

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Denial of Health and Dental  
Benefits Enrollment of Alexander T. Bechara, Disabled  
Dependent of NABEEL L. BECHARA, Respondent**

**Agency Case No. 2019-0090**

**OAH No. 2019050816**

**PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 3, 2019, in Orange, California.

Austa Wakily, Senior Attorney, represented complainant, Robert Jarzombek, Chief, Health Account Management Division, California Public Employees' Retirement System, State of California (CalPERS).

Nabeel L. Bechara, respondent, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 3, 2019.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED 10/3 2019  
dyu

## **ISSUE**

Is respondent eligible to enroll his son under his CalPERS health and dental coverage as a disabled dependent?

## **FACTUAL FINDINGS**

### **Background**

1. Respondent established membership in CalPERS in 1981 through his employment with the California Department of State Hospitals. By virtue of his employment; respondent and his dependents are eligible for health coverage under the Public Employees' Medical and Hospital Care Act (PEMHCA).

2. On November 1, 2016, CalPERS sent a letter to respondent informing him that his son, Alexander, would be turning 26 years old in February 2017. The letter advised that Alexander would automatically be deleted from respondent's medical coverage effective the first day of the month following Alexander's 26th birthday. However, if respondent's dependent remained incapable of self-support due to mental or physical disability, health coverage could be extended as a disabled dependent upon approval by CalPERS.

3. On December 19, 2016, respondent contacted CalPERS and requested the appropriate forms required to continue his son on his health coverage. CalPERS mailed respondent a Member Questionnaire and Medical Report for the CalPERS Disabled Dependent Benefit (Medical Report). CalPERS informed respondent that he had 60 days after his son turned 26 years old to submit the two forms.

4. On January 17, 2017, CalPERS received the Medical Report, which was completed by Francis D. Shin, M.D., a psychiatrist. Dr. Shin indicated that he began treating Alexander on April 20, 2011, for autism spectrum disorder and anxiety. Dr. Shin wrote that he last examined Alexander on May 11, 2012. Dr. Shin completed responses about his clinical findings, treatment, and a functional assessment of Alexander's activities of daily living. Dr. Shin certified that Alexander had a disabling condition of permanent and extended duration and was not capable of self-support.

5. On January 9, 2017, CalPERS received the Member Questionnaire signed by respondent. However, the form was incomplete – all four questions on the form were unanswered. The questions elicited a "yes/no" response about Alexander's entitlement to Medicare and Social Security benefits and whether Alexander was economically self-sufficient.

6. On January 18, 2017, CalPERS sent respondent a letter acknowledging receipt of the Medical Report but requested that the Member Questionnaire be completed and returned to CalPERS as soon as possible.

7. On February 2, 2017, CalPERS sent respondent a letter notifying him that effective March 1, 2017, Alexander would be deleted from respondent's health and dental coverage due to him turning 26 years of age.

8. CalPERS received no further communication from respondent until September 7, 2018, when respondent contacted CalPERS to request that Alexander be added back to his health and dental coverage as a disabled dependent. CalPERS informed respondent that he could submit a written request, which would be reviewed by CalPERS.

9. On October 26, 2018, respondent sent CalPERS a request to enroll Alexander on his medical and dental coverage.

10. On October 31, 2018, CalPERS sent respondent a pre-determination letter notifying respondent that it was denying his request to add Alexander onto his health and dental coverage as a disabled dependent. CalPERS provided respondent 30 days to submit supporting information before it would make a final determination.

11. On November 13, 2018, respondent provided CalPERS with medical records and copy of his divorce judgment.

12. On November 21, 2018, CalPERS notified respondent that after an administrative review, it was denying respondent's request to enroll Alexander as a disabled dependent. As the basis for the denial, CalPERS asserted that respondent failed to submit the required documentation within 60 days of Alexander turning 26 years old, which is required under California Code of Regulations, title 2, sections 599.500 and 599.501. Respondent appealed the denial.

13. On May 13, 2019, complainant filed a statement of issues. The issue to be decided is whether respondent should be allowed to enroll his son on his health and dental benefits as a disabled dependent. This hearing ensued.

### **Respondent's Testimony**

14. Respondent's testimony is summarized as follows. In 2012 his wife filed for divorce, which resulted in five or six years of litigation. During this time, respondent was very distraught by the divorce, suffered from health problems, and his wife left him to care for their four children. His wife moved to Texas, and in 2013, Alexander went to live with her. When respondent learned that Alexander was to be discontinued

from coverage on his health insurance he tried to contact his son to get information on his disability but received no response. Alexander's mother was also no help in providing the requested information as she had her own mental issues. During the time that Alexander lived in Texas he did not communicate with respondent. Alexander did nothing with his life during this time, and he was angry at respondent for trying to get him to do something productive. His ex-wife is irresponsible and Alexander lacks the mental capacity to be self-sufficient. Respondent testified that he did not make a mistake in failing to timely keep Alexander enrolled on his insurance. Instead, he blamed his son for failing to respond to him about the information he needed. When it was noted that the information requested in the Member Questionnaire was very basic and should have been easily answered by respondent, respondent again blamed his son for not providing the information.

15. Respondent testified that he finally enrolled his son in MediCal. He said his son still does nothing with his life and stays at home all day.

## **LEGAL CONCLUSIONS**

### **Applicable Statutes and Regulations**

1. The CalPERS Health Program is governed by the PEMHCA and its implementing regulations. (Gov. Code, § 22750 et seq.; Cal. Code Regs., tit. 2, § 599.500 et seq.)
2. Government Code section 22800 provides that an employee or annuitant is eligible to enroll in an approved health benefit plan in accordance with regulations.

3. Government Code section 22848 permits a member who is dissatisfied with any action in connection with his or her coverage to have a right of appeal to the CalPERS Board of Administration (board).

4. California Code of Regulations, title 2, section 599.501, subdivision (g), provides:

A disabled child, as described in section 599.500, subdivision (p), who attains age 26 is to be continued in enrollment [in health and dental coverage] if he or she is enrolled at the time he or she attains age 26, provided that satisfactory evidence of such disability is filed with the Board during the period commencing 60 days before and ending 60 days after the child's 26th birthday.

(h) The Board shall make determinations of the applicability of this section to specific employees or annuitants, or groups of employees or annuitants.

### **Correction of Errors or Omissions**

5. Government Code section 20160 provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of an active or retired member . . . provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a

reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

[¶] . . . [¶]

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the

act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

## **Evaluation**

6. Respondent's son, Alexander, was enrolled under respondent's health and dental coverage until he was removed upon turning 26 years old. Under California Code of Regulations, title 2, section 599.501, subdivision (g), respondent could have requested CalPERS continue coverage for Alexander as a disabled dependent within 60 days of Alexander's 26th birthday. Although respondent submitted a Medical Report from Alexander's physician, he was also required to complete a Member Questionnaire required by CalPERS, which provides CalPERS with additional information needed to

determine whether Alexander was disabled. On January 18, 2017, CalPERS notified respondent that the form had not been completed and advised him that he needed to resubmit it in order for CalPERS to process the request. In further communication, CalPERS advised respondent that Alexander would be removed from coverage effective March 1, 2017, following his 26th birthday. CalPERS received no further communication from respondent until over a year and a half later, in October 2018, when respondent requested Alexander be enrolled under respondent's coverage. Because Alexander's coverage had lapsed in March 2017 and respondent failed to provide CalPERS with sufficient evidence of disability, CalPERS appropriately denied respondent's request pursuant to California Code of Regulations, title 2, section 599.501, subdivision (g).

Respondent contends there were several factors related to his failure to timely provide CalPERS the required information: he was involved in a contentious and emotionally draining divorce, Alexander was living out-of-state, and Alexander was incommunicado from respondent and refused to provide respondent the information respondent needed to complete the request. It was not until Alexander moved back with respondent in California that respondent requested that CalPERS reinstate Alexander's coverage. Although not explicitly requested by respondent, the application of Government Code section 20160 is applicable if respondent can show he made an excusable error or omission in failing to timely complete the application.

Respondent has the burden to show that the "error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure." (Gov. Code § 20160, subd. (a)(2).) Any failure to make an "inquiry that would be made by a reasonable person in like or similar circumstances" does not constitute an "error or omission" correctable under

this section. (Gov. Code § 20160, subd. (a)(3).) Neglect is "excusable" when a reasonably prudent person under the same or similar circumstances might have made the same error. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258; *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276; *Ambrose v. Michelin North America, Inc.* (2005) 134 Cal.App.4th 1350, 1354.) Put another way, if a reasonably prudent person might have made the same error as respondent, his failure to timely complete the required paperwork is "excusable" within the meaning of Civil Procedure section 473. Finally, he must establish that the request to correct the error or omission was made within a reasonable time after discovery of the right to make the correction, which in no case can exceed six months after discovery of this right. (*Id.* at subd. (a)(1).)

The Member Questionnaire respondent submitted to CalPERS did not provide answers to the four questions CalPERS required in order to evaluate his request. CalPERS immediately advised respondent that he needed to complete the questionnaire and later advised him that Alexander's coverage was being terminated. Respondent took no further action until October 2018. Respondent's testimony that he could not complete the questionnaire because his son would not communicate with him was not credible. The questions were very basic and should have been known to respondent; his attempt to blame his son was misplaced.<sup>1</sup> Additionally, respondent

---

<sup>1</sup> It is further noted that the physician completing the Medical Report had not seen Alexander for five years at the time the report was completed. Thus, even if respondent had completed the Member Questionnaire, CalPERS would likely have requested respondent provide updated medical information. At no time up to the date of the hearing did respondent complete the Member Questionnaire.

waited more than six months after he was made aware that Alexander's coverage had been terminated before making further inquiry with CalPERS. Respondent failed to establish that he committed an excusable error or omission, and he failed to timely request to correct any such error. Accordingly, he cannot avail himself of the remedy provided by Government Code section 20160.

## ORDER

Respondent Nabeel L. Bechara's request to enroll his son Alexander under his health and dental coverage as a disabled dependent is denied.

DATE: October 1, 2019

DocuSigned by:  
  
19DED247708C4FB...

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings