

**ATTACHMENT A**  
**THE PROPOSED DECISION**

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

In the Matter of the Statement of Issues  
Against:

FELIPE ROSALES

Respondent.

Case No. 2011-0051

OAH No. 2012030890

**PROPOSED DECISION**

On September 13, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter.

Renee Salazar, Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Lorraine M. Nisbet, Attorney at Law, represented respondent.

The matter was submitted on October 3, 2012.

**FACTUAL FINDINGS**

1. Karen DeFrank, Chief, Customer Account Services Division of the California Public Employees' Retirement System (CalPERS), filed Statement of Issues No. 2011-0051 in her official capacity on March 19, 2012.

Counsel for the parties were requested by the Administrative Law Judge to submit closing briefs, and they were submitted on October 3, 2012. CalPERS Post-Hearing Brief was marked Exhibit 26. Respondent's Closing Brief was marked Exhibit 27.

2. Respondent is a correctional officer working at Centinela State Prison and is a member of the California Correctional Peace Officers Association (CCPOA).

3. CalPERS is the agency charged with administering the Public Employees' Medical and Hospital Care Act (PEMHCA), which authorizes the Board of Administration of CalPERS to provide health benefits for state employees and dependents.

4. CCPOA Medical Plan is a health maintenance organization plan offered by CalPERS to dues-paying CCPOA members and their families eligible for health care benefits under PEMHCA. CalPERS contracted with Blue Shield of California to administer the CCPOA health plan. By virtue of his employment, respondent was eligible for health benefits under PEMHCA and was enrolled in the CCPOA medical plan effective January 1, 2008.

5. On January 1, 2008, during an open enrollment period, added three dependents: Daniel Curiel, Luis Curiel, and Mara Rosales. Respondent had originally been enrolled on November 1, 2002. According to CalPERS records, Ernesto Rosales has never been a dependent on respondent's health plan.

6. Ernesto Esteban Rosales is respondent's son. He was born on September 10, 1970. He was diagnosed with schizophrenia on March 25, 1995 by Dr. Manuel Bellini of Tijuana, Mexico. At that time, Ernesto Rosales was 24 years old.

7. At some time shortly before May 18, 2009, respondent submitted a request to CalPERS to enroll Ernesto Rosales on his CalPERS-sponsored health plan as a disabled dependent. In April 2009, respondent faxed a Medical Report for the CalPERS Disabled Dependent Benefit to CalPERS. Ernesto Rosales signed the form on April 1, 2009. Dr. Bernard Ng also signed the form on April 1, 2009, and he indicated that Ernesto Rosales was permanently disabled as of 1995, and that he had been attending Ernesto Rosales during 2009. At the time of the application, Ernesto Rosales was 38 years old.

8. By letter dated May 18, 2009, CalPERS staff informed respondent that Ernesto could not be enrolled as his dependent because there was no indication in CalPERS' records that Ernesto Rosales was currently a dependent or was included as a dependent at respondent's initial enrollment. The letter informed respondent that an appeal must be received within 30 days.

9. Respondent appealed the decision by letter dated February 17, 2010. Although the letter was submitted nine months after the decision, and eight months late, CalPERS accepted the appeal.

10. By letter dated July 20, 2010, CalPERS again denied respondent's request to add Ernesto Rosales as a disabled dependent under his health plan because there was no indication in CalPERS' records that Ernesto Rosales was currently a dependent or was included as a dependent at respondent's initial enrollment on November 1, 2002. The letter informed respondent that an appeal must be received within 30 days.

11. Respondent appealed the decision by letter dated September 22, 2010. Although the letter was submitted two months after the decision, and one month late, CalPERS accepted the appeal.

12. Respondent testified at that hearing that Ernesto Rosales was first diagnosed with schizophrenia about 20 years earlier, when he was about 17 or 18 years old.

Respondent's recollection of the date and the age of his son at the time of the diagnosis was vague, and constituted little more than a guess. Based upon the letter from Dr. Bellini (Ex. 25), it was established that Ernesto Rosales was first diagnosed with schizophrenia on March 25, 1995.

Respondent testified that Ernesto Rosales showed some symptoms of an illness earlier in his life, and he and his wife tried different things. He could not say when the illness began. He testified that Dr. Bellini was the first doctor he took Ernesto Rosales to.

13. Respondent and Ernesto Rosales' mother, Maria Carreon, divorced in 2005. At the time of the divorce, Ernesto Rosales was living with his mother in Chula Vista, and he remained with her until 2009, when Ms. Carreon could no longer afford to care for him. Ernesto Rosales then moved in with respondent in Brawley, and at that time, respondent requested to add Ernesto Rosales as a dependent on his health plan.

