter was a copy of the IMRF publication, “Can I afford to retire?” In the letter, Fox stated that the publication provides details regarding the IMRF ERI. (See Documents, pp. 9-19)

12. IMRF’s “Can I afford to retire?” publication provides multiple caveats regarding the “severe financial penalties for a member who retires under ERI and returns to work for any IMRF employer in any position.” (See Documents, p. 15) Under a section entitled “If you return to work,” the publication states in relevant part:

If you retire under the ERI and you return to work for any IMRF employer *in any position (even in a position that does not require you to participate in IMRF)*, you will lose the ERI enhancements and be required to pay IMRF the difference between the ERI enhanced pension and the pension you would have received without the ERI--less the amount you paid for the ERI.” [emphasis added] (See Documents, p. 19)

13. At the hearing, Bauler testified that he did not recall receiving the letter from IMRF dated December 8, 2000, nor its enclosure, “Can I afford to retire?” (See Transcript, p. 33-36)

---

<sup>1</sup> While it is plausible that Bauler does not recall signing the Notice of Intent Form, his testimony that he did not complete the form or sign it, once he was provided an unredacted copy for review at hearing, is not credible.

14. Bauler continued working for the Wheaton Park District until September 20, 2001 (his IMRF termination date), and on October 1, 2001, he retired under the ERI program. His “Application for Retirement Annuity (Pension),” dated August 8, 2001, indicated that he purchased five years under the IMRF Early Retirement Incentive. (See **Documents**, pp. 20 and 99; **Transcript**, p. 15)

15. According to Bauler, neither the Wheaton Park District nor the City of Wheaton ever notified him of any IMRF Illinois Pension Code restrictions in seeking future employment. (See **Documents**, pp. 60 and 99; **Transcript**, p. 16)

16. However, Bauler later testified at hearing that he understood the IMRF return-to-work rules to be that, “I couldn’t go back to work for an IMRF employer.” (See **Transcript**, p. 36)

17. From 2006 to 2013, Bauler worked for seven years in the private sector for Freight First Corporation. (See **Documents**, pp. 216 and 218)

18. On August 21, 2013, Bauler began part-time work as a school crossing guard for the City of Wheaton, a position he worked continuously until November 9, 2020. Neither Bauler nor the City of Wheaton notified IMRF that Bauler had accepted employment with the City. (See **Documents**, pp. 48 and 99)

19. At the hearing, Holly Schulz, the Director of Human Resources and IMRF Authorized Agent for the City of Wheaton, confirmed that Bauler was not eligible for IMRF pension benefits in his role as a part-time crossing guard for the City of Wheaton. (See **Documents**, p. 61)

20. Bauler testified at the hearing that no one told him that City of Wheaton Police Department was an IMRF employer. In this position as a part-time crossing guard, Bauler stated that he was never aware whether he was eligible for IMRF benefits, he was never offered IMRF benefits, and he never ask for pension benefits. Furthermore, Bauler testified that no one told him

that if he received early IMRF retirement benefits, he could not work for the police department as a part-time crossing guard.<sup>2</sup> (See **Transcript**, pp. 21 and 48)

21. During his retirement, IMRF annually sent Bauler a three-page “Your IMRF Benefit Statement” in which his current benefits and annual increases were outlined. On the second page of this annual statement, under a section entitled, “THINKING OF RETURNING TO WORK FOR AN IMRF EMPLOYER? CALL IMRF FIRST!,” it states:

*You retired under IMRF’s Early Retirement Incentive (ERI). Therefore, you are prohibited from working for any IMRF employer in any position.*

*If you return to work for any IMRF employer in any position, you will lose the ERI enhancements to your pension and you will be required to pay IMRF the difference between your ERI enhanced pension and the pension you would have received without ERI.*

An exception may apply if you are elected to a public office that is eligible for IMRF. CALL IMRF before you make your decision about this very important matter. [emphasis added] (See **Documents**, pp. 21-23)

22. Bauler acknowledged at the hearing that he received the annual IMRF Benefit Statements but that he would simply check the first page of them for the amount of his benefit payment. Furthermore, the annual IMRF Benefit Statements Bauler kept in his personal files only included the first page; it was unclear from Bauler’s testimony whether he received the second and third pages of those annual IMRF Benefit Statements. (See **Transcript**, pp. 37-38; 52-53)

23. However, Bauler also testified that he was never notified by IMRF as to what he could or could not do as far as employment during retirement. Furthermore, Bauler never contacted IMRF by phone with questions about his retirement benefits. (See **Transcript**, pp. 22 and 49)

