

**BEFORE THE BOARD OF TRUSTEES  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

**In the Matter of** )  
 )  
 )  
 **Laurie Friedman** )  
 )  
 **Petitioner** )

**RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE**  
**IN THE ADMINISTRATIVE REVIEW OF**  
**Laurie Friedman**

**I. Introduction**

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on October 24, 2012 in Springfield, Illinois, to consider the administrative review of Laurie Friedman. Present were Presiding Hearing Officer Ralph Loewenstein, Claims Hearing Committee Chairman Cynthia O'Neill, and Claims Hearing Committee members Jan Cleveland and Sonia Walwyn. By agreement of the parties, the matter was presented to the Committee for hearing solely upon the record.

Ms. Friedman filed the instant administrative review to challenge her denial of disability benefits in the amount of \$4,176.61 pursuant to the provisions of 40 ILCS 5/16-149 for the period February 5, 2010 through April 25, 2010. At issue are: (1) whether the System is equitably estopped from denying Ms. Friedman's claim and (2) whether the statutory 90-day filing period in §16-149(a) was equitably tolled due to Ms. Friedman's medical condition.

**II. Findings of Fact**

1. On January 6, 2010, Ms. Friedman went on sick leave for the removal of a Stage IIB neuroendocrine tumor.

2. Surgery to remove the tumor was performed on January 7, 2010.
3. Ms. Friedman was hospitalized from January 7, 2010 to January 15, 2010.
4. Ms. Friedman was re-hospitalized from January 17, 2010 to January 28, 2010 to treat an infection from the surgery.
5. On February 22, 2010, Ms. Friedman contacted the System by telephone regarding TRS disability benefits.
6. Ms. Friedman was provided a pamphlet explaining TRS disability benefits and was advised that any application for disability benefits must be submitted in writing.
7. On March 15, 2010, Ms. Friedman was hospitalized for a bowel obstruction which required surgery.
8. Ms. Friedman was hospitalized from March 15, 2010 to March 23, 2010, due to her bowel obstruction.
9. On April 26, 2010, Ms. Friedman returned to teaching and completed the 2010-11 school year.
10. On May 30, 2010, while visiting the Cleveland, Ohio area, Ms. Friedman suffered a grand mal seizure.
11. Ms. Friedman was treated in the emergency department of a Cleveland Clinic-affiliated hospital and released the same day.
12. On July 10, 2010, Ms. Friedman contacted the System by telephone to request a TRS disability packet.
13. TRS provided the requested documents by mail on July 15, 2010.
14. Ms. Friedman received the disability packet on July 19, 2010.
15. On August 15, 2010, Ms. Friedman signed the disability application form.
16. Ms. Friedman's application was received by TRS on September 13, 2010.

17. TRS denied Ms. Friedman's request for disability benefits on October 28, 2010. The basis for the denial was that Ms. Friedman waited more than 90 days to apply for disability benefits and the fact that she was no longer disabled at the time her application was filed.
18. On November 1, 2010, Ms. Friedman sent TRS a letter confirming that she did not contact TRS to request disability benefits until July 10, 2010, but claimed that no one at TRS told her of the 90-day statutory filing requirement to receive retroactive benefits.

### **III. Analysis**

This case is governed by the provisions of 40 ILCS 5/16-149 and 80 Ill. Adm. Code 1650.201(a). As stated in §16-149(a):

*The benefit shall begin to accrue on the 31<sup>st</sup> day of absence from service on account of disability, except that when an application is made more than 90 days subsequent to the later of the commencement of disability or the date eligibility for salary ceases, it shall begin to accrue from the date of application, and shall be payable during the time the member does not receive a retirement annuity. The benefit is not payable to a member who is receiving or has a right to receive any salary as a teacher, or is employed in any capacity as a teacher by the employers included in any capacity as a teacher by the employers included under this System or in an equivalent capacity in any other public or private school, college or university, except as provided in Section 16-149.6.*

As stated in §1650.201(a):

*Any member claiming a disability benefit under 40 ILCS 5/16-149 or 16-149.1 shall begin the process by filing a written notice with the System.*

Ms. Friedman has acknowledged that she did not file her application for TRS disability benefits within 90 days of her tumor removal surgery on January 7, 2010, nor her hospitalization for bowel obstruction surgery from March 15, 2010 through March 23, 2010.

Ms. Friedman's argument that she filed for disability benefits within 90 days of her grand mal seizure episode of May 30, 2010, is unavailing. The grand mal seizure did not disable Ms. Friedman nor is it the disability for which she is seeking retroactive benefits. The surgeries in January and March 2010 are the basis for her claim.

Ms. Friedman missed no teaching service due to her grand mal seizure. Even if the System were to consider Ms. Friedman's seizure to be a disabling event, there is no benefit to be paid as a result. Dr. Caplan's disability certification makes it clear that Ms. Friedman was not disabled after June 1, 2010; Dr. Talamonti's disability certification showed no disability after April 10, 2010.

Ms. Friedman makes two arguments why §16-149(a) and §1650.201(a) do not apply in her case. First, she asks that the 90-day filing requirement in §16-149(a) be waived based upon a claim of equitable tolling. The Committee cannot grant this request for several reasons.

While the Committee acknowledges Ms. Friedman had serious medical issues, no medical evidence was presented that Ms. Friedman was mentally impaired at any time during the 90-day filing period. In fact, Dr. Caplan marked in her disability certification that Ms. Friedman was not impaired. Dr. Talamonti did not make an indication either way in her certification. There is no medical evidence that Ms. Friedman suffered from any of the potential side effects of the medication she was taking. The affidavits of personal friends and family members, none of whom were medically qualified to diagnose mental impairment, are insufficient to support Ms. Friedman's tolling claim.

As stated in Clay v. Kuhl, 189 Ill.2d 603 (January 21, 2000):

*The plaintiff also argues in favor of the equitable tolling of the limitations period here, contending that she failed to discover the cause of action during her minority because of Kuhl's actions in selecting victims who would remain silent and in leading them to believe that his behavior was acceptable. Equitable tolling of a statute of limitations may be appropriate if the defendant has actively misled the plaintiff, or if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or if the plaintiff has mistakenly asserted his or her rights in the wrong forum. Ciers v. O.L. Schmidt Barge Lines, Inc. 285 Ill.Ap.3d 1046, 1052, 221 Ill.Dec. 303, 675 N.E.2d 210 (1996). We do not believe that the*

*present action is one in which equitable tolling is proper. The plaintiff does not contend that, after the alleged abuse ceased and she reached the age of majority, Kuhl misled her or otherwise attempted to prevent her from asserting her rights in a timely manner.*

The Committee finds that TRS staff in no way misled Ms. Friedman regarding filing her disability claim nor prevented her from doing so.

As to Mr. Friedman's equitable estoppel claim, Ms. Friedman admits in her first conversation with TRS staff that she was told her application for benefits had to be in writing. The disability pamphlet she was provided at that time clearly explained the 90-day statutory filing requirement. TRS had no duty to continue to follow-up with Ms. Friedman to remind her to file her claim for benefits.

As stated in Patrick Engineering, Inc. v The City of Naperville, 2012 ILL 1131148 (September 20, 2012):

*a plaintiff seeking to invoke equitable estoppel against a municipality must plead specific facts that show (1) an affirmative act by either the municipality itself or an official with express authority to bind the municipality; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position.*

No one told Ms. Friedman she did not need to file her claim within the 90-day period, with or without the authority to bind the System.

Lastly, in Prazen v. Shoop, 2012 IL (4<sup>th</sup>) 120048, the Fourth Appellate Court held that:

*Administrative agencies such as the IMRF possess no general or common-law powers. JMH Properties, Inc. v. Industrial Comm'n, 332 Ill.App. 3d 831, 832, 773 N.E.2d 736, 737 (2002). An administrative agency's powers consist only of those granted to it by the state legislature and "any action it takes must be specifically authorized by the legislature." *Id.* At 832-33, 773 N.E.2d at 737. Any action taken by an administrative agency not provided for by statute is an act outside the agency's jurisdiction. *Id.* At 833, 773 N.E.2d at 737.*

The Committee finds that as a fiduciary of the TRS trust fund, it is bound by §16-149 and §1650.201(a) and cannot deviate from their statutory requirements.

**IV. Conclusion**

The Committee finds in favor of the staff in this matter.

**V. Notice of Right to File Exceptions**

Exceptions to the Claims Hearing Committee's Recommended Decision must be filed within 15 days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Recommended Decision and any exceptions filed by the Petitioner.