ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Felipe Rosales (Respondent) is employed by the California Department of Corrections and Rehabilitation (CDCR), which contracts with CalPERS to provide health care coverage to its employees. By virtue of his employment, Respondent is eligible to participate in a health care plan offered through the provisions of the Public Employees' Medical and Hospital Care Act (PEMHCA). Respondent has a disabled son, Ernesto Rosales, who was born on September 10, 1970. In 2002, when Respondent initially enrolled in a health care plan offered through PEMHCA, he did not enroll his son.

Subsequent to his initial enrollment, Respondent requested to add his disabled son to his health care plan. In support of adding Ernesto to his medical coverage, Respondent submitted a medical report for the CalPERS disabled dependent benefit. The report, signed by one of Ernesto's treating physicians, indicated that the date of the onset of Ernesto's disability was 1995. CalPERS denied Respondent's request to add his son on the basis that he was not enrolled at the time of Respondent's initial enrollment. Further, the medical reports submitted in support of Ernesto's disability indicated that the date of disability onset was March 1995, making Ernesto 24 years of age at the time of disability onset. Respondent appealed CalPERS' determination and a hearing was held on September 13, 2012.

At the hearing, Respondent was present and represented by counsel. Respondents' testimony at the hearing established that he initially enrolled in a health care plan offered through PEMHCA in 2002. He also testified that at the time of his initial enrollment, he did not enroll his disabled son onto his health care plan, and that the first doctor to diagnose Ernesto's disability was Dr. Bellini in March of 1995.

According to the regulations of the PEMHCA, as written prior to 2011, under section 599.501 (f), a family member who is a disabled child over the age of 23 is to be enrolled at the time of <u>initial</u> enrollment of the employee. Further, according to regulation section 599.500 (p), as written when Respondent requested that his son be enrolled, a disabled child was defined as a child who, at the time of attaining age 23, is incapable of self-support because of a physical or mental disability which existed continuously from a date prior to attainment of age 23.[1]

As a result of the above regulations, the Administrative Law Judge (ALJ) found that Respondent was required to enroll Ernesto in his health care plan at the time Respondent initially enrolled in 2002. Because he had not done so, the ALJ concluded that Respondent's son is not eligible to be enrolled in his health care plan. In addition, because the regulations require that the child be disabled from a date prior to his

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[1] The federal law (Patient Protection and Affordable Care Act) caused the regulations to amend the age from 23 to 26. However, according to the federal law, that change does not apply retroactively, but rather took effect with plan years on or after September 23, 2010, well after the 1995 diagnosis of Respondent's son, after Respondent's 2002 initial enrollment in his health care plan, and subsequent to Respondent's 2009 request to enroll his son.

attainment of age 23 and continuing, Ernesto was not eligible to be enrolled on Respondent's health care plan since he was diagnosed with his disabling condition when he was 24 years old. For that additional reason, the ALJ concluded that Respondent's son was not eligible to be enrolled on Respondent's health care plan. Accordingly, the ALJ denied Respondent's request to enroll Ernesto into his health care plan, and upheld CalPERS' determination to deny Respondent's request.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board should adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 12, 2012

Marguerite D Seabourn

for RENEE SALAZAR
Senior Staff Attorney