

Circuit Court for Montgomery County
Case No. 438265-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1143

September Term, 2018

FRATERNAL ORDER OF POLICE, LODGE 35, ET
AL.

v.

MONTGOMERY COUNTY, MARYLAND

Arthur,
Shaw Geter,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 28, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns the applications of two Montgomery County police officers for “non-service-connected disability” retirement benefits. Both officers submitted their applications shortly before their deaths. When the Fraternal Order of Police, Lodge No. 35, Inc. (the “FOP”), inquired about the status of the officers’ applications following their deaths, the County contended that it no longer had a duty to consider the applications or to reach a decision regarding the officers’ eligibility.

The Circuit Court for Montgomery County issued a writ of mandamus compelling the County to process both officers’ applications immediately. At the County’s request, however, the court amended its order. It concluded that, on the basis of the officers’ leave balances, mandamus relief was appropriate as to one application, but was nugatory as to the other.

For the reasons that follow, we shall vacate the judgment of the circuit court and remand the case for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

William Seidel joined the Montgomery County Police Department in 1990. In September 2016, Officer Seidel was diagnosed with cancer. On March 1, 2017, he submitted an application to Montgomery County for the non-service-connected disability-retirement benefits that are provided for County employees by section 33-43 of the Montgomery County Code.¹ He died four days later, on March 5, 2017.

¹ All statutory citations shall hereinafter refer to Chapter 33, Article III, of the Montgomery County Code (2014, as amended), unless otherwise indicated.

David Poulos began working for the Montgomery County Police Department in 1999. Officer Poulos was diagnosed with cancer in February 2014. He filed his application for non-service-connected disability-retirement benefits with the County on January 25, 2017, and died less than a month later, on February 20, 2017.

Montgomery County, through its police department, is the former employer of Officers Seidel and Poulos. The County is responsible for processing applications for disability benefits, including disability-retirement benefits, for employees of its police department. The County did not process Officer Seidel's or Officer Poulos's applications for disability-retirement benefits before their deaths. Thus, the County did not issue a decision regarding their eligibility for disability-retirement benefits.

When the FOP, acting on behalf of the officers' widows, inquired about the status of the applications, the County responded that it was not required to process an application for disability-retirement benefits after an applicant's death. Accordingly, it refused to consider Officer Seidel's and Officer Poulos's applications.

Pursuant to section 33-46(e)(1) of the County Code, the County is currently paying the death benefits that would have been payable to the officers' survivors if the officers had retired immediately before their deaths, without a finding of disability. The County is not paying the death benefits that are granted "[w]hen a member who has retired on a disability dies," as outlined in section 33-46(c). The benefits that Ms. Seidel and Ms. Poulos currently receive will be reduced substantially when their late husbands would have reached the normal Social Security retirement age. Mont. Cty. Code § 33-42(b)(2)(D)(ii). By contrast, the death benefits associated with disability-retirement, for

which Officer Seidel and Officer Poulos applied, are not similarly reduced. *See id.* § 33-43(h).

On October 4, 2017, Ms. Seidel and Ms. Poulos, joined by the FOP, filed a complaint for declaratory relief and a writ of mandamus in the Circuit Court for Montgomery County. Therein, they sought to require the County to process Officer Seidel’s and Officer Poulos’s applications for disability-retirement benefits as required under section 33-43(d)(2) of the County Code and to issue a decision regarding their eligibility for retirement benefits (and the accompanying death benefits) according to the timeline described in the Code. Both parties moved for summary judgment, agreeing that they had presented the circuit court with a pure issue of law.

The FOP maintained that a writ of mandamus should issue. It asserted that the County had evaded “an important ministerial duty” by not processing the officers’ applications, thereby leaving the officers’ widows with no remedy to obtain a decision regarding their late husbands’ eligibility for disability-retirement benefits. It pointed out that, under section 33-43(d)(2) of the County Code, a “Disability Review Panel must consider an application for disability retirement benefits filed by a member or a certified representative” and “must determine if an applicant is eligible for non-service-connected disability or service-connected disability in accordance with” the statutory criteria.

The County argued that mandamus relief would be “nugatory.” In particular, the County argued that under section 33-46(c) a surviving spouse is entitled to disability-retirement benefits only “[w]hen a member who has retired on a disability dies.” Because Officers Seidel and Poulos died before the County had reached a decision on

their applications for disability-retirement benefits, the County reasoned that the officers did not “retire[] on a disability” within the meaning of section 33-46(c) and, thus, that Ms. Seidel and Ms. Poulos would be precluded from receiving disability-retirement death benefits. The County insisted that, when an applicant dies during the application process, its duty to process a disability-retirement application, if any remains, becomes “discretionary.” The County admitted that it has processed the disability applications of some applicants who died before a final decision on their eligibility was made, but it sought to distinguish those applications on the ground that they were farther along in the review process than Officer Seidel’s or Officer Poulos’s at the time of the applicant’s death.

