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 Benefits
Enrollment of Patrick A. Moon, Disabled Dependent of:

ANTOINETTE M. MOON

and

CALIFORNIA DEPARTMENT OF TRANSPORTATION,
Respondents.

Case No. 2018-1161

OAH No. 2019030702

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings,
State of California, heard this matter on June 20, 2019 and September 10, 2019, in
Sacramento, California.

Senior Staff Attorney Austa Wakily represented the California Public Employees’
Retirement System (CalPERS).

Antoinette M. Moon (respondent) appeared and represented herself.
There was no appearance by or on behalf of respondent California Department of Transportation (Caltrans), which was timely served with the Statement of Issues and Notice of Hearing. The matter proceeded as a default against Caltrans, pursuant to Government Code section 11520, subdivision (a).

The hearing initially concluded on June 20, 2019. However, the record remained open to allow respondent to submit additional supportive documents and to allow for the submission of written closing briefs. Pursuant to respondent’s request, an additional day of hearing was held on September 10, 2019, to consider evidence she discovered prior to the closing of the record. The record thereafter remained open until October 8, 2019, to allow the parties to submit written closing briefs. The record closed and the matter was submitted for decision on October 8, 2019.

**ISSUE**

Should Patrick A. Moon be allowed to be enrolled onto respondent’s health plan as a disabled dependent?

**FACTUAL FINDINGS**

**Background**

1. CalPERS administers the Public Employees' Medical and Hospital Care Act (PEMHCA), which begins at Government Code section 22750. Pursuant to PEMHCA, CalPERS provides health benefits for state employees.
2. Respondent is employed by Caltrans. At all relevant times respondent and her dependents were eligible to qualify for CalPERS health benefits under PEMHCA, if all eligibility requirements were met.

3. Respondent’s son is Patrick A. Moon (Patrick). Patrick was born December 12, 1981. Until he reached 23 years of age, Patrick received dependent health insurance coverage from CalPERS. On January 1, 2005, shortly after Patrick turned 23 years old, CalPERS terminated his health insurance coverage because he exceeded the maximum age limit for coverage, without having been approved for continued coverage pursuant to an exception authorized by the PEMHCA.

4. On March 19, 2018, a Caltrans representative contacted CalPERS on respondent’s behalf and inquired of the steps necessary to add Patrick to respondent’s health insurance coverage as a disabled dependent. A CalPERS representative informed Caltrans that respondent had 60 days from Patrick’s 23rd birthday to continue his healthcare coverage as a disabled dependent and also told them they could submit a written request to add Patrick to respondent’s healthcare coverage along with an explanation that detailed why respondent did not request that Patrick’s coverage be continued as a disabled dependent in 2004.

5. On April 9, 2018, respondent submitted the following documents to CalPERS by facsimile to support her desire to add Patrick to her healthcare benefits as a disabled dependent: a CalPERS Member Questionnaire for the CalPERS Disabled Dependent Health Benefit form (Member Questionnaire) (HBD 98); a copy of her Anthem BlueCross healthcare benefit card; a CalPERS Medical Report for the CalPERS Disabled Dependent Benefit form (Medical Report) (HBD 34); a Valley Mountain Regional Center (VMRC) Authorization for the Release of Information form; and a Transfer/Discharge form from San Joaquin County Mental Health Services.
6. On the Member Questionnaire form, respondent specified that Patrick is a disabled dependent economically dependent upon her for support and indicated that Patrick became mentally or physically disabled at birth. The Medical Report form includes sections titled “Physician Part C and Part D,” which include the following instructions: “[T]he physician is to complete all requested information in PARTS C and D. All responses must be legible . . . Please DO NOT send information copied directly from the patient’s medical record at this time.” Part C and Part D of the Medical Report form submitted by respondent were not completed by a physician. Instead, “N/A” is handwritten in large letters in the Medical Report section of Part C. The word “Birth” is also written in Part C next to “Date of Disability Onset,” and the word “None” is handwritten in the sections of Part C labeled “Objective Clinical Findings/Detailed Statement of Symptoms,” and “Current Treatment and/or Medications(s) (rendered to the patient for this disability).”

7. Part D of the Medical Report is titled Medical Certification of Disability and Incapacity of Self-Support. Part D provides for a physician’s medical certification, wherein a physician may, based upon the physician’s examination, certify whether the individual who is the subject of the report is disabled and whether, in the physician’s medical opinion, the disability renders the subject incapable of self-support. Part D of the Medical Report form respondent submitted includes no physician’s certification nor any other information from a physician. Instead, a large handwritten note in the section states: “Autistic Not Going to Change.”

8. The VMRC release form is largely redacted, and provides no information regarding Patrick’s condition, claimed disability, treatment plan, or level of self-support. The San Joaquin County Mental Health Services Transfer/Discharge form includes the following notation: “Attention deficit disorder with hyperactivity. Seen
once for crisis evaluation on [August 22, 1983]. Has long history of previous treatment and mother could state no current problem. School has not complained. Treatment was not indicated.

9. On the facsimile cover sheet that accompanied respondent's April 9, 2018 submission to CalPERS, respondent included the following information regarding Patrick's claimed disability and her attempts to add him to her insurance as a disabled dependent:

I have been getting the run around about getting my son on my insurance since 2004. When Patrick was going to turn 23 in 2004, I was told he could not be on my insurance because he was in a group home. I have since found out that was a lie. . . . [W]hen he came back to live with me, I got another run around. I was told he could not be on my insurance because I was on Medi-Cal.

Patrick is Autistic, he is not going to get better, I am not going to make him take another battery of tests so you can have a doctor's form filled out. I have the paperwork to prove he is disabled and his condition will never change or update.

10. CalPERS reviewed all documentation respondent submitted. By letter dated July 18, 2018, CalPERS denied respondent's request to add Patrick to her benefits. The letter specifies that respondent's request had been denied pursuant to California Code of Regulations section 559.501, subdivision (g), because respondent's CalPERS account reflected that Patrick had not been listed as a certified dependent.
when he turned 23 years of age and because no documents were received requesting to continue Patrick's healthcare coverage, as a certified disabled dependent, during the permitted timeframe of between 60 days before or 60 days after his 23rd birthday. Respondent appealed from CalPERS' determination and this hearing followed.

**Testimony of Natalie Lua**

11. Natalie Lua is an Associate Governmental Program Analyst for the CalPERS Health Benefits Unit. Ms. Lua has worked in this unit for 27 years. Her duties include reviewing requirements and exceptions related to requests for CalPERS benefits. Ms. Lua is familiar with respondent's request to add her son to her healthcare benefits as a disabled dependent. She reviewed the CalPERS customer Touch Point system to become familiar with communications between respondent and CalPERS dating back to February 2002. Ms. Lua described the Touch Point system as an internal system CalPERS maintains in which a CalPERS employee documents all communications received from and provided to a member and also includes status changes relative to a member's CalPERS benefits.

12. Ms. Lua testified that her review of the Touch Point system revealed Patrick was deleted from respondent's healthcare coverage in January 2005 because he had reached the age of 23. She testified that respondent could have requested Patrick's healthcare coverage be continued as a disabled dependent within 60 days before and no later than 60 days after Patrick turned 23 years old. Ms. Lua added that any requests to continue Patrick's coverage as a disabled dependent must include medical support identifying and describing the disability. This information would be reviewed, and if approved, would permit the disabled dependent to continue to be covered under the member's healthcare plan. Any approval would be reviewed on an ongoing basis every five years.
13. Ms. Lua testified that CalPERS did not receive any request or documents from respondent indicating that she wanted Patrick’s healthcare coverage to be continued as a disabled dependent within 60 days of his turning 23 years old. There was no record that respondent made any request of this nature to CalPERS until April 2018. Since respondent’s April 2018 request to add Patrick to her medical benefits as a disabled dependent occurred over 13 years after Patrick turned 23, CalPERS denied the request.

**Respondent’s Testimony**

14. Respondent testified that she worked for Agnews Developmental Center (Agnews) when Patrick turned 23. Agnews was a psychiatric and medical care facility, located in Santa Clara, California, which closed in 2009. As an Agnews employee, respondent received health benefits through CalPERS.

