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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, (the “PBA”);

**AND IN THE MATTER OF** a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under subsection 87(2) of the PBA relating to the **Nursing Homes and Related Industries Pension Plan, Registration No. 0996983** (the “Plan”).

**TO:**

**Board of Trustees of the Nursing Homes  
and Related Industries Pension Plan**  
105 Commerce Valley Drive West, Suite 310  
Thornhill ON L3T 7W3

Attention:

Marina Romic  
Accounting Manager

**Plan Administrator**

**AND TO:**

**SS  
Member**

## NOTICE OF INTENDED DECISION

**I INTEND TO REFUSE TO MAKE AN ORDER** under clause 87(2)(a) of the PBA requiring the Plan administrator, the Board of Trustees of the Nursing Homes and Related Industries Pension Plan (the “Board”), to recalculate the commuted value of the pension benefits transferred to SS pursuant to her election dated April 1, 2014, using interest rates in effect on August 15, 2013.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within thirty (30) days after this Notice of**

**Intended Decision is served on you.**<sup>1</sup> Additional copies of the enclosed Form 1 can be obtained by visiting the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

**If a Request for Hearing (Form 1) is submitted to the Tribunal within thirty (30) days after this Notice of Intended Decision** is served on you, subsection 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (Superintendent) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

**IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the refusal to make an order pursuant to subsection 87(2) of the PBA.**

A completed Request for Hearing form must be received by the Tribunal within 30 days of this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
M2N 6L9

Attention: The Registrar  
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedures for Proceedings before the Financial Services Tribunal made under the authority of the Statutory Powers Procedure Act, R.S.O. 1990, c.S.22. Those Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext 7294.

#### **REASONS FOR PROPOSAL:**

1. The Plan is a multi-employer, contributory, defined benefit pension plan.
2. SS was employed by an employer that participates in the Plan. Her employment terminated on or about November 5, 2012.
3. Under the terms of the Plan, SS's membership in the Plan terminated effective August 1, 2013 because SS had not made any contributions to the Plan in the preceding eight months.
4. The Board sent SS a termination statement dated August 15, 2013 (the "Termination Statement") pursuant to section 28 of the PBA and subsections 41(1.1) and (2) of Regulation 909 (the "Regulation"). The Termination Statement informed SS that she was entitled to elect to receive either a deferred pension commencing on her normal retirement date or a transfer of the commuted value of her pension benefit into a registered retirement savings arrangement of her choice pursuant to section 50 of the PBA (unlocking for small amounts) and the Plan text. The Termination Statement contained a form on which SS was to make her election with respect to payment of her pension benefit

(the "Election Form").

5. Part II of the Termination Statement provided to SS contained the following statement:

Please note that the commuted value as shown on your Termination Statement is Valid [sic] for only 6 months. The value of this amount will be recalculated based on the current interest rate and other factors after those six months have passed. This may result with [sic] a lower amount of your pension benefit refund.

6. Approximately eight months later, on April 1, 2014, SS completed and signed the Election Form electing to transfer the commuted value of her pension benefit to a registered retirement savings arrangement.
7. On April 25, 2014, the Board notified SS that because the Election Form was filed with the Board more than six months after the date of the Termination Statement, the commuted value of SS's pension benefit had been recalculated using updated interest rates. The result of the recalculation was a lower commuted value.
8. SS has requested that the Board transfer the amount set out in the Termination Statement. SS submits that she did not receive the Termination Statement until on or around March 25, 2014, after the expiration of the six month period set out in Part II of the Termination Statement.

#### Termination Statement

9. Subsection 41(1.1) of the Regulation specifies the information that must be provided by an administrator in a termination statement for entitlements under section 50 of the PBA, including the time period within which a member must exercise her or his options with respect to her or his pension benefit (emphasis added):

(1.1) However, if the plan provides for a payment under subsection 50 (1) of the Act to the member, the written statement shall contain at least the following information, as recorded on the records of the administrator, instead of the information required by subsection (1):

...

5. Any options available to the member under subsection 50 (3) of the Act, where applicable, and the time period in which the options must be exercised.

10. Subsection 41(2) of the Regulation requires a plan administrator to provide a member of a pension plan with a termination statement within thirty days following the member's termination of employment or cessation of membership in the pension plan.
11. Subsection 22.1(2) of the Regulation prescribes the period in which a person entitled to transfer a pension benefit to a registered retirement savings arrangement under section 50 of the PBA must make an election with respect to her or his pension benefit: ninety days.
12. Pursuant to subsection 3.05(a) of the Plan text, where a member does not elect to transfer the commuted value of their pension benefit out of the Plan, the member is entitled to receive a deferred pension:
- (a) A Former Participant shall be entitled to a Deferred Pension if the Former Participant has not transferred the Commuted Value of the pension benefit pursuant to the Portability Option.

13. The Board complied with subsections 41(1.1) and 41(2) of the Regulation by providing SS, within thirty days of the date on which she terminated membership in the Plan, with a Termination Statement which included information about the time period within which SS had to make her election. The time period provided for SS to make her election was six months, double that required by subsection 22.1(2) of the Regulation.
14. SS did not make an election within the required time period. The Board permitted SS to transfer her pension benefit to a registered retirement savings arrangement despite the expiration of the time period.

### Commuted Value Calculation

15. Subsection 19(1.2) of the Regulation provides that the commuted value of a pension benefit for purposes other than subsection 42(1) of the PBA or subsection 29(2) of the Regulation “shall be calculated using methods and actuarial assumptions that are consistent with accepted actuarial practice.”
16. Section 3520.02 of the *Standards of Practice* of the Actuarial Standards Board, of the Canadian Institute of Actuaries, provides actuaries with discretion in determining the period within which a commuted value calculation should remain valid:

The actuary should establish the period for which the commuted value applies before re-computation is required, taking into account the requirements of applicable legislation and plan rules. Commuted values paid after the end of such period should be recomputed on the basis of a new valuation date.

17. The Plan text is silent on the time period after which a commuted value of a pension benefit should be recalculated. “Commuted Value” is defined in section 1.06 of the Plan text as:  
  
“Commuted Value” means the lump sum value of a pension benefit at a particular time, calculated in accordance with the [PBA], and using assumptions that are acceptable to the Minister of National Revenue.
18. The Plan actuary chose a time period of six months before requiring recomputation of commuted values for pension benefits under the Plan and recalculated SS’s pension benefit after the time period elapsed, both in accordance with section 3520.02 of the *Standards of Practice*.
19. SS was entitled to, and received, the commuted value of her pension benefit calculated in accordance with the PBA and the terms of the Plan on the date that value was transferred to her.
20. Assuming that SS did not receive her Termination Statement until after the recomputation period set out therein as she alleges, SS would still be entitled to the commuted value of her pension benefit calculated in accordance with the PBA and the terms of the Plan on the date that value was transferred to her. SS is not entitled to the commuted value of her pension benefit calculated as of the date that is most advantageous to her.
21. Clause 87(2)(a) of the PBA states that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension

plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan.

22. For the reasons set out above, the Superintendent is not of the opinion that the pension plan or pension fund is not being administered in accordance with the PBA, the regulations or the pension plan.

23. Such further and other reasons as may come to the attention of the Superintendent.

**DATED** at Toronto, Ontario, this 14th day of January, 2016.

*Original Signed By*

Lester J. Wong  
Deputy Superintendent, Pensions  
By delegated authority from the  
Superintendent of Financial Services

1 NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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