

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Health Enrollment of:**

**MIRIAM GABAI, Respondent**

**Case No. 2023-0374**

**OAH No. 2023080788**

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 22, 2024, by videoconference.

Cristina Andrade, Senior Attorney, represented complainant, Yesenia Croft, Chief, Health Account Management Division, California Public Employees' Retirement System (CalPERS).

Miriam Gabai, respondent, represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 22, 2024.

## **PROTECTIVE ORDER**

To protect privacy and confidential personal information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued. The order lists the exhibits that were sealed and governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to the order, provided that such documents are protected from disclosure to the public.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The CalPERS Health Program is governed by the Public Employees' Medical and Hospital and Care Act (PEMHCA). PEMHCA authorizes CalPERS to provide health benefits for state employees, dependents, annuitants, and the employees and annuitants of contracting public agencies that elect CalPERS's health benefit coverage.

2. Ms. Gabai's parents were employees of California State University Northridge. As such, they and their dependents were eligible for CalPERS health benefits. Ms. Gabai aged out of health benefit coverage in 1992 and was not continuously enrolled thereafter as a dependent on either her father's or her mother's health plans prior to their deaths.

3. Ms. Gabai's attempt to enroll in a CalPERS health plan in 2022 was denied. She timely appealed that denial.

4. On August 24, 2023, complainant filed a Statement of Issues seeking to have CalPERS's denial affirmed. Ms. Gabai timely filed a Notice of Defense and this hearing followed. The issue to be decided is whether Ms. Gabai is eligible to enroll in CalPERS's survivor health coverage.

### **History of Ms. Gabai's CalPERS Health Coverage and Inquiries**

5. Ms. Gabai was a dependent on her father's health insurance. There are no records of her ever being a dependent on her mother's health insurance. On August 1, 1992, CalPERS advised Ms. Gabai's father that because Ms. Gabai would soon be turning 23 (then the age when dependent eligibility ended; it is now age 26), she must be deleted from his health plan, although she could remain enrolled if she had never been married and was not capable of self-support due to mental or physical disability. CalPERS also advised that employers with 20 or more employees were required to extend group coverage to dependents who lose eligibility due to age as long as they assume responsibility for the total premium plus an administrative charge. CalPERS advised Ms. Gabai's father to complete an HBD-12 form to delete Ms. Gabai from his plan, and to complete the necessary application to continue group coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) provision if desired. CalPERS specifically advised him: "It is your responsibility to notify your personnel office immediately if any family member needs to be added or deleted. Your personnel office can provide you with detailed eligibility guidelines."

6. On September 9, 1992, CalPERS sent California State University Northridge a "Notice of Placement on Retirement Role" advising that Ms. Gabai's father had been placed on the service retirement role.

7. On October 14, 1992, because of her father's retirement, a Dental Plan Enrollment Authorization, marked "New Enrollment," was completed by California State University Northridge listing the plan members as Ms. Gabai, her father, her mother, and her two sisters.

8. On October 22, 1992, a Dental Plan Enrollment Authorization, marked "Change," was completed by California State University Northridge deleting coverage for Ms. Gabai because she was an "Overage Daughter."

9. On October 30, 1992, a Health Benefits Plan Enrollment Form (HBD-12) "New Enrollment" was signed by Ms. Gabai's father, listing himself, his wife and his three daughters, including Ms. Gabai, as enrollees in the plan.

10. On October 30, 1992, Ms. Gabai signed a "PERS Group Continuation Coverage Consolidated Omnibus Budget Reconciliation Act 'COBRA'" (PERS-HBD-85) form which identified the "Qualifying Event" as "Child Ceases to be a Dependent." The "Event Date" was Ms. Gabai's pending November 1992 birthday, and the "COBRA Enrollment Period" was December 1, 1992, through December 30, 1995. CalPERS processed this form on January 4, 1993.

11. In November 1992 when Ms. Gabai turned 23, she was deleted from her father's health and dental enrollment. No evidence of any COBRA enrollment for Ms. Gabai after 1995 was introduced at hearing.

12. In January 1999, when Ms. Gabai was 29 years old, her father died.

13. A September 20, 2019, CalPERS Customer Touch Point (CTP) entry in Ms. Gabai's mother's file noted Ms. Gabai contacted CalPERS inquiring about the process for having a disabled dependent added as a beneficiary to receive a monthly benefit

upon the surviving spouse's death. CalPERS advised that specific information could not be given as there was no Power of Attorney on file allowing CalPERS to discuss her mother's account with Ms. Gabai. Ms. Gabai advised she got no response from the letters she had sent to CalPERS "weeks ago" inquiring about the process. She asked to speak to someone regarding the exact process for her request and her call was transferred to a senior analyst. A second CTP entry on the same date in both Ms. Gabai's and her mother's files from the senior analyst documented Ms. Gabai's request about how to make sure how she, as a disabled person, could continue survivor's benefits after her mother's death. CalPERS advised she needed to submit the Power of Attorney which "takes 60 days to process" so her mother's information could be discussed with her. CalPERS further informed Ms. Gabai that a call back to provide her with the requested information may take up to five business days. There were no CTP entries of any follow up call from CalPERS during the next five business days.

14. A September 23, 2019, CTP entry in Ms. Gabai's mother's file documented that CalPERS received an "[Open Enrollment] dental document request to change plan." The request was processed for an effective date of January 1, 2020.

15. On October 9, 2019, CalPERS received two forms and a letter from Ms. Gabai.

- One form was a "Medical Report for the CalPERS Disabled Dependent Benefit" (HBD-34) identifying Ms. Gabai's mother as the member and Ms. Gabai as the dependent. In that form Ms. Gabai authorized her physician to provide information to CalPERS. However, the "Physician Part C," "Medical Report," and "Part D, Medical Certification of Disability and Incapacity of Self-Support" portions of the form were blank, making the form incomplete. The form states at the top: **"COMPLETE ALL ITEMS. INCOMPLETE ITEMS**

**WILL BE RETURNED CAUSING DELAYS IN BENEFITS.**" (Bold and caps in original.) No evidence of a completed form was introduced.

- The other form Ms. Gabai submitted was a completed "Member Questionnaire for the CalPERS Disabled Dependent Health Benefit" (HBD-98) signed by Ms. Gabai's mother, attesting to Ms. Gabai's entitlement to health insurance, her economic dependence on her mother, her receipt of Social Security Disability Insurance as of December 1, 2003, her inability to work, and her being dependent since birth.
- Ms. Gabai's letter which accompanied the two forms was dated September 23, 2019, and in it she wrote that she had "mailed this on September 6, 2019. Now I am sending a fax. Now I am following this letter by including 2 forms I was told were for this benefit." (Of note, it was unclear how she could have mailed a letter dated September 23 on September 6.) Ms. Gabai wrote that the purpose of her letter was "to start the process to establish survivor benefits for [Ms. Gabai], the disabled child of [her parents]." Ms. Gabai identified her "lifelong disability," and inquired if she could "receive a survivors benefit from [her father's] pension" from his date of death or if the survivors benefit begins when her mother dies. Ms. Gabai asked for information regarding "how this benefit works and what additional information [she] needs to provide in order to receive the benefit." She wrote she could "obtain a Doctor's note and a copy of the genetic testing." No evidence of either was introduced.

16. An October 11, 2019, CTP entry in Ms. Gabai's mother's file documented that CalPERS received the incomplete HBD-34 and the complete HBD-98 with the

letter inquiring about survivor benefits which were “[p]assed to digit analyst for followup.”

17. An October 14, 2019, CTP entry in Ms. Gabai’s mother’s file documented that CalPERS left a message for Ms. Gabai requesting a return call regarding the disability dependent form received for Ms. Gabai “who was never on the decease [*sic*] members account nor was dependent ever enrolled at the initial enrollment for the survivor.” There is no CTP entry of any further contact regarding the incomplete HBD-34 form although there are CTP entries in Ms. Gabai’s file of discussions in September 2019 regarding survivor’s benefits for a disabled dependent and in November 2019 regarding death benefits for a disabled dependent.

18. An October 21, 2019, CTP entry in Ms. Gabai’s mother’s file documented that CalPERS sent “death benefit estimate” letters to Ms. Gabai’s mother regarding her retirement account and her beneficiary/survivor account. The letters advised that Ms. Gabai “may qualify for survivor continuance as an unmarried disabled child if her condition prevents her from working full time.” The survivor continuance may be paid from Ms. Gabai’s mother’s or father’s account.

