

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Phyllis Chavis (Respondent) established membership with CalPERS on March 2, 1994, through employment with the California Employment Development Department. By virtue of her employment, Respondent is eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA).

Respondent first enrolled in a health benefits plan as a state employee when she was hired in 1994. CalPERS refers to her non-Medicare health benefits plan as "Basic."

On September 30, 2006, Respondent retired for disability, and she remained enrolled in the Basic health benefits plan as a retired member. A member can change her health benefits plan during the annual open enrollment period.

Respondent enrolled in Medicare Parts A and B in November 2010, when she first became eligible. Medicare Part A pertains to hospital costs, and Part B pertains to medical costs. Respondent was under the age of 65 at the time. CalPERS does not receive notification from the Social Security Administration when a CalPERS member under the age of 65 enrolls in Medicare.

A member eligible for CalPERS health benefits through state employment, who is enrolled in Medicare and also a CalPERS Medicare plan, is eligible for reimbursement from CalPERS of the premiums they pay to Medicare for Part B Coverage. The amount of reimbursement depends on various qualifying factors. Thus, not all members enrolled in a CalPERS Medicare plan will receive Medicare Part B reimbursements. Regardless, a retiree such as Respondent is not eligible for a Part B reimbursement if she is enrolled in a Basic health plan, even if she is also enrolled in Medicare.

Each year from 2012 to 2021, CalPERS mailed Respondent an annual Health Plan Statement. Each of the Statements showed Respondent was enrolled in a Basic health plan. The annual statements also showed the cost of monthly premiums for the various Basic health plans available.

In 2019 and 2020, CalPERS began mailing courtesy letters to retirees under age 65 who were enrolled in a Basic health plan explaining they may be eligible to enroll in a CalPERS Medicare plan. These letters provided instruction on how to submit a request to CalPERS to change their health plan enrollment. The January 2019 letter states (*italics added*):

We are contacting you regarding your CalPERS health benefits plan and Medicare eligibility. Our records indicate that you and/or your dependent(s) may be enrolled in Medicare Part A (Hospital) and Part B (Medical) through the Social Security Administration (SSA) and are currently

enrolled in a CalPERS Basic health plan. *You or your dependent(s) may be eligible to enroll in a CalPERS Medicare health plan if you are retired and enrolled in Medicare Part A and Part B.*

CalPERS Medicare health plans have similar coverage and typically lower monthly premiums compared to CalPERS Basic health plans. To learn more about the CalPERS Medicare health plans available to you, log into your myCalPERS account at [my.calpers.ca.gov](http://my.calpers.ca.gov) and use the Find a Medical Plan tool to complete a benefit comparison.

To enroll in a CalPERS Medicare health plan, submit the enclosed Certification of Medicare Status form and provide supporting documentation to CalPERS. Your health plan change will be effective the first day of the month following the receipt of your form and supporting documentation.

For information regarding your Medicare eligibility and enrollment, please contact the SSA at (800) 772-1213 or TTY (800) 325-0778 or visit their website at [www.ssa.gov](http://www.ssa.gov).

Respondent conceded during her testimony that she received the annual health statements and the courtesy letters informing her of possible eligibility for a CalPERS Medicare Plan. She testified that she disregarded all of those documents because they were “pointless” and “irrelevant.” She explained that her Basic health plan was through Kaiser Permanente (Kaiser) and she contacted CalPERS in November 2010 to inform she was enrolled in the Kaiser Medicare Plan. She testified that since she remained insured with Kaiser after her claimed November 2010 contact with CalPERS, she assumed she had been switched from her Basic health plan to the comparable CalPERS Medicare plan and therefore did not need to read any of the documents.

On January 18, 2022, Respondent contacted CalPERS upon learning that she had not been enrolled in a CalPERS Medicare plan since 2010. Respondent requested enrollment in a CalPERS Medicare plan and reimbursement of Medicare Part B premiums, both retroactive to November 1, 2010. Respondent told CalPERS she was requesting retroactive enrollment and reimbursement because an SSA employee recently told her she should have been receiving Part B premium reimbursements since she enrolled in Medicare on November 1, 2010.

During the same conversation, CalPERS informed Respondent that CalPERS had sent annual health statements and courtesy letters to her, notifying her that she was enrolled in a Basic health plan and of her possible eligibility to enroll in a CalPERS Medicare plan prior to age 65. CalPERS also told Respondent she could not be retroactively enrolled, and that her enrollment would only be going forward. Respondent advised she would appeal if her requests were denied. In response, CalPERS explained how to appeal.

The next day, January 19, 2022, CalPERS informed Respondent that she would be enrolled in a CalPERS Medicare plan effective February 1, 2022, the first day of the month following receipt of her Medicare information.

On February 3, 2022, Respondent appealed, arguing she should be reimbursed for Medicare Part B premiums retroactive to November 2010, and requesting reconsideration of the denial of her request for retroactive enrollment.

On February 10, 2022, CalPERS denied Respondent's request for retroactive enrollment and reimbursement of Medicare premiums because she did not request enrollment in a CalPERS Medicare plan until January 18, 2022.

On March 7, 2022, Respondent requested reconsideration. During several phone calls with Respondent in March 2022, CalPERS explained the denial of her requests, and her right to appeal.

Respondent exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 3, 2023. Respondent represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS presented the testimony of Jose Doria, a CalPERS employee who specializes in enrolling members in Medicare health benefits plans, helping members with Medicare Part B reimbursement, and resolving complex Medicare issues. Mr. Doria established the facts and timeline summarized above. He searched Respondent's myCalPERS account and her Customer Touch Point Report (CTP Notes), but found no record that Respondent ever requested enrollment in a CalPERS Medicare plan prior to January 18, 2022. Mr. Doria authenticated Respondent's annual Health Plan Statements from 2012 to 2021, and the courtesy letters mailed to her over the years.

Respondent testified on her own behalf that she informed a CalPERS representative in early November 2010 that she had enrolled in Medicare Parts A and B when she first became eligible. According to Respondent, the CalPERS staff member asked her to fax certain information, including a copy of her Medicare card, which she did the same day. She testified that she asked to be enrolled in Kaiser's Senior Advantage CalPERS Medicare plan. Respondent testified that she was unaware of the Part B reimbursement because CalPERS failed to engage in any outreach to her concerning her Medicare benefits. She also stated she became aware of her ability to receive reimbursement of Part B premiums when an SSA employee told her she should be receiving reimbursement.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found CalPERS' evidence more convincing and concluded that Respondent had failed to establish that she requested Medicare enrollment in November 2010. The ALJ did not find Respondent's testimony that she contacted CalPERS in November 2010 convincing because there was no evidence to corroborate her claims. The CTP Notes document many contacts in November 2010, concerning enrollment in Delta Dental and her inquiries regarding converting her benefits from Tier 1 to Tier 2. There is nothing in the CTP Notes documenting a request to change her Medicare health plan. The ALJ found it unlikely that all those contacts would have been correctly logged into Respondent's account, but the one contact concerning enrollment in a CalPERS Medicare plan to have been omitted or disregarded with no action taken. Regarding Respondent's claim of CalPERS' lack of outreach, the ALJ found that courtesy letters and annual statements were sent to Respondent over the years which informed her of the CalPERS Medicare plans for which she was eligible. She did not see those provisions because she intentionally disregarded the communications.

In addition, the ALJ did not find that Respondent made a mistake that would warrant the correction in a retroactive manner. Respondent made no inquiry with CalPERS after receiving annual statements for 12 years showing she was enrolled in a Basic health plan, nor after receiving the courtesy letters. The ALJ found that a reasonable person would not have disregarded notices concerning her health plan sent annually for 12 years. Respondent's claimed ignorance of the law coupled with her failure to ascertain it is not a valid excuse. The ALJ found that Respondent failed to meet her burden of establishing by a preponderance of the evidence that her enrollment in a CalPERS Medicare plan should be retroactive to November 1, 2010, or that she should be reimbursed Medicare Part B premiums retroactive to November 1, 2010. Accordingly, the ALJ denied Respondent's appeal.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

March 15, 2023

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