ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Allan Salley (Respondent) was employed by the California Department of Corrections and Rehabilitation (Respondent CDCR) as a Business Service Analyst. By virtue of his employment, Respondent was eligible for health benefits under the Public Employees’ Medical and Hospital Care Act (PEMCHA) (Gov. Code Section 22750 et. seq.) Respondent submitted an application for service retirement and received an effective date of service retirement of February 17, 2009. He was 64 years old.

Respondent did not enroll in a CalPERS health benefits plan at the time of his retirement although he was eligible. Respondent knowingly chose to remain in the TRICARE health plan he had utilized as a result of his many years of military service. In November 2009, Respondent turned 65 years old and was entitled to enroll in Medicare, which he did.

In November 2017, Respondent came to the CalPERS Sacramento Regional Office and requested to enroll in a CalPERS health benefits plan. Due to the HIPAA late enrollment rules, he was not eligible to begin coverage until March 1, 2018. On February 20, 2018, Respondent again came to the CalPERS Sacramento Regional Office and requested retroactive reimbursement for the Medicare Part B premiums. Such reimbursement would have been available to him had he enrolled into a CalPERS health benefits plan upon retirement. CalPERS informed Respondent on February 22, 2018 that he was not entitled to retroactively seek reimbursement for Medicare Part B premiums.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 4, 2019. Respondent represented himself at the hearing. No appearance was made on behalf of Respondent CDCR.

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

Respondent testified on his own behalf. Respondent testified that no one told him that if he had the CalPERS health benefit plan, he was entitled to the available contribution from CalPERS toward his Medicare Part B. He stated that he did not recall what was said in the meetings and phone calls documented between himself and CalPERS agents. Respondent stated that no one specifically told him that CalPERS health plans may pay towards Part B but did not recall if he asked about that. He said he chose to stay with TRICARE because he had had it for many years, liked it, and it paid 100 percent of his health care, while CalPERS’ health care plans paid less than 100 percent.
CalPERS presented a CalPERS Medicare Analyst who testified that Respondent was not entitled to reimbursement of Medicare Part B payments because he was not enrolled in a CalPERS health care plan during the years in question, and retroactive enrollment in CalPERS health care plans is not possible.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had the duty to seek information about the various differences in health care plans available to him, including those offered by CalPERS and TRICARE. Respondent had specific reasons for remaining with TRICARE. There were several sources of information accessible to him regarding CalPERS health care plans, but he took no steps to learn anything further from CalPERS and remained with his TRICARE plan. The ALJ also found considerable documentation that Respondent did not choose to inform himself about the CalPERS health plan benefits, until his inquiries in November 2017.

Thus, the ALJ denied that Respondent’s appeal should be denied.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

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