The FOP disputed the County’s interpretation of the language of section 33-46(c) that entitles a surviving spouse to disability-retirement death benefits “[w]hen a member who has retired on a disability dies.” The FOP argued that this condition may be satisfied if a member dies after he or she has submitted an application for disability-retirement benefits and has stopped working (i.e., has retired). On the premise that the administrators charged with interpreting the statute could reasonably adopt the FOP’s interpretation, it argued that mandamus would not be entirely “nugatory.” In addition, it argued that even if the administrators did not adopt the FOP’s interpretation, mandamus would not be entirely “nugatory,” because the FOP and the widows would have the ability to seek judicial review of the decision.

On April 26, 2018, the circuit court held a hearing on the parties’ cross-motions for summary judgment. After taking the matter under advisement, the court initially

granted summary judgment in favor of the FOP, Ms. Seidel, and Ms. Poulos, and issued a writ of mandamus requiring the County to process the Poulos and Seidel applications.

The circuit court explained the basis of its ruling in an accompanying memorandum opinion. The court reasoned that the County’s failure to take action on the applications “deprived” the officers’ beneficiaries “of any administrative process to review the decision” of whether they were entitled to the benefits they sought; that “[p]rocessing the retirement applications is a ministerial, non-discretionary duty”; and that the beneficiaries had a “clear right” to relief, as evidenced by the “the ordinance repeatedly us[ing] the word ‘must’ in reference to the steps the [County] take[s] in processing” applications.

The court rejected the County’s position that the duty to process applications becomes “discretionary” upon an applicant’s death, saying that that position was “arbitrary” and “not supported by law.” Similarly, the court rejected the County’s argument that granting a writ of mandamus would be “unavailing or nugatory” because the officers’ widows “ha[d] no entitlement to disability-retirement death benefits” under section 33-46(c) of the County Code, concerning the benefits for members who “retire[] on a disability.” In rejecting the County’s interpretation of “untested, uninterpreted provisions of the Montgomery County Code,” the court reasoned that granting mandamus is “unavailing or nugatory” only when “it is impossible for the Plaintiffs to attain their ultimate goals in seeking a writ of mandamus,” and that in the instant case, the “Plaintiffs’ ultimate goal to obtain disability retirement death benefits for the [officers’ widows] may be obtainable.”

The circuit court proceeded to offer its own construction of section 33-46(c). The court's construction was influenced by section 33-43(d)(10), a provision that, until this point, had been unmentioned by any party. In construing section 33-46(c) in light of section 33-43(d)(10), the court adopted an interpretation of the phrase “retired on a disability” in section 33-46(c), for which no party had advocated in the summary judgment briefing.

Under section 33-43(d)(10), “[a] disability retirement is effective on the date a member exhausts all accrued sick leave and accrued compensatory leave in excess of 80 hours, if any, or on the date the application is approved by the Chief Administrative Officer, whichever comes first.” Reading sections 33-46(c) and 33-43(d)(10) together, the circuit court reasoned that the officers’ beneficiaries might be able to obtain disability-retirement death benefits, depending on when the officers’ disability-retirement became effective:

The County Code expressly states that the disability retirement date is “the date a member exhausts all accrued sick leave and accrued compensatory leave in excess of 80 hours, if any, or on the date the application is approved by the Chief Administrative Officer, *whichever comes first.*” MCC § 33-43(d)(10) (emphasis added). If [Officers Seidel and Poulos] exhausted their leave per [section 33-43(d)(10)], then their disability retirement dates would be before their deaths and thus they would have ‘retired on a disability’ before dying. Therefore, their widows would be entitled to disability retirement death benefits [under section 33-46(c)].

In a footnote, the court acknowledged that the record did not make clear whether both officers had exhausted their leave, but that the FOP “indicated” that they both had.

Seizing on this language, the County moved to alter or amend the decision on the ground that neither officer “had exhausted [his] sick leave prior to applying for benefits

or passing away.”² In support of that argument, the County submitted evidence that, at the time of death, Officer Poulos had a balance of 620.66 hours of accrued sick leave, and Officer Seidel had a balance of 69.49 hours.

On the basis of this evidence, the circuit court granted the County’s motion, in part. Because Officer Poulos had not exhausted all accrued sick leave and accrued compensatory leave in excess of 80 hours, the court reasoned that mandamus relief would be “nugatory with respect to” him. By contrast, the court reasoned that Officer Seidel was “in a different posture vis-à-vis Montgomery County Code § 33-43(d)(10),” because he had less than 80 hours of accrued sick leave. Accordingly, the court issued an amended writ of mandamus that ordered the County to process Officer Seidel’s application but not Officer Poulos’s application for disability-retirement benefits.

Ms. Poulos and the FOP appealed the circuit court’s decision not to issue mandamus relief as to Officer Poulos’s application. The County has cross-appealed the court’s decision to issue mandamus relief as to Officer Seidel’s application. Ms. Seidel joins in this proceeding in light of the County’s cross-appeal.

QUESTIONS PRESENTED

The FOP³ presents the following questions for our review, which we quote:

1. Whether Plaintiffs-Appellants are entitled to mandamus relief requiring the County to process the disability retirement applications of police officers who died during the pendency of their applications, where the County not only has a mandatory, ministerial, and non-discretionary duty to process such applications

² In its motion, the County noted that it was not waiving any of its previous arguments.

³ We use “FOP” to collectively refer to the appellants and cross-appellees, including FOP #35, Ms. Seidel, and Ms. Poulos.

- under Section 33-43(d) of the County Code but also admits to processing some disability applications after the applicants have died?
2. Did the Circuit Court erroneously interpret Section 33-46(c), either because a widow of a police officer who died during the pendency of his disability application may receive disability death benefits under Section 33-46(c) regardless of whether the officer had more than 80 hours in accrued sick leave when he died, or because the Circuit Court made a de novo interpretation of an ambiguity in Section 33-46(c) in a mandamus proceeding, rather than permitting the ordinary administrative process to run its course?

In its cross-appeal, the County poses three questions, which we also quote:

1. Does the disability retirement law impose any imperative ministerial duty on the County to consider or decide a disability-retirement application?
2. Would mandamus be nugatory because even if the County considered the Decedents' applications and awarded them disability-retirement, their beneficiaries would not be entitled to disability retirement death benefits because the decedents did not die after retiring on a disability?
3. Did the trial court misinterpret the retirement law, or err in even making an interpretation?

We shall hold that the Montgomery County Code imposes a mandatory, ministerial duty on the County Disability Review Panel to consider an application for disability-retirement benefits and to issue a written recommendation containing findings of fact to the Chief Administrative Officer of the retirement system, even when applicants die before their applications have been completely processed. We shall also hold that mandamus is not nugatory in this case and that the appropriate remedy is to compel the County to consider the disability-retirement applications of both Officer Seidel and Officer Poulos.

Additionally, we shall hold that the trial court should not have ventured a de novo interpretation of uninterpreted provisions of the Montgomery County Code in this mandamus proceeding.

Accordingly, we shall vacate the judgment of the Circuit Court for Montgomery County and remand the case with instructions to issue a writ of mandamus to require Montgomery County to reach a decision on the disability-retirement applications of Officer Seidel and Officer Poulos.

DISCUSSION

The circuit court ultimately granted mandamus relief with respect to Officer Seidel’s disability-retirement benefits application, but declined to issue a writ of mandamus as to Officer Poulos’s application. Because these decisions were “based on its view of statutory interpretation questions, which are legal issues,” we review that aspect of the court’s ruling “for legal correctness, without deference to that court’s conclusions of law.” *Baltimore County v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 567 (2014).

The laws in contention here span several sections of the Montgomery County Code, §§ 33-34 to 33-61, which outline the County’s Employees’ Retirement System (“ERS”).⁴

⁴ As Montgomery County employees, both officers were entitled to membership, and were in fact members, of the Montgomery County ERS. *See* Mont. Cty. Code § 33-37.

Section 33-43 describes the County’s obligation to process and adjudicate applications for disability-retirement benefits for County government employees. As applicable here, section 33-43 states that the Disability Review Panel⁵ (the “Panel”) must consider an application for disability-retirement benefits filed by a member or a certified representative, must determine if the applicant is eligible for benefits, and must consider all evidence submitted to it no later than 60 days after an application is filed. Mont. Cty. Code § 33-43(d)(2), (6). Specifically, the Code provides:

(2) The Disability Review Panel must consider an application for disability retirement benefits filed by a member or a certified representative. The Panel must determine if an applicant is eligible for non-service-connected disability or service-connected disability in accordance with subsections (e)(2) through (4) and subsection (f).

* * *

(6) The Panel must review and consider all evidence submitted to it no later than 60 days after the application is filed. A Panel must include either 2 or 3 members. At least 2 members must vote in favor of a decision to take any action under this Section.

Id.

A member includes any County government employee, Mont. Cty. Code § 33-35; a certified representative includes an employee organization certified under section 33-79, such as the FOP. *See* Mont. Cty. Code § 33-43(b).

⁵ The Disability Review Panel is a group of four licensed medical doctors appointed as Panel members by the Chief Administrative Officer. Mont. Cty. Code § 33-43(b).

Within 30 calendar days after the Panel’s final discussion about an applicant’s eligibility, the Panel must issue a written recommendation to the Chief Administrative Officer⁶ regarding whether the applicant meets the criteria for disability-retirement benefits. Mont. Cty. Code § 33-43(d)(7). Before making its recommendation, however, “the Panel must . . . direct the applicant to undergo an independent medical examination . . . unless the Panel finds that a medical examination is unnecessary because of the nature and severity of the injury or illness.” Mont. Cty. Code § 33-43(d)(8)(A)(i).

Finally, within 20 calendar days after the receipt of the Panel’s written recommendation, the Chief Administrative Officer must issue a final decision regarding whether the applicant meets the criteria for disability-retirement benefits. Mont. Cty. Code § 33-43(d)(9).

If an applicant disagrees with the Chief Administrative Officer’s decision, the applicant or the applicant’s certified representative may appeal the decision to the Police Disability Arbitration Board within 20 calendar days of receiving that decision. Mont. Cty. Code § 33-43(l)(1). The Police Disability Arbitration Board “must render decisions quickly” and “should issue written decisions on appeals within 30 calendar days after the hearing or after receiving any post-hearing briefs.” *Id.* § 33-43(l)(6). An aggrieved party has a right to judicial review in the circuit court of an adverse decision by the Police Disability Arbitration Board.

⁶ The Chief Administrative Officer is responsible for the administration of the retirement system and the interpretation of all provisions of the retirement regulations, as set forth in the Montgomery County Code, including as well as the computation of benefits. Mont. Cty. Code § 33-47(c), (d); *see also id.* § 33-56(a).

Section 33-46 explains the variety of death benefits available to members' survivors. If a vested member who is eligible to retire on regular retirement dies before applying for retirement benefits, the member's spouse and children may elect a death benefit "equal to the yearly amount of benefits that would have been payable if the member had vested or retired immediately before death and had elected a 100-percent joint and survivor pension option." Mont. Cty. Code § 33-46(e)(1). Under section 33-46(c), "[w]hen a member who has retired on a disability dies, the spouse or domestic partner is entitled to receive the death benefits provided under the pension payment option elected."

I. Mandamus Relief

Mandamus is a specific and extraordinary type of relief that will be granted "only if no other 'ordinary adequate legal remedy' is available." *Baltimore Cty. FOP Lodge No. 4*, 439 Md. at 565 (quoting *Wilson v. Simms*, 380 Md. 206, 223 (2003)). The purpose of a writ of mandamus is "to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear legal right." *Goodwich v. Nolan*, 343 Md. 130, 145 (1996) (citation omitted).

For mandamus to issue, two requirements must be met. First, the party against whom enforcement is sought must have a non-discretionary, "ministerial" duty to act. *Baltimore Cty. FOP Lodge No. 4*, 439 Md. at 571. Second, "the party seeking enforcement of that duty must have a clear entitlement to have the duty performed." *Id.*

A court will not issue a writ of mandamus where doing so “would be unavailing or nugatory.” *Kinlein v. City of Baltimore*, 118 Md. 576, 581 (1912).

The FOP contends that mandamus relief is appropriate to require an administrative body to “come to a decision,” even where there is uncertainty as to whether the administrative decision will ultimately be in the mandamus petitioner’s favor. The FOP proffers that, although it is uncertain whether the Panel and the Chief Administrative Officer will ultimately give Officers Seidel and Poulos favorable reports, mandamus relief is required so as to obligate both of them to reach a decision on the applications (and thereby ensure that a court has the ability to review the decision).

In response, the County argues that mandamus relief is inappropriate for three reasons. First, it avers that the County’s disability-retirement law does not impose any ministerial duty to process an application for disability-retirement benefits. Second, the County contends that the officers’ widows lack a clear right to a decision on their late husbands’ applications. Finally, the County claims that mandamus relief as to both officers’ widows would be nugatory. It reasons that even if the County considered the decedents’ applications, neither Ms. Seidel nor Ms. Poulos would be entitled to disability-retirement death benefits. We address each argument separately below.