14. Maria Carreon testified she first noticed symptoms in Ernesto Rosales when he was about two or three years old, and he had trouble writing and speaking in school.

#### LEGAL CONCLUSIONS

1. Government Code section 22842 provides:

**"A change in coverage based on a change in the family status of an employee, annuitant, or family member enrolled in a health benefit plan may be requested by the employee or annuitant by filing an application within 30 days after the occurrence of the change in family status or at other times and according to conditions as may be prescribed by regulations of the board."**

2. Government Code section 22775 provides:

**"Family member" means an employee's or annuitant's spouse or domestic partner and any child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to children."**

3. Title 2, California Code of Regulations, section 599.500 provides in part"

**"For the purposes of this subchapter:**

...

**(n) A "child," as described in Government Code section 22775, means an adopted, step, or recognized natural child until attainment of age 26, unless the child is disabled as described in section 599.500, subdivision (p).**

...

(p) "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 (f) and (g), until termination of such incapacity.

4. Title 2, California Code of Regulations, section 599.501 provides in part:

...

(f) 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.

(g) 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 60 days before and ending 60 days after the child's 26th birthday.

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

5. Prior to February 15, 2011, sections 599.500 and 599.501 of the Regulations provided that a child was no longer a family member upon attainment of age 23. The two regulations were amended to read as set forth above in order to align state law with the new federal law (Patient Protection and Affordable Care Act). The amended regulations clarify who is considered a disabled child and provides continued coverage beyond age 26 for previously enrolled disabled children.

6. Under section 599.500, subdivisions (n) and (p) of the Regulations, Ernesto Rosales was a disabled child within the meaning of that regulation. He was diagnosed as suffering from schizophrenia in March 1995 when he was 24 years old and he was incapable of self-support. As of 2009, he suffered continuously from this illness.

Pursuant to section 599.501, subdivision (f), in order for Ernesto Rosales to be added to respondent's health care plan, respondent was required to enroll his disabled son at the time of his initial enrollment. Respondent's initial enrollment in the CalPERS system occurred on November 1, 2002, when Ernesto Rosales was 32 years old. During an open enrollment period in January 2008, he added other dependents, but not Ernesto Rosales.

At the time of respondent's initial enrollment into the CalPERS health care system in 2002, Ernesto Rosales was not living with respondent but rather was living with his mother.

Circumstances changed in 2009 and Ernesto Rosales came to live with respondent.

Under Government Code section 22842, respondent was permitted to request a change in coverage based on a change in his family status by filing an application within 30 days after the occurrence of the change in family status. Respondent requested coverage for Ernesto Rosales in a timely manner.

7. Several issues are presented by this proceeding. The first relates to respondent's initial enrollment. Respondent's initial enrollment was on November 1, 2002. At that time, Ernesto Rosales was 32 years old. Section 599.501, subdivision (f) required respondent to add Ernesto Rosales, an adult disabled child, at that time. He did not. Respondent presented no reason why this requirement should be waived or ignored. For this reason, CalPERS' denial of respondent's request to enroll his son must be denied.

A second issue presented is whether the amendment in the regulations to change the maximum age to permit coverage of adult disabled children to age 26 should be applied retroactively. The amendment took effect on February 11, 2011. Prior to that date, the maximum age was 23. Ernesto Rosales was diagnosed with schizophrenia when he was 24 years old. If the amendments applied to him, he would be entitled to coverage. In *People v. Brown* (2012) 54 Cal. 4<sup>th</sup> 314, 319-20, the court explained:

“Whether a statute operates prospectively or retroactively is, at least in the first instance, a matter of legislative intent. When the Legislature has not made its intent on the matter clear with respect to a particular statute, the Legislature's generally applicable declaration in section 3 provides the default rule: “No part of [the Penal Code] is retroactive, unless expressly so declared.” We have described section 3, and its identical counterparts in other codes (e.g., Civ. Code, § 3; Code Civ. Proc., § 3), as codifying “the time-honored principle ... that in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature ... must have intended a retroactive application.” (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209, 246 Cal.Rptr. 629, 753 P.2d 585 (*Evangelatos*); see also *id.*, at p. 1208, 246 Cal.Rptr. 629, 753 P.2d 585 [requiring “ ‘express language or [a] clear and unavoidable implication [to] negative[ ] the presumption’ ”].) In applying this principle, we have been cautious not to infer retroactive intent from vague phrases and broad, general language in statutes. (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 229–230, 46 Cal.Rptr.3d 57, 138 P.3d 207; see *Evangelatos*, at p. 1209, fn. 13, 246 Cal.Rptr. 629, 753 P.2d 585.) Consequently, “ ‘a statute that is ambiguous with respect to retroactive application is construed ... to be unambiguously prospective.’ ” (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841, 123 Cal.Rptr.2d 40, 50 P.3d 751, quoting *I.N.S. v. St. Cyr* (2001) 533 U.S. 289, 320–321, fn. 45, 121 S.Ct. 2271, 150 L.Ed.2d 347.)

The amendments to the regulations occurred after Ernesto Rosales was diagnosed with schizophrenia, after respondent's initial enrollment, and after respondent asked

**CalPERS to enroll his son in his health plan as a disabled child.**

**The first step in deciding whether a change in the law should be applied retroactively is to examine the legislative intent. The Patient Protection and Affordable Care Act was signed into law on March 23, 2010. In response to the requirement in that law that health coverage of dependent children continue to age 26, the Legislature amended several applicable statutes in PEMHCA, including Health and Safety Code section 1373, subdivision (d)(1) and Insurance Code section 10277, subdivision (f)(1) to conform to the federal law. The amendments were contained in SB 1088. As the Legislative Counsel explained:**

**“Existing law, the federal Patient Protection and Affordable Care Act, requires a health insurance issuer issuing group or individual coverage that provides dependent coverage of children to continue to make that coverage available for an adult child until the child attains 26 years of age with respect to plan years beginning on or after September 23, 2010. Regulations promulgated under that provision require issuers to provide certain dependents who have lost or been denied coverage an opportunity to enroll, as specified.**

**...**

**This bill would prohibit the limiting age for dependent children covered by health care service plan contracts and health insurance policies from being less than 26 years of age with respect to plan or policy years beginning on or after September 23, 2010, except for certain group contracts and policies for plan or policy years beginning before January 1, 2014, as specified. The bill would require plans and insurers to provide certain dependents who have lost or been denied coverage an opportunity to enroll, as specified.**

**It is clear from the statutory language and the Legislative Counsel’s analysis that the Legislature intended the amendments to take effect to plan years beginning on or after September 23, 2010, and not to health plans existing prior to that date. Consistent with that decision, the regulatory changes adopted by CalPERS should also be applied only after their effective date. In light of the clear legislative and administrative intent, it is unnecessary to consider whether the amendments should be applied retroactively using respondent’s analysis. Respondent’s request to enroll Ernesto Rosales on his health plan must therefore be denied on this basis as well.**

**Finally, respondent argues that a change in family status occurred when Ernesto Rosales moved from his mother’s residence to respondent’s residence in 2009 within the meaning of Government Code section 22842 and therefore he should be enrolled in respondent’s health benefit plan.**

**Section 22842 does not define the term “family status” nor does any other statute or regulation dealing with the subject of the extent of coverage in an employee’s health plan. In the absence of any statutory or regulatory guidance, resort to the dictionary definition of terms becomes necessary. According to the New Oxford American Dictionary the word**

status is defined as:

“1 the relative social, professional, or other standing of someone or something: *an improvement in the status of women.*

- high rank or social standing: *those who enjoy wealth and status.*
- the official classification given to a person, country, or organization, determining their rights or responsibilities: *the duchy had been elevated to the status of a principality.*

2 the position of affairs at a particular time, esp. in political or commercial contexts: *an update on the status of the bill.*”

The Cambridge Dictionary defines status as “position or rank, esp. in a social group or legal system.”

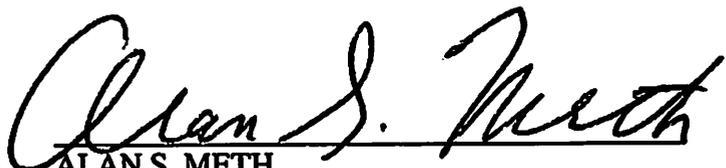
When Ernesto Rosales moved from his mother’s home to his father’s home in 2009, there was no change of status as that term is commonly understood. He remained a disabled adult, respondent remained his father, and only Ernesto Rosales’ physical location changed. His status did not change. Section 22842 cannot be interpreted to permit coverage to be extended to Ernesto Rosales based upon his moving from his mother’s residence to his father’s residence. For this reason as well, CalPERS’ decision that Ernesto Rosales is ineligible to be enrolled under respondent’s health plan must be upheld.

8. Cause for denial of respondent's application to enroll Ernesto Rosales into his health plan was established by reason of Factual Finding 2-14 and Legal Conclusion 7.

#### ORDER

The application respondent Felipe Rosales to enroll Ernesto Rosales into his health plan is denied. The decision by CalPERS to deny the application is affirmed.

DATED: October 5, 2012



ALAN S. METH

Administrative Law Judge  
Office of Administrative Hearings