

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Miriam Gabai's (AKA Jeanmarie Saltman) (Respondent) parents, Benjamin and Helen Saltman, were employees of California State University Northridge. As such, they and their dependents were eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA), if all eligibility requirements were met.

Respondent was born on November 10, 1969. Until she reached 23 years of age, Respondent received health insurance coverage from CalPERS as her father's dependent. On August 1, 1992, CalPERS advised Respondent's father that because Respondent would soon be turning 23, 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 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."

On October 22, 1992, A Dental Plan Enrollment Authorization, marked "Change", was completed by California State University Northridge deleting coverage for Respondent because she was an "Overage Daughter." On October 30, 1992, Respondent signed a Consolidated Omnibus Budget Reconciliation Act (COBRA) enrollment form which identified the "qualifying event" as "child ceases to be a dependent." In November 1992, after Respondent turned 23 years old, CalPERS terminated her health insurance coverage because she exceeded the maximum age limit for coverage, and she had not been approved for continued coverage pursuant to an exception authorized by the PEMCHA. In January 1999, Respondent's father died. Respondent was then 29 years old and not enrolled in his health coverage.

On October 9, 2019, CalPERS received an incomplete "Medical Report for the CalPERS Disabled Dependent Benefit" (HBD-34) form and a completed "Member Questionnaire for the CalPERS Disabled Dependent Health Benefit" (HBD-98) form. On October 14, 2019, CalPERS left a message for Respondent requesting a return call regarding the incomplete forms received. On January 17, 2022, Respondent's mother died. Respondent was 52 years old and was not enrolled in her mother's health coverage. On August 23, 2022, Respondent began receiving a monthly survivor continuance allowance as a disabled child.

On August 25, 2022, Respondent contacted CalPERS regarding health enrollment. A CalPERS representative erroneously informed Respondent that she could apply for health coverage during the open enrollment period, but she would need to drop her third-party supplemental plan to enroll in the CalPERS Medicare supplemental plan. On October 25, 2022, Respondent contacted CalPERS attempting to enroll in health coverage. She was informed that she was not eligible because she was not enrolled on her parents' accounts and did not have continuous coverage. After additional inquiries, CalPERS reviewed Respondent's request to enroll in health coverage and issued a predetermination letter denying her request to enroll in a health plan.

On November 30, 2023, Respondent submitted a letter appealing CalPERS' denial containing an argument and an explanation of the circumstances. On January 3, 2023, CalPERS issued its determination letter denying Respondent's request for survivor health coverage.

Respondent appealed this determination and 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 22, 2024. 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.

CalPERS presented the testimony of Gabrielle Reitter, an Associate Governmental Program Analyst from the CalPERS Enrollment and Eligibility unit in the Health Account Management Division. Ms. Reitter testified that receiving a survivor continuance does not mean an individual will receive health benefits. Ms. Reitter described the dependent disability certification process and testified that CalPERS never received any evidence of Respondent's disability when she aged out of her father's health plan. Ms. Reitter also explained that a disabled dependent must remain continuously enrolled in the CalPERS health plan in order to continue on a health plan. There can be no lapses in coverage. Once a lapse occurs, a disabled dependent cannot come back and obtain CalPERS health coverage. A dependent must also be enrolled when the member dies, or they are not eligible for coverage. Respondent did not meet these requirements; therefore, she was not eligible for coverage.

Respondent testified on her own behalf. Respondent testified that she had received a tremendous amount of misinformation from CalPERS and had experienced great frustration and difficulty throughout her interactions with CalPERS. Respondent was told by one CalPERS customer service agent she could enroll in health coverage during the Open Enrollment period and then was denied the ability to do so when she attempted to. Respondent explained that her father did not have access to the internet when he retired in 1992 and was not able to research issues, nor could he understand all of Respondent's medical issues at the time because he was not involved in handling her care or needs. Respondent testified that her father did not appreciate the effect his decisions would have on her ability to apply for disabled benefits and receive those benefits throughout her lifetime.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that while Respondent's frustration regarding the misinformation given to her was understandable, the law regarding survivor health coverage is clear. A disabled dependent must be continuously enrolled in a CalPERS health plan, which Respondent was not. She was also not enrolled in her father's health plan when he died and was never enrolled in her mother's health plan. As such she was neither enrolled nor eligible to be enrolled for a survivor health benefit as required by law.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to “make technical or other minor changes in the Proposed Decision.” To avoid ambiguity, staff recommends correcting the citation to the California Code of Regulations, title 2, section “599.50” to “599.500” on page 18 paragraph 4 of the Proposed Decision.

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

March 20, 2024

CRISTINA ANDRADE
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