15. According to respondent, she submitted the paperwork required to continue Patrick’s CalPERS healthcare coverage as a disabled dependent just before he reached 23 years of age. She testified that she submitted the paperwork to Agnews’ personnel office but was told that because her son lived in a group home at the time, he was ineligible for continued coverage. Respondent could not specifically recall whether Agnews ever submitted the paperwork she provided to CalPERS. However, respondent was certain that she had communicated with CalPERS regarding her desire to continue her son’s healthcare coverage just before his 23rd birthday, and was told he was ineligible because he resided in a group home.

16. Respondent testified that approximately 13 years later, while working for Caltrans, a coworker informed her that her son Patrick should have never been taken off of her healthcare coverage and that her request to continue his coverage as a
disabled dependent should not have been denied. Based on the information she obtained, respondent requested that Patrick be added back to her healthcare coverage as a disabled dependent, by submitting to CalPERS the documents described in Finding 9 above.

17. Respondent submitted into evidence a CalPERS Health Benefit Plan Enrollment Form (Enrollment Form) (HBD 12), bearing respondent signature and dated December 1, 2004. The enrollment form lists both respondent and Patrick as the individuals to be enrolled in the health plan. “Change of Coverage” is indicated as the “Type of Action” authorized by submission of the Enrollment Form. However, the section of the form that allowed respondent to indicate whether she did not want to enroll in a health benefit plan, elected to enroll in or change her health benefit plan, or elected to cancel a health benefit plan was left blank. There was no agency name or retirement system indicated on the form in the area designated for that information. The bottom of this form includes a section where a CalPERS representative would normally sign and date the document to indicate that the date the document had been received by the employing office. There was no signature or date from any CalPERS representative on the Enrollment Form to indicate that the document was received. This section was not completed at all. Attached to the Enrollment Form is an email prepared by a Caltrans personnel specialist dated April 2, 2019. The email includes the following statement:

Attached is everything I have concerning the appeal and correspondence.

I was not the [personnel specialist] at the time [respondent's] son (Patrick) turned 23. However, in the [official personnel file] was an enrollment form dated the
month Patrick turned 23 and it appears it was not ever processed. Unfortunately, it may have been Caltrans that dropped the ball.

18. Respondent testified that she submitted all the paperwork required to allow Patrick to remain on her healthcare plan as a disabled dependent after he turned 23 years old to the Agnews personnel office. Based on the information the Caltrans representative located in her personnel file, respondent asserted that the personnel office at Agnews “must have dropped the ball by not submitting [her] paperwork to CalPERS.”

19. Respondent testified that she did not have any portion of the paperwork she submitted to Agnews or CalPERS completed by a physician. She testified that “[she has] taken [Patrick] to medical doctors [but] medical doctors do not understand the problem. His disability is developmental. It’s autism. Medical doctors cannot judge, and they keep trying to send [her] to medical doctors to find out what is wrong with [her] son, and they can’t do anything. They don’t know anything about autism.”

Discussion

20. When all the evidence is considered, respondent failed to establish that she should be allowed to enroll Patrick onto her CalPERS healthcare plan for several reasons. First, respondent did not establish that Patrick qualified for continued coverage under her healthcare plan as a disabled dependent. While respondent made several conclusory statements that her son has autism, there is no evidence that Patrick has ever been diagnosed with autism. There is no evidence that Patrick is disabled. While the Transfer/Discharge note from the San Joaquin County Mental Health Services does reference Attention Deficit Disorder, there was no evidence this
was a diagnosis, rather than a basis for assessment. Even had Patrick been diagnosed with this condition, there is no evidence this proposed diagnosis was disabling as described in the PEMHCA regulations, considering that there was no indication of any current issues or treatment.

21. Respondent also failed to establish that she timely sought continuation of coverage for Patrick as a disabled dependent. Although respondent produced a CalPERS Health Benefit Plan Enrollment Form dated December 1, 2004, which ostensibly reflects that she planned to make some unspecified change to her healthcare plan at that time, the document fails to establish that she timely requested Patrick continue to be enrolled on her healthcare plan with satisfactory evidence of his disability. Despite when the Enrollment Form was discovered by respondent or Caltrans, there is no reference to continuing Patrick's healthcare coverage for any reason on the form. The form does not include a physician's certification of, or include any reference to, disability. And, there was no evidence this Enrollment Form was ever submitted to CalPERS.

22. Respondent's request to add Patrick to her health benefits as a disabled dependent is also untimely. CalPERS received her request over 13 years after Patrick turned 23 years old. While she claims she submitted the required paperwork to CalPERS in 2004, there was no evidence to support her claim. Under certain circumstances, including those specified in Government Code section 20160, CalPERS may, in its discretion, correct the errors or omissions of a member or beneficiary if
such relief is requested within a reasonable timeframe and the correction does not provide the party seeking correction with a status or right not otherwise available.¹

¹ Government Code section 20160, in pertinent part, provides as follows:

(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 any active or retired member, or any beneficiary 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
There was no evidence to support that this type of correction is warranted. For these reasons, respondent’s appeal must be denied.

LEGAL CONCLUSIONS

1. Employees can obtain coverage for family members under their health care plans. Government Code section 22775 defines “family member,” as follows:

   “Family member” means an employee’s or annuitant’s spouse or domestic partner and any unmarried child, including an adopted child, a step child, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

2. California Code of Regulations, title 2, section 599.500, subdivisions (n) and (o), define “child” as follows:

   (n) A “child,” as described in Government Code section 22775, means an adopted, step, or recognized natural child until attainment of age 26, unless the child is disabled as described in section 599.500, subdivision (p).

   (o) In addition to a “child” as described in Government Code section 22775, “family member” also includes any circumstances does not constitute an “error or omission” correctable under this section.
child for whom the employee or annuitant has assumed a parent-child relationship (PCR), in lieu of the relationship described in subdivision (n), as indicated by intentional assumption of parental status, or assumption of parental duties by the employee or annuitant, as certified by the employee or annuitant at the time of enrollment of the child, and annually thereafter up to the age of 26, unless the child is disabled as described in section 599.500, subdivision (p). This section should not be construed to include foster children.

3. California Code of Regulations, title 2, section 599.500, subdivision (p), defines "disabled child" as follows:

   (p) "Disabled child," means a child, as described in Government Code section 22775 and section 599.500, subdivision (n) or (o), who at the time of attaining age 26, is incapable of self-support because of a physical or mental disability which existed continuously from a date prior to attainment of age 26 and who is enrolled pursuant to section 599.501, subdivisions (f) and (g), until termination of such incapacity.

4. On January 1, 2005, the date Patrick was removed from respondent’s healthcare coverage, California Code of Regulations, title 2, section 599.500, subdivisions (f) and (g) provided:
(f) A family member who is a disabled child over age 23 is to be enrolled at the time of the initial enrollment of the employee or annuitant.

(g) A family member who is a disabled child over age 23 is to be continued in enrollment only if he or she is then enrolled, provided that no such child shall continue to be enrolled unless satisfactory evidence of such disability is filed with the Board during the period commencing 60 days before and ending 60 days after the effective date of the initial enrollment or the child's 23rd birthday, whichever is pertinent.

(Bolding added.)

5. California Code of Regulations, title 2, section 599.501, subdivisions (f) and (g) currently provide:

(f) A disabled child as described in section 599.500, subdivision (p), who is age 26 or over is to be enrolled at the time of the initial enrollment of the employee or annuitant provided that satisfactory evidence of such disability is filed with the Board within 60 days of the initial enrollment.

(g) A disabled child, as described in section 599.500, subdivision (p), who attains age 26 is to be continued in enrollment 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.

(Bolding added.)

6. California Code of Regulations, title 2, section 599.500, subdivision (p), defines "disabled child" as follows:

(p) "Disabled child," means a child, as described in Government Code section 22775 and section 599.500, subdivision (n) or (o), who at the time of attaining age 26, is incapable of self-support because of a physical or mental disability which existed continuously from a date prior to attainment of age 26 and who is enrolled pursuant to section 599.501, subdivisions (f) and (g), until termination of such incapacity.

7. As set forth in Findings 19, 20, and 21, respondent failed to establish a basis to add her son Patrick to her healthcare plan as a disabled dependent. Therefore, her appeal must be denied.

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ORDER

The appeal of Antoinette M. Moon is DENIED.

DATE: November 7, 2019

ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings