

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
801 West Badger Road
Madison, WI 53702**

CORRESPONDENCE MEMORANDUM

DATE: May 20, 2002
TO: Employee Trust Funds Board
FROM: Shelly Schueller
SUBJECT: Secretary's Equity Authority Report

The Department's Equity Authority, s. 40.03(2)(w), Wis. Stats., was created by 2001 Wisconsin Act 16 and was effective August 31, 2001. S. 40.03(2)(w), Wis. Stats. states:

If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, may order the correction of the error to prevent inequity. A decision under this paragraph is not subject to review. The secretary shall submit a quarterly report to the employee trust funds board on decisions made under this paragraph.

The intention of this statute is to permit the Department Secretary to correct and prevent inequities that result from errors made by Department staff of the type described in the statutes. The Department has developed guidelines to assist staff in determining when to recommend use of the Department's equity authority.

The Secretary has exercised this authority once since your March 2002 meeting. In accordance with state statute, the Department has prepared this report for your review. This report is included with your regular board meeting materials whenever the Secretary has exercised his equity authority.

ETF Equity Authority #2002-02

FACTS

- ❑ September 2001 -- ETF staff prepared a formal death benefit estimate and application form for the beneficiary of a WRS participant.
- ❑ October 2001 -- The beneficiary contacted the Department to inquire about waiving part of the death benefit. During this conversation, the beneficiary was incorrectly advised that the only waiver option available was to waive 100% of the death benefit. As a result of this conversation, the beneficiary applied for the full lump sum death benefit, the Department processed the application. Both the beneficiary and the Department's trust fund specialist acknowledge that incorrect information was provided to the beneficiary.

- November 2001 -- The lump sum check was vouchered in November 2001.
- December 21, 2001 -- The beneficiary spoke with ETF legal counsel and was informed that the check could not be returned. It was at this time that a miscommunication occurred: legal counsel did not know that the beneficiary had been incorrectly advised by an ETF trust fund specialist regarding benefit waivers.
- April 2, 2002 – The beneficiary met with ETF legal counsel and wrote a letter requesting cancellation of the previous application, and also requesting the ability to waive a portion of the benefit.

DECISION

On April 3, 2002, the Department Secretary exercised his equity authority and a WRS beneficiary was granted the ability to cancel a written request for a lump sum death benefit. The beneficiary was permitted to return a lump sum benefit check beyond the time period established in ETF Ch. 10.633 (1)(c), WI Admin. Code.

SUMMARY OF WHY DECISION WAS MADE

The Secretary determined that the beneficiary would not have applied for a lump sum death benefit and would have elected to waive part of the death benefit if the beneficiary had not been provided with misinformation regarding waiving death benefits from Department staff.

COMMENT

There is no future impact to the trust fund from this use of the Secretary's equity authority. The uncashed check was returned to the Department and the beneficiary was provided with the correct waiver form so that the beneficiary's statutory right to waive all or part of a benefit could be exercised. The Department will follow the proper waiver procedures to ensure that the benefits are paid correctly.