19. A November 4, 2019, CTP entry in Ms. Gabai’s file noted she called CalPERS regarding death benefits that may be available for a disabled dependent. CalPERS told Ms. Gabai the call back time frame was five days. There are no CTP entries in either Ms. Gabai’s or her mother’s file of CalPERS calling Ms. Gabai back about this inquiry. The next CTP entry in Ms. Gabai’s file is July 8, 2020, which is referenced below.

20. July 8, 2020, CTP entries in both Ms. Gabai’s and her mother’s files documented Ms. Gabai’s request for written documentation of the definition of



disabled dependent under the survivor continuance benefit, what she needs to provide, and what criteria is needed to be eligible. The CTP notes documented the referral for callbacks regarding her requests, the explanation given to her of the laws governing CalPERS, and a walk through of the CalPERS website with her. The next CTP entry in Ms. Gabai's file is in February 2022, referenced below.

21. A July 10, 2020, CTP entry in Ms. Gabai's mother's file confirmed CalPERS's receipt of a valid power of attorney authorizing Ms. Gabai to act on her mother's behalf and allowing CalPERS to discuss specifics with Ms. Gabai.

22. A July 15, 2020, CTP entry in Ms. Gabai's mother's file documented that CalPERS spoke with Ms. Gabai, explaining the disabled child eligibility process, and agreed to send her "a blank sample of the disabled child packet" for her records.

23. The next CTP entry in Ms. Gabai's mother's file is in January 2022 regarding Ms. Gabai's mother's death. At the time, Ms. Gabai was 52 years old. Other entries in February, March, and June 2022 documented communications regarding benefits payable to Ms. Gabai and her two sisters.

24. A May 2, 2022, CTP entry in Ms. Gabai's mother's file documented that CalPERS sent a disabled child packet to Ms. Gabai. The packet was received and uploaded to CalPERS's system on May 27, 2022.

25. A July 7, 2022, CTP entry in Ms. Gabai's mother's file documented that the medical report was approved and Ms. Gabai was eligible for survivor continuance benefits.

26. July 12, 2022, CTP entries in both Ms. Gabai's and her mother's files documented Ms. Gabai's inquiry about survivor benefits and health insurance. Ms.

Gabai asked when her health benefits would begin. CalPERS advised she would receive a return call within five days.

27. A July 16, 2022, CTP entry in Ms. Gabai's mother's file noted that CalPERS informed Ms. Gabai she was eligible for a survivor continuance allowance which would take approximately three weeks to process. There is no reference in the CTP entry regarding the health benefits Ms. Gabai asked about on July 12, 2022.

28. On August 17, 2022, CalPERS advised Ms. Gabai in two letters that her claims to the monthly survivor continuance allowances for each of her deceased parents had been processed. She would be receiving retroactive allowances and monthly allowances thereafter. The "Description of Benefits" section in both letters advised Ms. Gabai that: "If you were covered as a dependent on health and/or dental coverage, your coverage will automatically continue." The section also provided Ms. Gabai with information regarding how to contact CalPERS if she had any questions concerning her health or dental plans. No evidence showed that Ms. Gabai was a covered dependent in 2022.

29. On August 23, 2022, Ms. Gabai began receiving a monthly survivor continuance allowance as a disabled child of her parents.

30. An August 25, 2022, CTP entry in Ms. Gabai's file documented her inquiry regarding health enrollment. CalPERS informed Ms. Gabai that Open Enrollment will take place from September 19, 2022, to October 15, 2022. Ms. Gabai was "guided" to the Health Benefit Summary and HBD-30. CalPERS advised Ms. Gabai that she "will need to drop her third-party supplemental plan if she want [*sic*] to enroll in a CalPERS Medicare supplemental plan. Advised [Ms. Gabai] to include her Medicare card with

her [Open Enrollment] request." During this call, CalPERS did not inform Ms. Gabai that she was not eligible for healthcare benefits.

31. An October 25, 2022, CTP entry in Ms. Gabai's file noted that she called to apply for health benefits and was told she needed to call during Open Enrollment which had ended. The August 25, 2022, CTP note was reviewed and CalPERS explained that "without [a] separate life event, such as losing coverage, [Ms. Gabai] would need to wait for [Open Enrollment] 2023." Ms. Gabai stated she was told she could apply now and her call was "transferred to IAA for further assistance."

32. A second October 25, 2022, CTP note in Ms. Gabai's file documented the transferred call. Ms. Gabai stated she was told she would be eligible to enroll in health benefits outside the Open Enrollment period due to being new to CalPERS. It was explained to her that members are eligible to enroll during Open Enrollment or another qualifying event such as loss of coverage. Ms. Gabai claimed that was not what she was told and upon further questioning, Ms. Gabai stated she is a disabled dependent of two deceased members "however she did not have continuous coverage or no enrollment information appears in the deceased [members'] account[s]." Ms. Gabai requested "to speak to someone to confirm she is eligible for health benefits as a disabled surviving child because she has been told different things from CalPERS." CalPERS told Ms. Gabai it could take five business days to receive a return call.

33. An October 28, 2022, CTP entry in Ms. Gabai's file documented her request for "someone who is an expert at the health benefits for new members medicare [sic] post retirement plans for enrollment and how to do it."

34. A November 1, 2022, CTP entry in Ms. Gabai's file documented that CalPERS was "working with lead to determine eligibility."

35. A November 2, 2022, CTP entry in Ms. Gabai's file documented that CalPERS spoke with her about her health eligibility as a survivor and disabled dependent. Ms. Gabai asked to see the Government Codes on which CalPERS was relying to determine she was not eligible for health coverage. CalPERS advised a letter would be sent to her with that information.

36. On November 2, 2022, CalPERS issued a predetermination letter to Ms. Gabai denying her request to enroll in survivor health coverage and seeking additional information from her prior to issuing a final determination.

37. On November 30, 2022, CalPERS received Ms. Gabai's letter appealing CalPERS's denial of survivor health coverage.

38. On January 3, 2023, CalPERS issued its determination letter denying Ms. Gabai's request for survivor health coverage which Ms. Gabai appealed. CalPERS apologized for "any misinformation you may have received" regarding this issue.

39. January 27, 2023, CTP entries in both Ms. Gabai's and her mother's files documented Ms. Gabai's inquiry about her health benefits and the explanation given to her that she was not continuously on her father's health plan when he died in 1999 and her mother did not have her as a dependent on her health plan. Ms. Gabai advised that she has been appealing that decision.

40. A February 7, 2023, CTP entry in Ms. Gabai's file documented the "escalation" due to contact from an Assembly member who reached out on Ms. Gabai's behalf regarding her appeal of survivor health benefits. CalPERS contacted Ms. Gabai and provided her with response time frames for her appeal and notified the Assembly member that this had occurred.

41. A May 8, 2023, CTP entry in Ms. Gabai's file documented that her appeal had been received in the legal office and would be assigned to an attorney.

### **Other CTP Entries**

42. Several CTP entries for Ms. Gabai's mother documented her mother's numerous contacts with CalPERS, many of which noted her frustration with receiving incomplete and inaccurate information, as well as her complaints regarding CalPERS's failure to provide requested documents. A November 5, 2018, CTP entry documented Ms. Gabai's mother's initiation of an appeal with the Health Benefits Compliance and Appeals Unit, but no further information regarding this appeal was introduced.

### **CalPERS's Witness' Testimony**

43. Gabrielle Reitter is a CalPERS Associate Government Program Analyst, Enrollment and Eligibility, in the Health Account Management Division. She described her job duties and testified about how CalPERS reached its determination. She also described CalPERS's record-keeping procedures and documentation of contacts with members and their dependents.

Ms. Reitter described the dependent disability certification process. CalPERS requires certification to be submitted by the treating physician who attests to the dependent's disability. Thereafter, the physician must recertify the disability. Here, CalPERS never received any evidence of Ms. Gabai's disability when she aged out of her father's health plan. The only form CalPERS received regarding disability was in 2019 and that form was incomplete. Ms. Reitter also explained how the two forms submitted in 2019 have now been merged into one form, the HBD-34.

Ms. Reitter further testified that a disabled dependent must remain continuously enrolled in the CalPERS health plan. There can be no lapses in coverage. Once a lapse occurs, the disabled dependent "cannot come back" and obtain CalPERS health coverage. The disabled dependent must also be enrolled in CalPERS health coverage at the time of the member's death. If the disabled dependent is not enrolled when the member dies, the disabled dependent is not eligible for coverage. Here, Ms. Gabai did not have continuous coverage because she was not continuously enrolled on her father's health plan until his death, and she was never enrolled on her mother's health plan. She was not enrolled when either her father or her mother died. As such, she was not eligible for coverage.

Ms. Reitter also noted that the documents Ms. Gabai's father completed when he retired indicated he was aware that Ms. Gabai was aging out of coverage under his plan. In addition, the CTP notes and Ms. Gabai's letter to CalPERS document inquiries regarding survivor benefits which are different from health benefits. Receiving survivor benefits does not mean an individual will receive health benefits.

On cross-examination Ms. Reitter explained that if CalPERS gives misinformation, CalPERS must follow the law and cannot "honor the mistake." CalPERS does not have the authority to provide benefits that violate the law.

### **Ms. Gabai's Testimony**

44. Ms. Gabai testified about the "tremendous amount of misinformation" she received from CalPERS and the difficulty she experienced "getting through to people" who had "the factual information." She described CalPERS as "an incredibly difficult and non-transparent process." There was "lots of back-and-forth and lack of

clarity." There was also no CalPERS liaison at her father's place of employment who could answer any of her questions during this process.

Ms. Gabai explained how when her father retired in 1992, he did not have access to the internet or the ability to view documents except on microfiche. There was no ability to research issues. Her father was a disabled veteran who was not in the best of health and was not someone who was savvy or had clarity regarding the way the world works. Ms. Gabai did not understand all of her medical issues at the time and was not involved in the handling of her care or her needs. Her father did not realize the long-term effect his decisions would have on her ability to apply for disabled benefits and receive those benefits through her lifetime.

When Ms. Gabai contacted CalPERS in 2022, she was told she could enroll during the Open Enrollment period. Her August 25, 2022, discussion with the CalPERS representative was an extremely lengthy discussion where they went into "deep detail" regarding Ms. Gabai's ability to get health insurance. Before this conversation, she had a "lack of clarity and a hard time" getting information regarding health benefits, but that was not the case during this call where she was given much information. Ms. Gabai was told she would receive healthcare benefits and instructed to drop her third party Medicare supplement plan in order to enroll in the CalPERS plan. Ms. Gabai was concerned about doing that prior to her CalPERS plan being in place and inquired if she could simultaneously drop her Medicare plan and be enrolled in the CalPERS plan because she did not want to end up without benefits as she is "life dependent" on her Medicare benefits. The CalPERS representative "reassured" Ms. Gabai that she qualified for CalPERS health coverage. "Fortunately," Ms. Gabai was hesitant to drop her Medicare and "fortunately" she did not or she would have no health coverage.

During her October 25, 2022, discussion with another CalPERS representative, Ms. Gabai was again given misinformation about being eligible for healthcare. When her call was then transferred for further assistance, this was the first time she was told about the requirement of continuous coverage. The CTP entries noted above corroborated Ms. Gabai's testimony.

Ms. Gabai testified how this kind of misinformation is "really devastating." People have been CalPERS members for "many, many years," and "put in lots of service. Their pension benefits is why and what they signed up for, and for their survivors and beneficiaries." Ms. Gabai referenced Government Code section 22831, subdivision (b), which requires CalPERS to eliminate or minimize adverse impacts, noting that she is being adversely impacted by CalPERS's determination in this case. She said her mother would have made different choices if she knew the adverse impact on Ms. Gabai.

On cross-examination, Ms. Gabai acknowledged that she never submitted any evidence of her disability to CalPERS. She was not aware of the need to do so or that any paperwork was required to be submitted on her behalf regarding her disability. While her signature is on the COBRA enrollment form, she did not recall submitting that form and it is possible it was something her parents asked her to sign; she has no recollection of seeing this document before and the signature on it does not look like her signature. Ms. Gabai recalls going for doctor visits after she turned 23, but has no knowledge regarding how those visits were paid or what insurance was used.



## LEGAL CONCLUSIONS

### Jurisdiction

1. Government Code section 22750 et seq. and California Code of Regulations, title 2, section 599.500 et seq. govern the CalPERS Health Program.

### Applicable Code Sections

2. Government Code section 22760 states in part:

“Annuitant” means:

(a) A person, other than a National Guard member defined in Section 20380.5, who has retired within 120 days of separation from employment and who receives a retirement allowance under any state or University of California retirement system to which the state was a contributing party. (b) A surviving family member receiving an allowance in place of an annuitant who has retired as provided in subdivision (a), or as the survivor of a deceased employee under Section 21541, 21546, 21547, or 21547.7, or similar provisions of any other state retirement system.

(b) A surviving family member receiving an allowance in place of an annuitant who has retired as provided in subdivision (a), or as the survivor of a deceased employee under Section 21541, 21546, 21547, or 21547.7, or similar provisions of any other state retirement system.

(c) A person who has retired within 120 days of separation from employment with a contracting agency as defined in Section 22768 or, if applicable, consistent with the provisions of subdivision (b) of Section 22893, and who receives a retirement allowance from the retirement system provided by that employer, or a surviving family member who receives the retirement allowance in place of the deceased.

[¶] . . . [¶]

(h) A person receiving a survivor allowance pursuant to Article 3 (commencing with Section 21570) of Chapter 14 of Part 3 provided that he or she was eligible to enroll in a health benefit plan on the date of the member's death, on whose account the survivor allowance is payable.

3. Government Code section 22831 states:

(a) An annuitant may, as provided by regulations of the board, continue his or her enrollment, enroll within 60 days of retirement, enroll within 60 days of the death of the member, or enroll during any future open enrollment period without discrimination as to premium rates or benefit coverage. If the survivor of an annuitant is also an annuitant as defined in this part, he or she may enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulations of the board.

(b) Board rules and regulations shall provide whatever provisions necessary to eliminate or minimize the impact of adverse selection because of the enrollment of annuitants that would affect any health benefit plans approved or maintained. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare if the board determines that payment of the surcharge would be less costly than continued enrollment in a basic plan.

### **Applicable Regulations**

4. California Code of Regulations, title 2, section 599.50, subdivision (p), states:

“Disabled child,” means a child, as described in Government Code section 22775 and section 599.500, subdivision (n) or (o), who at the time of attaining age 26, is incapable of self-support because of a physical or mental disability which existed continuously from a date prior to attainment of age 26 and who is enrolled pursuant to section 599.501, subdivisions (d) and (e), until termination of such incapacity.

5. California Code of Regulations, title 2, section 599.501, states in part:

(a) Each employee or annuitant other than those excluded by subsections (b) or (c) below, is eligible to be enrolled in a health benefits plan at the times and under the conditions prescribed in this subchapter, provided however that no person shall be enrolled in a supplemental plan who at the

time of enrollment is not also enrolled under Part A and Part B of Medicare. An eligible employee or annuitant enrolled in both Parts A and B of Medicare, or who has a family member who is so enrolled, may be enrolled in a basic plan contracted for by the Board with respect to persons not enrolled in Parts A and B, and in a supplemental plan with respect to all persons enrolled in Parts A and B.

[¶] . . . [¶]

(d) A disabled child as described in section 599.500, subdivision (p), who is age 26 or over is to be enrolled at the time of the initial enrollment of the employee or annuitant provided that satisfactory evidence of such disability is filed with the Board within 60 days of the initial enrollment.

(e) A disabled child, as described in section 599.500, subdivision (p), who attains age 26 is to be continued in enrollment if he or she is enrolled at the time he or she attains age 26, provided that satisfactory evidence of such disability is filed with the Board during the period commencing 90 days before and ending 60 days after the child's 26th birthday.

(f) The Board shall make determinations of the applicability of this section to specific employees or annuitants, or groups of employees or annuitants.

## **Evaluation**

6. While Ms. Gabai's frustration regarding the misinformation given to her was understandable, and it appeared CalPERS did not return calls as promised and gave her inaccurate health plan enrollment information, the law regarding survivor health coverage is clear. A disabled dependent must be continuously enrolled in a CalPERS health plan, which Ms. Gabai was not. She was also not enrolled on her father's health plan when he died, and she was never enrolled on her mother's health plan. As such, she was neither enrolled nor eligible to be enrolled for a survivor health benefit. On this record, CalPERS's determination must be affirmed.

## **ORDER**

Miriam Gabai's appeal of CalPERS's determination that she is not eligible to enroll in CalPERS's survivor health coverage is denied. CalPERS's final determination that she is not eligible is affirmed.

DATE: February 6, 2024

  
Mary Agnes Matyszewski (Feb 6, 2024 17:15 PST)

MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings