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 Medicare Part B Premiums:

ALLAN R. SALLEY, Respondent.

Case No. 2018-0966
OAH No. 2019020080

PROPOSED DECISION

This matter was heard before Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, on June 4, 2019, in Sacramento, California.

The California Public Employees' Retirement System (CalPERS) was represented by Cynthia Rodriguez, Senior Attorney.

Respondent Allan R. Salley was present at the hearing and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 4, 2019.

ISSUE

The issue on appeal is whether CalPERS is correct in its determination that respondent is ineligible to receive retroactive reimbursement for Medicare Part B premiums for the period of November 1, 2009 through February 28, 2018, because he was not enrolled into a CalPERS Medicare health benefits plan.¹

¹ The Statement of Issues at pages 6, line 19 and page 7, line 16, lists the time period of March 1, 2009 through February 28, 2018. At hearing, the Statement of Issues was amended to reflect the correct time period of November 1, 2009 through February 28, 2018.
FACTUAL FINDINGS

Procedural History

1. Respondent was employed as a Business Service Analyst with the Department of Corrections and Rehabilitation (Department). As a result of his employment, respondent was eligible for health benefits under the Public Employees' Medical and Hospital Care Act (PEHMCA) (Gov. Code § 22750 et. seq.). On June 20, 2009, respondent signed and thereafter filed with CalPERS, an application for service retirement. Respondent service retired effective February 17, 2009. He was 64 years old. Respondent was not enrolled in a CalPERS health benefits plan at the time of his retirement, nor did he request to enroll in such a program. Rather, at the time of respondent's retirement he was enrolled in a TRICARE health care plan through the military, as a result of his previous military service. In November 2009, respondent turned 65 years old and was entitled to enroll in Medicare.

2. On or about November 14, 2017, respondent visited the CalPERS Sacramento Regional Office and requested to enroll in a CalPERS health benefits plan. At that time, a staff person explained the health benefits available to him, the premiums and Medicare Part B reimbursement. Respondent elected to enroll. Respondent was informed that under the Health Insurance Portability and Accountability Act (HIPAA) late enrollment rules, his health insurance would not be effective until the first month following the 90-day waiting period from his enrollment date. Respondent submitted a completed "Health Benefits Plan Enrollment for Retirees" form. He also provided a copy of his Medicare parts A and B card. By enrolling in a CalPERS health benefits plan, respondent was eligible to receive reimbursement for the monthly Medicare Part B premium he paid. His enrollment was not effective until March 1, 2018.

3. On February 20, 2018, respondent visited the CalPERS Sacramento Regional Office and inquired as to whether he could receive retroactive reimbursement for Medicare Part B premiums. Respondent was advised to obtain a letter from the Social Security Administration for each year respondent "received the incorrect reimbursement amount," and to submit the information to CalPERS. The following day, respondent submitted to CalPERS a copy of a Social Security Administration document stating that $134 per month is subtracted from respondent's Social Security benefit for medical insurance premiums. Respondent requested reimbursement from CalPERS for the premiums he paid from 2009 through 2017.

4. By letter dated February 22, 2018, CalPERS informed respondent that he was not eligible to receive reimbursement for Medicare Part B premiums through CalPERS for the period of time between 2009 through 2017, because he was not enrolled in a CalPERS health benefits plan.

2 The Statement of Issues at page 2, lines 17, and 23, stated respondent went to the CalPERS San Bernardino Regional Office (SBRO). At hearing, the Statement of Issues was amended to reflect that respondent went the CalPERS Sacramento Regional Office (SRO).
On February 28, 2018, respondent replied to CalPERS’ February 22, 2018 letter denying his request for reimbursement. Respondent explained that he retired from the Department in February 2009, when he was 64 years old. He did not elect to enroll in a CalPERS health benefits plan because, as a retired military person, he received 100 percent medical coverage under TRICARE. Respondent explained that in November 2009, he turned 65 years old and applied for Medicare parts A and B. He stated that he was not aware or informed that CalPERS would pay for the Medicare Part B premiums if he had been enrolled in a CalPERS health benefits plan. Respondent requested that CalPERS reconsider his request for retroactive reimbursement of the Medicare Part B premiums he paid.