A. The County Has a Ministerial Duty to Process and Decide Applications

In arguing that it does not have a ministerial duty to process the deceased officers’ applications, the County concedes that under section 33-43(d) the Panel “must consider an application for disability retirement benefits filed by a member or a certified representative” and that the Panel “must issue a written recommendation” to the Chief

Administrative Officer within 30 days “*after the Panel’s final discussion at which the application was considered.*” Mont. Cty. Code §§ 33-43(d)(2), (7) (emphasis added). Nonetheless, the County points to the absence of a deadline within the County Code for the Panel to issue a written recommendation regarding an application to the Chief Administrative Officer. Because the Panel need not make a recommendation until after its “final discussion” of the application, and because the Code imposes no deadline on the length of the Panel’s discussions, the County argues that the Panel “can consider an application indefinitely.” As a consequence, the County concludes that the Panel could indefinitely delay the date when the Chief Administrative Officer must “issue a final decision” (20 days following the receipt of the Panel’s written recommendation). *Id.* § 33-43(d)(9).⁷

We decline to endorse this interpretation, as it might enable the Panel to refuse to issue a recommendation on (and prevent the Chief Administrative Officer from reaching a decision on) *any* disability-retirement application if the Panel claimed to be still “considering” the application. In interpreting statutes, we seek “to avoid constructions that are illogical, unreasonable, or inconsistent with common sense.” *See, e.g., Baltimore Cty. v. Baltimore Cty. FOP Lodge No. 4*, 439 Md. 547, 572 (2014) (quoting *Marriott Empls. Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 459 (1997)). The County’s interpretation makes no sense given that the statute is specifically intended

⁷ In this case, of course, the County is no longer in the process of considering the applications of Officers Seidel and Poulos: it has stopped processing them and claims that it has no obligation to continue to process them.

to provide retirement benefits to eligible County employees. *See* Mont. Cty. Code § 33-34 (“[i]t is the policy of the county to maintain a system of retirement pay and benefits for its employees which is adequately funded and insures employees sufficient income to enjoy during their retirement years[]”). The Code must be read to require the Panel to make a recommendation within a reasonable time after an application is filed. *See Green v. Nassif*, 426 Md. 258, 280 (2012). If the Panel fails or refuses to reach a decision on an application, an applicant may pursue a writ of mandamus to require the Panel to “‘come to a decision.’” *See Board of Cty. Comm’rs of Anne Arundel Cty. v. Buch*, 190 Md. 394, 402 (1948) (quoting *Stark v. State Bd. of Registration*, 179 Md. 276, 284 (1941)); *see also Board of Pub. Works v. Hovnanian’s Four Seasons at Kent Island, LLC*, 443 Md. 199, 224-25 (2015) (citing *A.H. Smith Sand & Gravel Co. v. Department of Water Resources*, 270 Md. 652, 661 (1974), for the proposition that “mandamus may be available when an agency ‘unduly delays processing an application’”).

In the alternative, the County argues that if the Code contains a deadline for issuing a recommendation or decision, the deadline is directory and not mandatory. Drawing upon language in *G & M Ross Enters., Inc. v. Board. of License Comm’rs of Howard Cty.*, 111 Md. App. 540 (1996), the County contends that it can ignore the mandatory language in its statutes (“must consider,” “must determine,” “must issue”) because the Code attaches no penalty to exceeding the timeframe for issuing a recommendation to the Chief Administrative Officer. The County’s reliance on *G & M Ross* is misplaced.

In *G & M Ross*, 111 Md. App. at 542, Ross sought judicial review of the Board of License Commissioners' decision to suspend a liquor license because, "[a]ccording to Ross, the Board violated its own rules and regulations in failing to issue a decision within thirty days of the hearing." Ross argued that the governing statute's use of the word "shall" meant that the provision was mandatory. *Id.* at 543. Thus, because the Board issued its decision roughly 80 days after the hearing, Ross argued that the decision should be reversed. *Id.* at 542-43.

This Court explained that, while the use of the word "shall" is presumed to be mandatory, this presumption is overcome when the context of the statute indicates otherwise, such as "[w]hen 'shall' is used in an unsanctioned statute directed toward an arbiter's time limitations for opining." *Id.* at 543-44 (quoting *Pope v. Secretary of Personnel*, 46 Md. App. 716, 719 (1980)). In *G & M Ross*, this Court concluded that the 30-day rule's "purpose [wa]s clearly to encourage the Board expeditiously to render its decisions, although a violation of this directive carrie[d] no sanction." *Id.* at 545. This Court was willing to overlook what it deemed an "inconsequential error" because imposing the sanction of reversal "would be adverse to the purpose of creating the Board to protect the public from the consequences of minors indulging in alcoholic beverages." *Id.*

G & M Ross is clearly distinguishable from the present case. *G & M Ross* does not involve a petition for a writ of mandamus, and it certainly does not hold that a court can compel an administrative decisionmaker to perform a mandatory, ministerial act only if some statute or rule prescribes a penalty for failing to perform that act. Instead, as the

FOP observes, *G & M Ross* and similar cases simply hold that an administrative decision is not automatically invalid if the decisionmaker fails to meet a specified deadline, unless the applicable statute or rule imposes such a penalty. Thus, if an applicant for disability benefits argued that the County could not deny the application because the County's agents had failed to meet one of the deadlines in the County Code, the County might invoke *G & M Ross* to rebut the applicant's position. *G & M Ross* and similar cases, however, do not hold that a decisionmaker can permanently or indefinitely refuse to make any decision at all, as the County has done in this case.

Therefore, we hold that Montgomery County (via the appropriate administrative actors) has a ministerial, mandatory duty to process and decide all disability-retirement applications that have been filed by a member of a certified representative, including those of Officer Seidel and Officer Poulos.

B. Clear Entitlement to Relief

In addition to disputing its duties with respect to processing the Seidel and Poulos applications, the County challenges whether the FOP has a right to enforce the County's obligations, i.e., the second requirement for mandamus to issue.

A writ of mandamus "may be issued" to require an administrative body to hold "a hearing or to come to a decision." *Stark v. Board of Registration*, 179 Md. 276, 284 (1941). Mandamus relief is appropriate even where, as here, it is uncertain whether that decision will ultimately result in a favorable outcome to the party seeking mandamus. *Board of Comm'rs of Anne Arundel Cty. v. Buch*, 190 Md. 394, 401, 403-04 (1948) (affirming the issuance of a writ of mandamus requiring an administrative body to hold a

hearing on a taxpayer’s request for a re-assessment of property, while simultaneously recognizing that the outcome of the hearing might not be favorable to the taxpayer); *see also O’Brien v. Board of License Comm’rs for Washington Cty.*, 199 Md. App. 563, 579 (2011) (stating that, “in a proper case, traditional mandamus may be invoked to compel a board *to consider* a license application, although it ordinarily may not be used to require the granting of the license[.]”) (emphasis added).

The County denies that the FOP is entitled to a decision on the disability applications of Officers Seidel and Poulos. It argues that the disability-retirement provision of the County Code “anticipates a living applicant,” but that the officers died before their applications were processed. We are not persuaded the County’s argument can defeat the right to a writ of mandamus.

The County begins by noting that the Code defines a “member” as “an employee . . . of the County government or of a participating agency . . . who is contributing to this retirement system.” Mont. Cty. Code § 33-35. On the basis of that definition, the County reasons that, after an employee dies, the employee is no longer a “member” whose application for disability-retirement benefits the Panel must consider. Moreover, the County contends, a member who has died is not “incapacitated for the further performance of duty” as a result of a disabling illness or injury, as contemplated by section 33-43(e) of the Code.

These arguments do not conclusively establish that the FOP has no right to a decision on the applications filed by Officers Seidel and Poulos. Both Officer Seidel and Officer Poulos were still living when they submitted their applications for disability-

retirement benefits to the County. Yet, noticeably absent from the Code is any language suggesting that once a living officer has submitted an application for disability-retirement, the County need not process the application to a final decision if the officer does not survive to the conclusion of the process.

The County also argues that the Code requires a living applicant so that the Panel can direct the applicant to undergo an independent medical examination under section 33-43(d)(8)(A) to determine whether the applicant is incapacitated for the further performance of duty. *See* Mont. Cty. Code § 33-43(e) (outlining the criteria for non-service-connected disability-retirement). An examination, however, is not required if the Panel concludes that it “is unnecessary because of the nature and severity of the injury or illness.” *Id.* § 33-43(d)(8)(A)(i). As the circuit court observed, it “would not be unreasonable for the Panel to conclude that where an applicant’s illness results in death the illness was severe enough” that an examination is unnecessary.⁸

In any event, whether the officers’ applications are ultimately granted under section 33-43, with attendant death benefits provided to their widows under section 33-46(c), is not material to whether a writ of mandamus should issue. Instead, the proper inquiry is whether the petitioners have a clear right to the *mandamus relief* sought (here, to have the Chief Administrative Officer “come to a decision” on the applications that Officers Seidel and Poulos submitted). Because the Code imposes a ministerial duty

⁸ Officer Seidel died four days after submitting his application; Officer Poulos died less than a month after submitting his application.

upon the County to process and decide all disability-retirement applications, as discussed in the previous section, it follows that the FOP has a clear legal right to the relief it seeks.⁹

C. Mandamus Relief Would Not Be Nugatory

Finally, the County maintains that the issuance of mandamus requiring the County to process the officers' applications would be a "nugatory and unavailing effort," and therefore the FOP has no legal right to relief. This argument is based on section 33-46(c) of the County Code, which states: "[w]hen a member who has retired on a disability dies, the spouse or domestic partner is entitled to receive the death benefits provided under the pension payment option elected." The County asserts that Officers Seidel and Poulos had not yet "retired on a disability" when they died, and therefore their widows would not be entitled to the additional benefits that accompany disability-retirement if the County processed the officers' applications after their deaths.¹⁰ Using the trial court's language, the County concludes that mandamus is nugatory because it would be "impossible for the

⁹ The County's contrary interpretation would motivate employees to apply for disability benefits as soon as they could, for fear that they might die while their applications were pending. The County's interpretation would also have the unfortunate effect of penalizing loyal employees like Officers Seidel and Poulos, who continue to work even though they have a fatal disease.

¹⁰ Although presented to this Court as a distinct issue, the County's position that mandamus relief would be nugatory is merely an extension of its broader argument that the issuance of mandamus is inappropriate in the instant case.

Plaintiffs to attain their ultimate goals in seeking a writ of mandamus.” As we explain below, both the premise and conclusion of this argument are faulty.

First and foremost, the County misunderstands the FOP’s objective in seeking mandamus: the objective is to *obtain final decisions* on Officer Seidel’s and Officer Poulos’s disability-retirement applications, and not, as the County suggests in its brief, “to obtain disability-retirement death benefits under § 33-46(c).” Even if the ultimate outcome is unfavorable, the mere act of reaching a decision will prove beneficial to the FOP. Mandamus relief, therefore, will not be nugatory.¹¹

Currently, the County has stopped processing the officers’ applications without granting or denying them, thus leaving the FOP without any way to challenge the County’s pocket veto of the applications. A decision, favorable or not, will provide an opportunity for judicial review that the FOP currently lacks. *See* Mont. Cty. Code § 33-43(l); *see also* *Sweeney v. Montgomery Cty.*, 107 Md. App. 187, 197 (1995) (stating that losing parties have a right to know why they lost their case); *accord* *Baltimore Gas & Elec. Co. v. Pub. Serv. Comm’n*, 75 Md. App. 87, 98 (1988). “The requirement of findings meets the elementary demand of those injured by an agency decision to be told ‘the reason why.’” *Baltimore Gas & Elec. Co. v. Pub. Serv. Comm’n*, 75 Md. App. at 98; *accord* *Sweeney v. Montgomery Cty.*, 107 Md. App. at 197.

¹¹ Of course, if favorable, a decision will result in the grant of disability death benefits more valuable than those Ms. Seidel and Ms. Poulos are currently receiving under § 33-46(e).

Arguing the merits of the application for benefits, the County observes that section 33-46(e)(1) permits surviving spouses to elect non-disability-retirement benefits after an officer's death, but that section 33-46(c) contains no such provision. On the basis of that distinction, the County argues that section 33-46(c) categorically forecloses disability-retirement death benefits for Officers Seidel's and Poulos's widows. Having concluded that the grant of mandamus with respect to the officers' applications would not be nugatory, however, we need not express an opinion on this novel question of statutory interpretation. The County's argument concerns the widows' ultimate entitlement to disability-retirement death benefits, not their right to a writ of mandamus to compel the County to make a decision about their entitlement to those benefits. The County's argument, therefore, should be considered first by the administrative decision-makers and, then, on a petition for judicial review, by the circuit court. *See infra* Part II.

II. De Novo Interpretation of Retirement Law

The trial court initially concluded that processing Officer Seidel's and Officer Poulos's applications was not nugatory. In reaching this conclusion, however, the court relied on its own reading of section 33-43(d)(10), a statute that neither party had cited.

Section 33-43(d)(1) provides:

A disability retirement is effective on the date a member exhausts all accrued sick leave and accrued compensatory leave in excess of 80 hours, if any, or on the date the application is approved by the Chief Administrative Officer, whichever comes first.

The court appears to have read section 33-43(d)(10) in conjunction with section 33-46(c), which describes the death benefits that survivors will receive “[w]hen a

member who has retired on a disability dies.” On the basis of that reading, the court reasoned that processing the officers’ disability-retirement applications was not necessarily nugatory because, if approved, the officers’ beneficiaries could obtain disability-retirement death benefits as long as each officer died with less than 80 hours of accrued leave. In that event, the court reasoned, the applicants would have “retired on a disability” at the time of their deaths, within the meaning of section 33-46(c).

On the premise that both officers may have exhausted all accrued leave in excess of 80 hours, the court initially issued a writ of mandamus requiring the County to process the disability-retirement applications of both Officer Seidel and Officer Poulos. Upon receiving evidence that Officer Seidel had “accrued sick leave of 69.49 hours” and that Officer Poulos “had an accrued sick leave balance of 620.66 hours,” however, the circuit court held that Officer Poulos’s posture “vis-à-vis Montgomery County Code § 33-43(d)(10)” foreclosed his application from being granted, thereby rendering mandamus nugatory in his case.

Just as neither party initially asked the court to consider section 33-43(d)(10) of the County Code, neither party agrees with the trial court’s reliance on, or interpretation of, section 33-43(d)(10).

The FOP contends that section 33-43(d)(10) does not announce an additional condition that a member must satisfy in order to become eligible for disability-retirement benefits, as the trial court thought. Instead, the FOP contends that section 33-43(d)(10) is simply a timing provision – a provision that dictates when a member’s retirement is deemed to be effective.

The County agrees that section 33-43(d)(10) “does not control” the question of whether mandamus relief would be nugatory. Thus, the County did not cite, much less rely on, section 33-43(d)(10) as a basis for its motion for summary judgment in the circuit court. Nonetheless, on the premise that this Court might disagree with all of the parties and conclude that section 33-43(d)(10) has some bearing on a member’s eligibility for disability-retirement benefits, the County offers an alternative interpretation, under which none of the officers’ survivors would have a right to disability-retirement death benefits. Under the County’s alternative interpretation, the survivors would not be eligible for disability-retirement death benefits unless the members had exhausted all of their accrued sick leave and all but 80 hours of their accrued compensatory leave at the time of death. According to the County, neither officer met that condition, because both had an accrued sick leave balance when they died.

In our judgment, the circuit court should not have volunteered its interpretation of section 33-43(d), whether alone or in conjunction with section 33-43(d)(10). Instead, the court should have left the question of interpretation, in the first instance, to the bodies that are charged with administering the statutes.

In this case, the interpretation of this statutory language is appropriately reserved, in the first instance, for the administrative bodies, i.e., the Police Disability Arbitration Board and the Chief Administrative Officer, charged with interpreting and administering the Code. Permitting the administrative process to run its course will ensure that a reviewing court has benefit of a full, informed administrative record. *See Priester v. Baltimore County*, 232 Md. App. 178, 195 (2017).

In *Sweeney v. Montgomery County*, 107 Md. App. 187 (1995), this Court explained the importance of following ordinary administrative procedure. In that case, an employee applied for “service related disability” retirement benefits but was awarded only a “temporary partial disability.” *Id.* at 189, 196. Without addressing the merits of the administrative determination, this Court concluded that the matter had to be remanded to the Merit System Protection Board, the final administrative decisionmaker, because the Board failed to adequately explain its decision. *Id.* at 198. After emphasizing that Maryland courts “have consistently required that administrative agencies make findings of fact and conclusions of law,” (*id.* at 197) the Court concluded that the Board was also required to do so. *Id.* at 199.

Remand to the Board, the Court explained, was superior to the “clumsy alternative” in which the court in the first instance would have to “read the record, speculate upon the portions that were probably believed by the board, guess at the conclusions drawn from the credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained.” *Id.* at 198-99 (emphasis omitted) (quoting *Mortimer v. Howard Research*, 83 Md. App. 432, 446 (1990)). This “clumsy alternative” to remand was “unacceptable because it would force a reviewing court to perform duties that the law assigns to the administrative agency.” *Id.* at 199. In our view, the “clumsy alternative” described in *Sweeney* is even less acceptable here, where there is *no* decision and *no* record upon which to draw conclusions.

Furthermore, the Chief Administrative Officer has the delegated authority to interpret the County Code provisions at issue here. *See* Mont. Cty. Code § 33-56(a) (“[t]he Chief Administrative Officer is responsible for deciding questions arising under [the Employee’s Retirement System] Article[]”); *id.* § 33-47(d)(1) (explaining that the Chief Administrative Officer has the duty and power to “[i]nterpret the provisions of the retirement system”). The Chief Administrative Officer’s decision is then subject to review by the Police Disability Arbitration Board. *See id.* § 33-43(l)(1); *id.* § 33-56(b). An agency’s interpretations of its own regulations “are purely administrative matters as to which the judicial branch of government has no special competence.” *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 235 (1998).

Therefore, we hold that the circuit court should not have engaged in a de novo interpretation of the County Code. Instead, in situations such as those presented by this case, the ordinary administrative process should be allowed to run its course, thereby providing a reviewing court the benefit of a full administrative record and a reasoned interpretation of Code provisions by those responsible for administering it.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
VACATED; CASE REMANDED WITH
INSTRUCTIONS TO ISSUE A WRIT OF
MANDAMUS TO MONTGOMERY
COUNTY WITH DIRECTIONS TO
CONSIDER THE APPLICATIONS OF
OFFICERS SEIDEL AND POULOS AND
MAKE A DECISION IN ACCORDANCE
WITH SECTION 33-43(d) OF THE
MONTGOMERY COUNTY CODE; COSTS
TO BE PAID BY MONTGOMERY
COUNTY.**