

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 Retroactive Reimbursement of
Health Plan Premiums by:

RICHARD E. MONTRE,

Respondent.

Case No. 2014-1276

OAH No. 2015050312

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on November 4, 2015, in Sacramento, California.

Jeanlaurie Ainsworth, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Richard E. Montre represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 4, 2015.

SUMMARY

This appeal is limited to determining whether CalPERS correctly denied respondent's request for retroactive reimbursement of the difference in health plan premiums between Blue Shield HMO and Blue Shield NetValue from January 1, 2008, through December 31, 2013, and complied with the terms of the Public Employees' Medical and Hospital Care Act (Gov. Code, § 22750 et seq.) (PEMHCA) when it denied his request. The evidence established respondent was enrolled in the former plan pursuant to his September 18, 2002 Health Benefit Plan Enrollment Form, effective January 1, 2008. He and his family remained enrolled in that plan until he signed a Health Benefit Plan Enrollment Form on September 25, 2013, which enrolled him and his family in the latter plan, effective January 1, 2014. Therefore, respondent is not entitled to retroactive reimbursement of the difference in health plan premiums between the two plans, and CalPERS complied with the PEMHCA when it denied his request.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED 30 Nov 2015

Atty. Montre

FACTUAL FINDINGS

Procedural Background

1. Respondent has worked for the California Department of Transportation (CalTrans) at all times relevant to this appeal. He and his family have been eligible to enroll in healthcare benefits sponsored by CalPERS since May 1, 1989, due to such employment. He and his family have lived in Nevada County at all times relevant to this appeal.

2. On October 24, 2013, CalPERS received correspondence from respondent, which stated the following:

I am filing an appeal for reimbursement of additional Healthcare costs I incurred for a healthcare plan I didn't sign up for, and received no additional benefit for the added cost.

History

I was enrolled in Healthnet [*sic*] health insurance until 2003. At that time Healthnet [*sic*] was no longer available, so I signed up for Blue Shield. Then, in 2007, I was automatically signed up for Blue Shield "Access +." The "Access +" plan is currently \$206 more per month than the Value Plan. I recently did a comparison, and found out there is no difference in benefits between the two plans. I called Blue Shield to find out why there is a difference in cost. They explained there are different doctors available for the two different plans. They were able to do a search to determine what doctors were available to me for each plan, and the list of doctors was identical for both plans in my area (see attached). There was absolutely no benefit for me to be on the "Access +" plan.

Appeal.

I never received any documentation to explain the differences between the plans, was signed up for the more expensive plan without my consent. I have since signed up for Net Value, and will begin paying the reduced cost in January of 2014. The additional cost I incurred over the last 7 years is roughly \$200/month for 7 years (2007-2014). That is an approximate loss of $\$200 \times 12 \times 7 = \$16,800$ plus interest! I would like to be reimbursed for the out of pocket expense I incurred.

CalPERS denied respondent's request for reimbursement, and respondent timely appealed the denial.

3. On April 20, 2015, Carene Carolan, Chief of the Member Account Management Division of CalPERS, signed the Statement of Issues solely in her official capacity.

History of Respondent's Health Plan Enrollment Elections

4. Prior to 2003, respondent and his family were enrolled in HealthNet, an HMO health plan sponsored by CalPERS at the time. CalPERS decided in 2002 to stop offering HealthNet to its members starting the following year, and respondent was notified of that decision. He completed a Health Benefit Plan Enrollment Form on September 18, 2002, and enrolled his family and himself in the only HMO plan offered by Blue Shield at the time (Plan Code 2053).¹ The monthly premiums were deducted from his paycheck for the duration of his enrollment in that plan.

5. Sometime in 2013, respondent was talking to a coworker who also lived in Nevada County and was also enrolled in Blue Shield. Wondering why his coworker was paying cheaper premiums for his family and himself, respondent compared pay stubs with the coworker and discovered for the first time that CalPERS was sponsoring a second Blue Shield HMO plan, Blue Shield NetValue, in addition to Blue Shield HMO.

On September 25, 2013, respondent completed a Health Benefit Plan Enrollment Form enrolling his family and himself in Blue Shield NetValue, effective January 1, 2014. The amount deducted from his paycheck for healthcare premiums was reduced accordingly.

6. The above history was corroborated by CalPERS in its response to his request for reimbursement and request for appeal. On January 8, 2014, CalPERS sent correspondence which read:

Our records indicate you requested an open enrollment health plan change from Health Net of California [*sic*] to Blue Shield of California effective January 01, 2003. Since this request, there is no record to reflect that you have made any attempts to inquire or change your health plan until this current open enrollment, whereas you have elected a health plan change from Blue Shield Access Plus of California [*sic*] to Blue Shield NetValue of California. Therefore, based on the information you have provided, your request has been denied.

¹ There was a discrepancy in the evidence as to the exact name of the Blue Shield healthcare plan respondent enrolled in. But the evidence established it was an HMO plan, and CalPERS sponsored only one Blue Shield HMO plan prior to 2008 as discussed further below. For the sake of ease of reference, the plan will be referred to as "Blue Shield HMO."

Five months later, respondent received correspondence from CalPERS stating:

CalPERS has considered your request to receive reimbursement retroactively for the difference in health plan premiums between Blue Shield HMO in which you were enrolled and Blue Shield NetValue for the period of January 1, 2008, through December 31, 2013. We regret that we cannot approve your request. After a review of the records provided by yourself and your employer, it has been determined that you elected to enroll in Blue Shield HMO effective January 01, 2003, and subsequently changed health plans to enroll in Blue Shield NetValue effective January 01, 2014.

History of Blue Shield HMO Plans Sponsored by CalPERS

7. From at least 2003 through 2007, CalPERS sponsored only one Blue Shield HMO plan for its members – Blue Shield HMO. But on August 2, 2007, Holly A. Fong, Chief of the Office of Employer & Member Health Services of CalPERS, issued Circular Letter No. 600-034-072 to the health benefits officers and assistants of CalPERS's contracting agencies. The Circular Letter explained that Blue Shield NetValue was being offered by CalPERS, effective January 1, 2008, and provided, in part:

Blue Shield will offer a new Blue Shield NetValue HMO plan which has a smaller network of medical groups, but offers a significantly lower premium while still providing the same quality of care and comprehensive benefits to CalPERS members. That Blue ShieldValue plan includes 50 percent of the Primary Care Physicians and 49 percent of the Specialists and OB/GYN Physicians in the current Blue Shield Access+ physician network. This new plan will be offered **in addition** to the current Blue Showed Access+ HMO plan.

Blue Shield Net Value will be available in 17 counties: El Dorado, Fresno, Kern, Kings, Los Angeles, Madera, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Barbara, Ventura and Yolo. Some counties will have only partial access and members should contact Blue Shield Member Services at (800) 334-5847 or www.blueshieldca.com to determine whether their ZIP Code is included in the NetValue service area.

(Bold in original.)

Natalie Lua, an enrollment and eligibility specialist employed in the Health Account Services unit of CalPERS, was familiar with the process CalPERS used to disseminate

Circular Letter No. 600-034-072 to its contracting agencies, but did not know how, if at all, those agencies shared the Circular Letter with its employees. Besides, respondent has always been a member of CalPERS because he is a state employee, not because he is an employee of a contracting agency.

8. Respondent argued at hearing he never received notice CalPERS was sponsoring Blue Shield NetValue, and did not learn of the plan until he compared pay stubs with his coworker in 2013. He claimed he would have switched from Blue Shield HMO to Blue Shield NetValue sooner had he been aware of the plan because the medical network to which he and his family belonged was approved by both plans. Therefore, there was no advantage to respondent or his family remaining enrolled in the former plan and paying higher monthly premiums.

While there was no evidence respondent received a copy of Circular Letter No. 600-034-072, he received statements from CalPERS identifying his current healthcare plan each year prior to open enrollment from at least 2007 through 2013. The statements identified each of the healthcare plans CalPERS was sponsoring for the following year, as well as the monthly premiums for each of those plans. Each statement respondent received from 2007 through 2012 identified his current plan as being Blue Shield HMO, listed both that plan and Blue Shield NetValue as being sponsored by CalPERS for the following year, and included the premiums for both plans.

At hearing, respondent initially denied receiving any of the annual statements from CalPERS. Later, he admitted he may have received the statements, but his wife handled "those matters." He also explained he would not have paid attention to such information even if he saw it because he was not unhappy with Blue Shield HMO and was not looking to switch healthcare plans.

9. Respondent introduced evidence of a form provided to his employer by an employee at CalPERS's customer call center on March 19, 2014. The form was on Blue Shield of California letterhead and read, in pertinent part:

Subscriber Access+ HMO Plan Election Form

If you do not want to be enrolled in the Blue Shield NetValue HMO plan effective January 1, 2008 please complete this form and return it to Blue Shield of California at the following address by **September 5, 2007**

Blue Shield of California
Attention CalPERS Access+ HMO plan
Po Box number 629019
El Dorado Hills CA 95762-9814

A self-addressed envelope has been enclosed for your convenience. Note that you will still be able to make any plan change during the CalPERS open enrollment period from September 17 through October 12, 2007, including changing your automatic enrollment in the NetValue HMO plan and instead remaining in the Access+ HMO plan.

If you do not sign and return this form, coverage for you and all enrolled family members will be transferred to the NetValue HMO plan effective January 1, 2008 which offers you lower monthly rates.

If you have questions feel free to call CalPERS at **888 CalPERS** (or 888-225-7377) or your Blue Shield CalPERS Member Services team at **(800) 334-5847** Monday through Friday 7 a.m. to 7 p.m.

(Bold in original.)

Respondent explained at hearing he did not receive a copy of the form until his employer provided one after it received a copy on March 19, 2014, and he never notified anyone he and his family wanted to remain enrolled in Blue Shield HMO after December 31, 2007. Therefore, he argued he and his family should have been automatically enrolled in Blue Shield NetValue, effective January 1, 2008.

There was no evidence of how CalPERS originally obtained a copy of the form, which members, if any, should have been sent a copy of the form and by whom, or what role, if any, CalPERS played in the dissemination and collection of the form.

Discussion

10. The evidence established respondent and his family were enrolled in the HealthNet HMO plan prior to 2003. Effective January 1, 2003, they switched to Blue Shield HMO pursuant to the September 18, 2002 Health Benefit Plan Enrollment Form he completed. Respondent and his family remained enrolled in the latter plan until January 1, 2014, when they switched to Blue Shield NetValue pursuant to the September 25, 2013 Health Benefit Plan Enrollment Form he completed. He received a statement from CalPERS which identified his current healthcare plan, the healthcare plans CalPERS was going to sponsor the following year, and the premiums for each of those plans from at least 2007 through 2013.

Respondent's argument that CalPERS failed in its obligation to notify him it was offering Blue Shield NetValue beginning in 2008 was not persuasive. As discussed further in the Legal Conclusions, CalPERS's obligation is to make available to its members the information necessary for them to make an informed choice when deciding which health

benefit plan to enroll in. CalPERS satisfies that obligation, in part, by sending its members, including respondent, an annual statement identifying the health plans in which they are currently enrolled, the health plans CalPERS will offer the following year, and the applicable premiums. Respondent received those statements during the applicable timeframe, and the statements starting in 2007 identified Blue Shield NetValue as one of the options.

Respondent's argument that he should have been automatically enrolled in Blue Shield NetValue, effective January 1, 2008, also was not persuasive. He offered no evidence he was one of the members entitled to the purported automatic enrollment. Nor did he offer any evidence of CalPERS's responsibility, if any, for implementing the automatic enrollment. Besides, CalPERS had provided respondent with sufficient information to make an informed decision about which health care plan was appropriate for his family and him as previously discussed.

Summary

11. When all the evidence is considered, respondent did not establish CalPERS incorrectly denied his request for retroactive reimbursement of the difference in health plan premiums between Blue Shield HMO and Blue Shield NetValue for the period of January 1, 2008, through December 31, 2013, or that CalPERS violated the PEMHCA when denying his request. Therefore, his appeal should be denied.

LEGAL CONCLUSIONS

Applicable Law

1. The provision of healthcare benefits to state employees is governed by the Public Employees' Medical and Hospital Care Act (Gov. Code, § 22750 et seq.) (PEMHCA). The Board of Administration for CalPERS is responsible for administering the PEMHCA. (Gov. Code, § 22790.) Generally speaking, all permanent, full-time employees of the State of California and their eligible family members are eligible for enrollment in a healthcare plan pursuant to the PEMHCA. (Gov. Code, § 22800; Cal Code Regs., tit. 2, § 599.501, subd. (a).) "Enrollment shall serve as authorization for the deduction of the contributions required under this part from the salary of an employee or allowance of an annuitant." (Gov. Code, § 22830, subd. (b).)

To assist eligible employees in determining which healthcare plan to enroll in, Government Code section 22863, subdivision (a), provides:

The board shall make available to employees and annuitants eligible to enroll in a health benefit plan information that will enable the employees or annuitants to exercise an informed choice among the available health benefit plans. Each employee or annuitant enrolled in a health benefit plan shall be issued an

appropriate document setting forth or summarizing the services or benefits to which the employee, annuitant, or family members are entitled to thereunder, the procedure for obtaining benefits, and the principal provisions of the health benefit plan.

Conclusion

2. The Board of Administration for CalPERS complied with its statutory duty pursuant to Government Code section 22863, subdivision (a), by providing respondent annual statements identifying the health plan he and his family were currently enrolled in, the health plans CalPERS was going to offer the following year, and the applicable premiums for those plans. Therefore, his request for retroactive reimbursement of the difference in health plan premiums between Blue Shield HMO and Blue Shield Net Value for the period of January 1, 2008, through December 31, 2013, was properly denied, and CalPERS complied with the PEMHCA in denying his request.

ORDER

CalPERS's denial of respondent Richard E. Montre's request for retroactive reimbursement of the difference in health plan premiums between Blue Shield HMO and Blue Shield Net Value for the period of January 1, 2008, through December 31, 2013, is UPHELD, and his appeal of that denial is DENIED.

DATED: November 25, 2015

DocuSigned by:
Coren D. Wong
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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings