ATTACHMENT B

STAFF'S ARGUMENT
The Public Employees’ Medical and Hospital Care Act (PEMHCA) authorizes CalPERS to provide health care benefits to state employees, dependents, retirees, and annuitants, and to employees, dependents, retirees, and annuitants of contracting public agencies which elect to contract with CalPERS for health care coverage. Respondent Sylvia Garcia (Respondent) was employed by the California Department of Corrections and Rehabilitation (CDCR). By virtue of her employment, Respondent and her dependents were eligible for a health care plan offered through CalPERS.

Respondent retired for disability effective October 1, 2011. On January 6, 2015, Respondent contacted CalPERS to change her health plan from Blue Shield NetValue to the Sharp HMO basic health plan. On January 7, 2015, Respondent was enrolled in the Sharp plan, as requested, effective February 1, 2015.

On June 5, 2018, Respondent wrote to CalPERS, requesting that she be retroactively enrolled in Medicare, effective February 2015, and that she be reimbursed for health care coverage premiums that she paid between 2015 and 2018.

After reviewing her file, CalPERS wrote to Respondent on June 14, 2018, denying her request. The letter advised that the CalPERS health program is governed by the provisions of PEMHCA and that the regulations provide that “the effective date of enrollment [in Medicare] shall be the date Medicare coverage became effective or the first of the month following receipt of the application [for Medicare coverage], whichever is later.” The letter concluded, in relevant part, as follows:

After a careful review of your account, your enrollment documents were received on May 16, 2018. Pursuant to [the regulations] the effective date of your CalPERS health coverage is June 1, 2018. Your request for a retroactive enrollment effective February 1, 2015 is denied.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 2, 2019. Respondent represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.
Documents received into evidence and considered by the ALJ included copies of the 2015, 2016, 2017 and 2018 Health Plan Statements sent by CalPERS to Respondent. The relevant language from each of these Statements is quoted by the ALJ in the Proposed Decision on pages 5 and 6. Each of the Statements included language similar to that contained in the 2016 Statement, which read, in relevant part, as follows:

**Please review your customized health plan statement.** This information provides your 2016 and 2017 premium rates, enrolled dependents, and specific health benefit changes that may impact you in 2017. You are responsible for ensuring the health enrollment information about you and your dependents is accurate...

(Bold in the original; emphasis added.)

Respondent admitted, on cross-examination, that she had received each of the yearly Health Plan Statements, but had only “glanced over” them. Respondent said that she assumed that the yearly Health Plan Statement simply confirmed the fact that she was enrolled in a health plan. None of the Health Plan Statements identified or referred to Respondent as receiving health care through Medicare.

The ALJ correctly understood the importance of CalPERS providing the yearly Health Plan Statements to Respondent and Respondent’s failure to read/review such Statements:

Moreover, respondent received her yearly Health Plan Statements, which never stated that she was receiving Medicare until her 2018 statement after CalPERS learned of the Medicare eligibility. It was respondent’s duty to review those yearly statements to confirm that the health care plan identified is correct. Respondent never notified CalPERS before 2018 that she was receiving Medicare. (Proposed Decision, p. 11, par. 3)

A CalPERS witness from the CalPERS Medicare Administration Unit explained that there are two ways for someone covered by a CalPERS health plan to become eligible for Medicare coverage. In the first instance, an individual becomes eligible for Medicare coverage by attaining age 65. In this scenario, CalPERS automatically sends letters to members, and retirees such as Respondent, who are about to turn 65. CalPERS provides information regarding options and enrollment in Medicare. CalPERS also has the authority to enroll an individual in Medicare Part A and Part B if the individual does not take any action. This was not the circumstance regarding Respondent.

Respondent’s eligibility for Medicare coverage resulted from a determination made by the Social Security Administration (SSA) that she was disabled. Documentary evidence and Respondent’s testimony showed that in February 2015, Respondent received a letter and Notice of Award from the SSA, advising Respondent that she had been found to be disabled, entitled to benefits as of March 2012, and that Medicare Part A (hospital insurance) started March 2014 and Part B (medical insurance) would start in February 2015.
After receiving the letter and Notice of Award from the SSA, Respondent did not contact CalPERS regarding her eligibility for Medicare Part B coverage. Respondent testified that she went to the San Diego Regional Office and gave her Medicare card to an unidentified staff member, who supposedly made a copy. This led Respondent to assume that CalPERS: 1) knew about her eligibility for Medicare Part B coverage; and 2) that CalPERS would, or had, done whatever was necessary to transfer her health care coverage from a CalPERS offered plan to Medicare. This testimony was contradicted by documentary evidence and the testimony of the CalPERS witness.

Communications between a CalPERS member, retiree, beneficiary and/or annuitant and CalPERS staff members are documented in Customer Touch Point (CTP) entries. These entries are dated and contain a summary of the question, issue, concern, and discussion of the communication. There is an entry in Respondent’s file/CTP Notes for a date of March 25, 2015, which would have been after Respondent received the letter and Notice of Award from the SSA. The March 25, 2015, CTP entry documented that Respondent “called [not appeared] to inquire about some medicare [sic] questions.” The March 25, 2015, CTP Note continued, with a notation that Respondent “decided to drop off copy of Medicare card at nearby [regional office].” For the date of March 25, 2015, and for any subsequent date noted in the CTP Notes, there is no documentation or confirmation that Respondent did go to the San Diego Regional Office and had any conversation with a CalPERS staff member regarding her eligibility for Medicare Part B coverage. This fact was not lost on the ALJ, who found as follows:

Members under age 65 who are determined by the Social Security Administration to be eligible [for Medicare] must notify CalPERS of that determination. CalPERS has no other way of obtaining that information because the Social Security Administration does not notify CalPERS of those determinations. (Proposed Decision, p. 11, par. 2; emphasis added)

[The CalPERS staff witness] reviewed respondent’s file and CalPERS’ records, and there were no indications that respondent ever notified CalPERS of her Medicare eligibility before May 2018. Moreover, had respondent notified CalPERS, in 2015, as she claims, she would not have been able to remain enrolled in her Sharp health plan because that was not an option for members receiving Medicare. If respondent had given her Medicare card to CalPERS in 2015, CalPERS would have notified respondent that she needed to change her health care plan, something that was not done. (Proposed Decision, p. 11, par. 3; emphasis added)

Additionally, applicable regulations prohibit CalPERS from granting Respondent’s request to be reimbursed for health care plan premiums she paid after having been determined by the SSA to be eligible for Medicare Part B coverage. In a September 5, 2018 letter to Respondent, CalPERS advised as follows:
Medicare Advantage plans [Part B] are regulated by the Centers for Medicare and Medicaid services (CMS). A retroactive enrollment request in a Medicare Advantage plan must meet CMS requirements and must be submitted to CMS for approval. Our records reflect that you were eligible for Medicare coverage prior to June 1, 2018 but do not reflect that you requested enrollment in a Medicare health plan sponsored by CalPERS employer group health plan [sic] prior to May 16, 2018. Our records do not substantiate retroactive enrollment for Medicare Part B premiums pursuant to California law. (Exhibit no. 8)

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ’s conclusion is as follows:

Respondent did not establish by a preponderance of the evidence that she notified CalPERS about her Medicare eligibility before 2018. None of the documents introduced into evidence supported her testimony that she provided that information to CalPERS in 2015 or that her file had been “updated” with that information in April 2015. If she had given her Medicare card to CalPERS’s regional office staff in 2015, this would have caused CalPERS to notify respondent of the need to change her health plan because Sharp did not provide Medicare coverage. There was, however, no evidence presented that CalPERS ever notified respondent of the need to change her insurance because of her Medicare coverage until 2018. More importantly, from 2015 through 2017 respondent received yearly Health Plan Statements advising her of her health coverage. None of those statements listed Medicare, and this put respondent on notice that CalPERS had no information that she was Medicare eligible. As those statements noted in bold lettering, it was respondent’s duty to ensure the accuracy of the information contained therein. (Proposed Decision, p. 16, par. 6)

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

August 21, 2019

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RORY J. COFFEY
Senior Attorney