By letter dated March 12, 2018, CalPERS informed respondent that pursuant to California Code of Regulations, section 559.517, subdivision (e)(1), “the effective date of enrollment shall be the date Medicare coverage became effective or the first month following receipt of the application, whichever is later.” CalPERS explained that respondent’s enrollment documents were received on November 14, 2017, and as a result, the effective date of his CalPERS health coverage was March 1, 2018, which included the HIPAA 90-day waiting period for late enrollment. CalPERS denied respondent’s request for retroactive reimbursement and notified him of his right to appeal the decision.

By letters dated March 27, and May 29, 2018, respondent requested a re-evaluation of his request for retroactive reimbursement of the Medicare Part B premiums. Respondent contended that he was enrolled in TRICARE, but also had 90 percent health care coverage through Kaiser, a CalPERS health care provider, related to a workers’ compensation claim. Respondent contended that upon his retirement he continued to be covered by Kaiser and thereby eligible to receive retroactive payment of his Medicare Part B premiums.

By letter dated June 29, 2018, CalPERS explained to respondent that pursuant to California Code of Regulations, section 559.503, subdivision (a), respondent was required to “elect retiree health coverage with CalPERS since [he was] not enrolled prior to retirement and it would have been effective on the first of the month following the date [he] submitted [his] request.” CalPERS explained that respondent did not elect to enroll in retiree health benefits until November 15, 2017, which made the effective date March 1, 2018. CalPERS further explained that “Medicare Part B reimbursement applies to members who are enrolled in a CalPERS Medicare health benefits plan pursuant to [Government Code] section 22879, therefore the date [he] became eligible for reimbursement for Medicare Part B premium payments is March 1, 2018.” CalPERS again informed respondent of his right to appeal the decision, which he did on July 25, 2018.

On February 4, 2019, Robert Jarzombek, Chief Health Account Management Division for CalPERS signed and thereafter filed the Statement of Issues.
**Additional Evidence Presented by CalPERS**

10. Jose Doria, an Associate Governmental Program Analyst, is the lead Medicare analyst for CalPERS. Mr. Doria testified at hearing that he received respondent’s requests for reimbursement of Medicare Part B premiums, and assisted in responding to his requests. Mr. Doria explained that respondent’s requests for reimbursement of the Medicare Part B premiums he paid from 2009 through 2017, were denied because respondent did not elect to enroll in a CalPERS health benefits plan upon his retirement. Upon retirement, respondent was informed of his right to elect health, dental and vision coverage, but elected dental coverage only. Respondent did not have health benefits through CalPERS prior to his retirement and did not elect to enroll in health benefits at his time of retirement. Rather, respondent elected to keep his coverage through TRICARE. Additionally, the Kaiser coverage respondent received as a result of his workers’ compensation claim against the Department was not obtained through CalPERS and, as a result, did not make respondent eligible to receive reimbursement of the Medicare Part B premiums.

11. Respondent was not enrolled in a CalPERS health benefit program at the time he turned 65 years old and enrolled in Medicare parts A and B. Therefore, Mr. Doria explained, CalPERS did not pay for his Medicare Part B premium. Had respondent been enrolled in CalPERS health benefits plan, he would have received a notice of his right to the Medicare Part B premium reimbursement. This information was also available through the CalPERS website, or respondent could have requested written material or called CalPERS and inquired into his health benefits options. Mr. Doria also explained that respondent contacted CalPERS several times prior to his retirement and received information about available health benefits.

**Respondent’s Testimony**

12. Respondent testified that CalPERS failed to inform him that he was required to be enrolled in a CalPERS health benefits plan in order to be reimbursed for Medicare Part B premiums. He could not recall if he had received information about CalPERS retiree health benefits prior to his retirement. He admitted that he was aware that he could have elected to enroll in a CalPERS health benefits plan into his retirement, but he did not elect to enroll because he received 100 percent health care coverage from TRICARE.

Additionally, respondent explained that the medical care he received from Kaiser after his retirement was related to his workers’ compensation claim against the Department. Respondent contended that because Kaiser is a CalPERS health care provider, his Kaiser coverage should have been sufficient to make him eligible for the Medicare Part B reimbursement upon turning 65 years old. As a result, respondent asserted that he should be reimbursed for the Medicare Part B premiums he paid from 2009 through 2017.
Discussion

13. When all the evidence is considered, respondent failed to establish that CalPERS incorrectly determined that he is ineligible to receive retroactive reimbursement for Medicare Part B premiums for the period of November 1, 2009 through February 28, 2018, because he was not enrolled in a CalPERS Medicare health benefits plan during this period. Upon retirement, respondent was provided information about the health, dental and vision benefits available to him. Respondent had the option to enroll in a CalPERS health benefits plan at that time. However, because respondent had 100 percent medical coverage through TRICARE, he did not elect to enroll in CalPERS health benefits. As a result, when respondent turned 65 years old and enrolled in Medicare Part B, he was not eligible to receive reimbursement from CalPERS for the cost of the premium.

Additionally, respondent failed to demonstrate that the medical insurance he received through Kaiser related to his workers' compensation claim against the Department was a part of the CalPERS health benefit program. Although Kaiser is a provider option available to CalPERS retirees, respondent did not enroll in Kaiser through the CalPERS health benefit program upon his retirement in February 2009. Had he done so, he would have been eligible for reimbursement for Medicare Part B premiums upon turning 65 years old and enrolling in Medicare Part B.

14. Respondent had multiple sources of information available to him from CalPERS that he could have utilized to obtain information about the CalPERS Medicare health benefit plan available to him as a retiree. Upon requesting information about those benefits in November 2017, respondent was provided the option of enrolling in a CalPERS Medicare health benefits plan which made him eligible, as of March 1, 2018, to begin receiving Medicare Part B premium reimbursement.

15. The law does not allow respondent to receive reimbursement for Medicare Part B premiums while not enrolled in a CalPERS Medicare health benefits plan. As a result, respondent is not entitled to reimbursement Medicare Part B premiums for the period of November 1, 2009 through February 28, 2018, and his appeal must be denied.

LEGAL CONCLUSIONS

Applicable Law

1. "As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence. . . ." (McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044; Evid. Code, § 500.) In this matter, respondent bears the burden of establishing that CalPERS incorrectly determined that he is ineligible to receive retroactive reimbursement for Medicare Part B premiums for the period of November 1, 2009 through February 28, 2018, because he was not enrolled into a CalPERS Medicare health benefits plan.
2. 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 (Board) for CalPERS is responsible for administering the PEMHCA, which requires the Board to provide health benefits for state employees, dependents, and annuitants, as well as for employees and annuitants of contracting public agencies which elect to contract with CalPERS for health benefit coverage. (Gov. Code, §§ 22772 subd. (a)(1), 22800, 22807; Cal. Code Regs., tit. 2, § 599.515, subd. (a).) PEMHCA is subject to the terms and conditions of PEMHCA regulations, found at California Code of Regulations, title 2, section 599.500 et seq.

3. Pursuant to Government Code section 22777, a "'Health benefit plan' means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits."

4. Pursuant to Government Code section 22778, a "'Medicare health benefit plan' means a health benefit plan that provides benefits in coordination with Medicare Parts A and B, including, but not limited to, a managed Medicare health benefit plan providing coverage through the Medicare+Choice program or a Medicare supplement health benefit plan that provides coverage in coordination with the traditional Medicare program."

5. Pursuant to Government Code section 22794, the Board "shall have all powers reasonably necessary to carry out the authority and responsibilities expressly granted or imposed upon it under this part."

6. Government Code section 22830, subdivision (a) provides that "an employee or annuitant, under eligibility rules as prescribed by board regulations, may enroll in a health benefit plan approved or maintained by the board either as an individual or for self and family."

7. Government Code section 22831 provides that:

(a) An annuitant may, as provided by regulations of the board, continue his or her enrollment, enroll within 60 days of retirement, enroll within 60 days of the death of the member, or enroll during any future open enrollment period without discrimination as to premium rates or benefit coverage. If the survivor of an annuitant is also an annuitant as defined in this part, he or she may enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulations of the board.

(b) Board rules and regulations shall provide whatever provisions necessary to eliminate or minimize the impact of adverse selection because of the enrollment of annuitants that would affect any health benefit plans approved or maintained. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare.
if the board determines that payment of the surcharge would be less costly than continued enrollment in a basic plan.

8. Government Code section 22844, subdivision (a) provides that "[e]mployees, annuitants, and family members who become eligible to enroll on or after January 1, 1985, in Part A and Part B of Medicare shall not be enrolled in a basic health benefit plan. If the employee, annuitant, or family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a Medicare health benefit plan."

9. Government Code section 22879, provides in relevant part that:

(a) The board shall pay monthly to an employee or annuitant who is enrolled in, or whose family member is enrolled in, a Medicare health benefit plan under this part the amount of the Medicare Part B premiums, exclusive of penalties, except as provided in Section 22831. This payment may not exceed the difference between the maximum employer contribution and the amount contributed by the employer toward the cost of premiums for the health benefit plan in which the employee or annuitant and his or her family members are enrolled. No payment may be made in any month if the difference is less than one dollar ($1).

(b) This section shall be applicable only to state employees, annuitants who retired while state employees, and the family members of those persons.

10. California Code of Regulations, title 2, section 559.502, subdivision (b) provides in pertinent part:

(b) Initial Enrollment.

(3) An annuitant or an employee who is brought within coverage of the Act shall enroll or register not to enroll within sixty days of notice of eligibility.

(6) An annuitant who retired while an employee of a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act, and whose retirement is effective on or prior to the effective date of such election, may enroll no later than the 60th calendar day following notification of eligibility.
Late Enrollment or Change of Enrollment. Upon a determination by the Board or the Executive Officer that an employee or annuitant was unable, for cause beyond his or her control, to enroll or to change enrollment within the time limits prescribed by this subchapter, the Board shall accept his or her enrollment or change of enrollment provided he or she enrolls or changes enrollment within 31 days after he or she is first able to do so.

(a) Normal Effective Date. The effective date of enrollment, re-enrollment, or change of enrollment shall be the first of the month following the date the employee or annuitant's Health Benefits Plan Enrollment Form is received in the employing office, subject to deferral under subsection (b) of this section. An enrollment shall not become effective if payroll deduction is not accomplished within six months following the date on which such enrollment would normally have become effective.

Post-1997 Basic Health Plan Enrollees, Post-2000 CSU Basic Health Plan Enrollees, and Prospective Medicare Beneficiaries who are Medicare-eligible may enroll in a Medicare Plan by submitting an application to the Board and proof of enrollment in Parts A and B of Medicare. Enrollment in the Medicare Plan shall be effective on the date Medicare coverage became effective or the first of the month following receipt of the application, whichever is later.

As set forth in the Factual Findings and Legal Conclusions as a whole, respondent failed to establish that CalPERS incorrectly determined that he is ineligible to receive retroactive reimbursement for Medicare Part B premiums for the period of November 1, 2009 through February 28, 2018, because he was not enrolled in a CalPERS Medicare health benefits plan. As a result, respondent's appeal must be denied.
ORDER

The appeal of respondent Allan R. Salley is denied.

DATED: June 28, 2019

[Signature]

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings