

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

This appeal is limited to the issue of whether CalPERS correctly denied Respondent Richard Montre's (Respondent Montre) 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 whether CalPERS complied with the terms of the Public Employees' Medical and Hospital Care Act (PEMHCA)(Gov. Code, §22750 et seq.) when CalPERS denied Respondent Montre's request.

Respondent Montre worked for the California Department of Transportation at all times relevant to this appeal. He has been eligible to enroll in healthcare benefits since May 1, 1989, as a result of his employment.

Respondent Montre was enrolled in the Blue Shield HMO plan pursuant to his Health Benefit Plan Enrollment Form, effective January 1, 2003. Respondent Montre and his family remained enrolled in that Plan until Respondent Montre signed a Health Benefit Plan Enrollment Form which enrolled him and his family in the Blue Shield NetValue Plan, effective January 1, 2014.

CalPERS discontinued HealthNet in 2003, and Respondent Montre was notified in writing of that decision. Respondent Montre then enrolled in the only HMO plan offered by Blue Shield at the time (Plan Code 2053).

Sometime in 2013, Respondent Montre learned that there was a second Blue Shield HMO plan called Blue Shield NetValue. On September 25, 2013, Respondent Montre completed a Health Benefit Plan Enrollment Form enrolling in Blue Shield NetValue, effective January 1, 2014.

On October 24, 2013, CalPERS received a letter from Respondent Montre requesting reimbursement for the additional cost of healthcare premiums between Blue Shield HMO (Plan Code 2053) and Blue Shield NetValue. CalPERS denied Respondent Montre's request. Respondent Montre appealed and a hearing was held on November 4, 2015.

Prior to the hearing, CalPERS explained the hearing process to Respondent Montre and the need to support his case with witnesses and documents. CalPERS provided Respondent Montre with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Montre's questions and clarified how to obtain further information on the process.

At the hearing, Respondent Montre argued that he never received notice that CalPERS was sponsoring Blue Shield NetValue, and did not learn of the plan until sometime in 2013. He claimed he would have switched sooner had he been aware of the plan, because it had a lower premium and the medical network he used was approved by both plans.

However, Respondent Montre received annual statements from CalPERS identifying his current healthcare plan each year prior to open enrollment from at least 2007 to 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 Montre received identified his current plan as being Blue Shield HMO (Plan Code 2053), 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 the hearing, Respondent Montre initially denied receiving the annual statements from CalPERS. However, Respondent Montre later admitted he may have received the statements, but his wife handled "those matters." He also explained that he would not have paid attention to such information even if he had seen it.

The Administrative Law Judge (ALJ) found that the evidence established that Respondent Montre was enrolled in the Blue Shield HMO prior to 2003. Effective January 1, 2003, Respondent Montre switched to Blue Shield HMO (Plan Code 2053) pursuant to a Health Benefit Plan Enrollment Form. Respondent Montre remained enrolled in that plan until January 1, 2014, when he switched to Blue Shield NetValue pursuant to his September 25, 2013, Health Plan Enrollment Form. Further, the ALJ found that Respondent Montre received annual statements from CalPERS which identified his current healthcare plan, the healthcare plans CalPERS would sponsor the following year, and the premiums for those plans from at least 2007 through 2013.

The ALJ reasoned that CalPERS is obliged to make available to its members the information necessary for them to make an informed choice when deciding a health plan in which to enroll. The ALJ found that CalPERS satisfies that obligation in part by sending its members (including Respondent Montre) 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.

When all the evidence was considered, the ALJ found that Respondent Montre did not meet his burden to establish that CalPERS incorrectly denied his request for retroactive reimbursement of the difference in health plan premiums between Blue Shield HMO (Plan Code 2053) 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.

The ALJ concluded that Respondent Montre's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board 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.

February 18, 2016

  
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