24. During a 2020 IMRF audit of the City of Wheaton, IMRF uncovered Bauler’s re-employment with an IMRF employer. (See **Documents**, pp. 32-48) In an interview on November

---

<sup>2</sup> At hearing, Bauler seemed to imply that he believed that the City of Wheaton Police Department was a separate employer from the City of Wheaton. (See **Transcript**, pp. 21 and 48)

17, 2020, City of Wheaton HR Director Schulz stated that that prior to the audit, the City was unaware that Bauler was receiving an IMRF pension. (See **Documents**, p. 48)

25. A prior IMRF audit of the City of Wheaton in 2015 did not reveal Bauler's employment with the City, as the City did not indicate that it had employed a retiree in the IMRF audit questionnaire. (See **Documents**, p. 28) The City also failed to include Bauler within a list of employees who worked less than 1,000 hours per year. As a result, IMRF was unaware that Bauler was employed by an IMRF participating employer. (See **Documents**, pp. 25-31)

26. Schulz testified that prior to the 2020 IMRF audit, the City of Wheaton had never had to apply the IMRF re-employment rules because the issue had never come up before. Before 2020, the City of Wheaton did not conduct a pre-employment check to identify IMRF retirees who might be hired by the City, particularly if they did not qualify for IMRF benefits. (See **Transcript**, pp. 67-68)

27. However, in a pre-hire interview conducted by a City of Wheaton Police Department lieutenant on July 1, 2013, Bauler revealed that "he is retired from the Wheaton Park District where he served in a position of supervision." His employment as a supervisor at the Wheaton Park District was also documented in his City of Wheaton Application for Employment. Bauler testified at hearing that he never lied or concealed his position at the Wheaton Park District or the early retirement pension benefits that he received. (See **Documents**, pp. 213, 215 and 216; **Transcript**, p. 24)

28. On November 9, 2020, Bauler testified that he received a call from Schulz at the City of Wheaton HR Department. She told Bauler not to report to work the following day because there was a problem. According to Bauler, this was the first time anyone told him that by taking the position as a part-time crossing guard he was in violation of a law or regulation. (See **Transcript**, p. 23)

29. As a result of the IMRF audit finding, IMRF Benefits Manager Amy Claussen notified Bauler by letter dated November 19, 2020, that he had forfeited his ERI age enhancement

under Section 7-141.1(g) of the Illinois Pension Code (40 ILCS 5/7-141.1(g)). As of that date, Bauler's prepayment accrued was approximately \$203,252,27.<sup>3</sup> (See **Documents**, pp. 49-50)

30. On January 14, 2021, Bauler timely appealed the IMRF Staff Determination through his attorney, John Kreamer, in an email sent to Claussen and IMRF Associate General Counsel Shuliga. (See **Documents**, p. 51) On January 15, 2021, IMRF Associate General Counsel Shuliga provided correspondence to Attorney Kreamer, acknowledging receipt of the appeal and providing a copy of the IMRF appeal procedures. (See **Documents**, pp. 53-58)

31. Attorney Kreamer filed his client's Statement of Claim and supporting exhibits with IMRF on April 9, 2021. Bauler primarily argues that his position with the City of Wheaton as a part-time school traffic crossing guard is not eligible for IMRF benefits and he is thus exempt from the forfeiture provision set forth in Section 7-141.1(g) of the Illinois Pension Code (40 ILCS 5/7-141.1(g)). It is Bauler's position that Section 7-141.1 only prohibits re-employment in positions for which participation in IMRF is required or elected (citing 40 ILCS 5/7-141.1(b)). (See **Documents**, pp. 59-226)

### **C. CONCLUSIONS OF FACTS**

32. The undisputed evidence shows that Bauler returned to work with the City of Wheaton, an IMRF employer, while receiving an IMRF retirement benefit under an Early Retirement Incentive program with his former employer, the Wheaton Park District, which included an age enhancement.

33. Although the City of Wheaton Police Department was aware that Bauler had retired from the Wheaton Park District at the time of hire, the City of Wheaton failed to further investigate whether Bauler received IMRF retirement benefits and the nature of those benefits.

---

<sup>3</sup> At hearing, Staff Attorney Carter advised that the prepayment accrued had grown to \$207,735, through July 2021, as Bauler had elected to receive his full pension, including the age enhancement, during the appeal. (See **Transcript**, p. 82)

Thus, the City of Wheaton never notified Bauler of the consequences to his IMRF retirement benefits if he accepted employment with the City.

34. On multiple occasions, Bauler was given written notice that accepting the IMRF ERI age enhancement to retire from the Wheaton Park District prohibited him from accepting employment from another IMRF employer.

35. Specifically, the Resolution to Adopt IMRF Early Retirement Incentive approved by the Wheaton Park District Board of Trustees on November 15, 2000, provided that an employee who retired under the ERI program would lose those incentives if he or she accepted employment with any IMRF employer *in any position*.<sup>4</sup>

36. Furthermore, the Notice of Intent to Retire Under Employer's IMRF Early Retirement Incentive form that Bauler signed five days later on November 20, 2000, clearly stated that his IMRF pension would be suspended, and he would be required to repay to IMRF any enhanced pension he received from the early retirement incentive if he accepted employment with any IMRF employer.

37. The December 2000 ERI-related letter that IMRF sent to Bauler included the IMRF publication, "Can I afford to retire?" which also warned of the "severe financial penalties for a member who retires under ERI and returns to work for any IMRF employer in any position."

38. Finally, IMRF's "Your Benefit Statement" sent to Bauler annually included a warning at the bottom of page two, specifically stating that because he had retired under IMRF's Early Retirement Incentive, he was prohibited from working for any IMRF employer *in any position*.

---

<sup>4</sup> While Section 7-141.1(b) of the Illinois Pension Code includes a sample form of resolution or ordinance for IMRF participating employers adopting an ERI program which contains language that conflicts with Section 7-141.1(g) regarding the type of re-employment with an IMRF employer that will cause a forfeiture of ERI incentives, the evidence clearly shows that the Wheaton Park District did not use that sample language. Rather, Wheaton Park District Board of Trustees adopted IMRF's standard form resolution in which the forfeiture language correctly states that any re-employment with any IMRF employer in any position will cause the annuitant to lose the ERI age enhancement. (40 ILCS 7-141.1(b) and (g))

39. While Bauler claimed he was never advised by the Wheaton Park District, the City of Wheaton or IMRF about the prohibition from working for another IMRF employer while receiving a retirement benefit under ERI with an age enhancement, he testified that he did understand the IMRF return-to-work rules prohibited him from taking any employment with an IMRF employer.

40. From October 1, 2001 through July 2021, Bauler received a prepayment of retirement benefits of \$207,735 as the result of the ERI age enhancement.

#### **D. CONCLUSIONS OF LAW**

41. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

42. The Board has a fiduciary duty to only pay those benefits authorized by the Illinois Pension Code. (40 ILCS 5/1-109)

43. As an annuitant who received an age enhancement under Section 7-141.1(e) of the Illinois Pension Code and thereafter accepted employment with an IMRF employer, Bauler has forfeited that age enhancement under Section 7-141.1(g). (40 ILCS 5/7-141.1(e) and (g))

44. Furthermore, as an annuitant forfeiting the early retirement incentive under Section 7-141.1(g) of the Illinois Pension Code, Bauler is required to repay IMRF that portion of his retirement annuity already received that is attributable to the early retirement incentives that are being forfeited. (40 ILCS 5/7-141.1(g))

45. While the sample resolution or ordinance form set forth in Section 7-141.1(b) of the Illinois Pension Code contains language regarding disqualifying re-employment with IMRF employers, the sample form is not the statement of law on the circumstances under which forfeiture will occur; rather, the controlling language regarding forfeiture of ERI age enhancement benefits is found in Section 7-141.1(g). (40 ILCS 5/7-141.1(b) and (g))

## **E. DECISION**

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, HEREBY ORDERS as follows:

1. The administrative staff determination that IMRF Annuitant Larry Bauler returned to work and received compensation from a participating IMRF employer in violation of Section 7-141.1(g) of the Illinois Pension Code (40 ILCS 5/7-141.1(g)), thereby forfeiting the Early Retirement Incentive age enhancement, is hereby AFFIRMED.

2. Furthermore, the administrative staff determination that as a result of this forfeiture, Larry Bauler is obligated to repay IMRF \$209,318.25 (as calculated through August 2021) pursuant to Section 7-141.1(g) of the Illinois Pension Code (40 ILCS 5/7-141.1(g)), is AFFIRMED.

3. IMRF staff is directed to calculate and confirm the final forfeiture amount and recover that amount from Bauler through an offset to his future retirement benefits in the amount of 50% of the gross monthly benefit, and, if necessary, any applicable survivor benefit or annuity, until it is recovered.

4. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this 27th day of August, 2021, by the following roll call vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

Being parties to these proceedings.

\_\_\_\_\_  
President, Board of Trustees  
Illinois Municipal Retirement Fund

ATTEST:

\_\_\_\_\_  
Secretary, Board of Trustees  
Illinois Municipal Retirement Fund