

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Appeal regarding the
Denial of Enrollment of SASHA
TREMOLADA for Health Benefits Coverage
by:

LYNN TREMOLADA,

Respondent.

Case No. 2013-0622

OAH No. 2013080279

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on October 29, 2013, in Oakland, California.

Cynthia A. Rodriguez, Senior Staff Counsel, represented the complainant, Sue Kane, Assistant Division Chief, Health Account Services, California Public Employees' Retirement System.

Lynn Tremolada appeared and represented herself.

FACTUAL FINDINGS

1. The California Public Employees' Retirement System (CalPERS) administers the Public Employees' Medical and Hospital Care Act (PEMHCA), which begins at Government Code section 22750. Pursuant to PEMHCA, CalPERS provides health benefits for state employees.

2. Respondent, Lynn Tremolada, is employed by the Marin County Schools, and at all times relevant was eligible for health benefits under PEMHCA.

3. Respondent's daughter is Sasha Tremolada. Sasha Tremolada was born on August 31, 1982, and until she reached age 23, she received dependent insurance coverage from CalPERS. At the time she reached age 23, under the law then in effect, she was no longer eligible for such coverage, and it was terminated.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Dec. 2nd 2013
C. Bodily

4. When CalPERS terminated Sasha Tremolada's coverage, she became eligible for health insurance from her employer. However, at some point she stopped working, at which time she purchased COBRA coverage, and continued under COBRA until those benefits ended.

5. On April 19, 2007, the Social Security Administration determined Sasha Tremolada became disabled on November 1, 2006.

6. On September 12, 2012, respondent applied to CalPERS for dependent coverage on behalf of her daughter by submitting a "member questionnaire" on her behalf. This is the document used for the purpose of applying for health insurance for a disabled dependent.

7. By letter dated September 18, 2012, CalPERS advised respondent that Sasha Tremolada was not eligible for coverage as a disabled dependent, but that respondent could request an appeal of its decision. The appeal was timely filed and this hearing followed.

8. In a letter sent to CalPERS dated October 3, 2012, and again in testimony offered at hearing, respondent further explained her position. When respondent completed the member questionnaire, she relied on a document from CalPERS entitled "Open Enrollment News." Respond argues that language contained in Open Enrollment News requires CalPERS to extend health insurance coverage to Sasha Tremolada as a disabled dependent. In particular, respondent points to the language that states: "certified disabled dependent children of any age" are "eligible dependents."

9. By letter dated October 10, 2012, CalPERS advised respondent that it believed the language contained in the Open Enrollment News, when read in its entirety, did not permit Sasha Tremolada to be covered. It notes the brochure excludes "disabled children over age 26 who were never enrolled or who were deleted from coverage." CalPERS further explained the reason for its coverage denial as follows:

California Code of Regulations (CCR) 599.501 (g) establishes the eligibility criteria for the continued enrollment of a disabled dependent. This regulation states that enrollment can continue if satisfactory evidence of the disability is filed during the period commencing 60 days before, and ending 60 days after the child ages-out of the program.

A review of your account reflects that Sasha was deleted from your CalPERS health plan on September 1, 2005, as she reached 23 years of age on August 31, 2005. To continue the enrollment of Sasha as a disabled dependent, satisfactory evidence of the disability was required within 60 days of September 1, 2005. We were unable to locate any request or documentation to continue Sasha's enrollment as a disabled dependent.

Consequently, your dependent Sasha Tremolada was never certified as a Disabled Dependent and she not eligible to enroll in the CalPERS Health Program.

10. Sasha Tremolada did not have a certified disability until November 1, 2006, which was more than a year following the termination of her coverage with CalPERS.

LEGAL CONCLUSIONS

1. Employees can obtain coverage for family members under their health care plans. Government Code section 22775 defines "family member," as follows:

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

2. California Code of Regulations,¹ title 2, section 599.500, subdivision (n), provides:

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).

3. Section 599.500, subdivision (p), provides:

"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. These provisions, when read alone, would appear to require CalPERS to cover Sasha Tremolada as respondent's dependent. However, they are limited by the provisions of section 599.501, subdivisions (f) and (g), which provide:

¹ All references are to the California Code of Regulations, title 2, unless otherwise specified.

(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.

5. Respondent's position is sympathetic and reasonable, given what appears to be unqualified language in the in Open Enrollment News. One of the groups listed under a column headed "Eligible Dependents" is "certified disabled dependent children of any age." Sasha Tremolada is a certified disabled dependent. However, this language must be read with the exclusions listed in the adjacent column under "ineligible dependents." Ineligible dependents include "disabled children over ages 26 who were never enrolled or who were deleted from coverage." This language limits the dependents who are eligible for coverage.

6. Although the Social Security Administration certified Sasha Tremolada to be disabled when she was 24 years old, there are additional requirements to qualify for CalPERS coverage, and she did not meet these. Under section 599.501, subdivision (f), respondent would have had to enroll Sasha Tremolada as a disabled dependent within 60 days of respondent's initial employment date. This was not possible, because at the time of respondent's initial employment, her daughter was not disabled. Similarly, under section 599.501, subdivision (g), in order to qualify for coverage, Sasha Tremolda would have to have been continuously covered as a dependent. However, her CalPERS coverage terminated when she attained age 23 and she obtained health insurance from her then employer.

7. The language on which respondent relied in Open Enrollment News is imprecisely written and leads to confusion. Nonetheless, when read in context with other provisions, and with the provisions of section 599.500 and 599.501, CalPERS's determination to deny disabled dependent coverage to Sasha Termolda was correct.

ORDER

The appeal of Lynn Tremolada is denied.

November 26, 2013.



KIRK E. MILLER

Administrative Law Judge
Office of Administrative Hearings