

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Eddie A. McDonald (Respondent) worked for the Heman G. Stark Youth Training School, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment with Respondent CDCR, Respondent is eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA).

While employed by Respondent CDCR in 2000, Respondent was informed of an option called Flex Elect that would allow him to cancel his CalPERS health coverage in exchange for a monthly stipend. Effective January 1, 2000, Respondent elected Flex Elect, and his CalPERS health coverage was cancelled. Following his Flex Elect cancellation, Respondent received health coverage through his wife's employment. Although Respondent also enrolled in his wife's dental coverage, Respondent retained his dental coverage for the benefit of his disabled son (Son).

Respondent retired effective December 2009. In September 2018, Respondent submitted a request to enroll himself, his wife, and his Son into health coverage with CalPERS under PEMHCA. At the time of Respondent's request, Son was over the age of 26. CalPERS enrolled Respondent and his wife into health coverage. But, on October 4, 2018, CalPERS informed Respondent that his Son could not be added to his health coverage.

Under California Code of Regulations, title 22, section 599.501(g) (Regulation 599.501(g)), a disabled child over the age of 26 must be continuously enrolled in health coverage prior to turning 26 to continue to receive such health coverage. Respondent's Son turned 26 in 2013 and was not enrolled in CalPERS health coverage prior to his 26th birthday. So, CalPERS determined that Respondent's Son could not be enrolled onto Respondent's health coverage under PEMHCA.

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 November 4, 2019. Respondent was represented by counsel at the hearing.

CalPERS' staff testified at the hearing in support of its determination and explained why CalPERS denied Respondent's 2018 request to enroll Respondent's Son into CalPERS' health coverage. Because Respondent's Son was not continuously enrolled in health coverage with CalPERS prior to, and after, turning 26, he did not qualify for enrollment in 2018, under Regulation 599.501(g).

Staff also explained that there was no mistake correctable under Government Code section 20160. Government Code section 20160 allows CalPERS to correct errors or omissions within the system. Government Code section 20160 allows CalPERS to fix a member's error that was the result of mistake, inadvertence, excusable neglect, or surprise.

Staff explained that CalPERS sent Respondent a letter on November 10, 2010, which explained the requirements for enrollment of a disabled dependent, such as Respondent's Son, into CalPERS coverage past the age of 23.¹ The November 10, 2010 letter was sent regarding Respondent's Son's dental enrollment, but staff testified that the same continuous enrollment rules apply for CalPERS health coverage. Because the November 10, 2010 letter fully apprised Respondent of the rules for enrolling his Son into CalPERS health coverage, there was no mistake correctable by Government Code section 20160.

Respondent testified on his own behalf. Respondent does not recall receiving the November 10, 2010 letter that explained the disabled dependent enrollment requirements. Respondent then explained that he received retirement counseling at a CalPERS Regional Office prior to his 2009 retirement. During his retirement counseling, Respondent claimed that he was told by CalPERS that he could enroll his Son into health coverage at any time, regardless of his age or continuous enrollment. But for the purported counseling from CalPERS, Respondent stated that he would have enrolled his Son into CalPERS health coverage at his retirement in 2009.

Respondent's wife also testified on Respondent's behalf at the hearing. Respondent's wife attended the CalPERS retirement counseling in 2009 with Respondent. Respondent's wife also contended that both she and Respondent were told by CalPERS that he could enroll his Son into health coverage at any time, regardless of his age or continuous enrollment.

CalPERS disputes that it incorrectly advised Respondent about his ability to enroll his Son into CalPERS health coverage regardless of age or continuous enrollment. Staff had no recollection of the interaction with Respondent and Respondent's wife.

To further rebut Respondent's contention, CalPERS introduced Customer Touch Point Notes (CTP Notes) from Respondent's account. CalPERS' staff is required to maintain an accurate log of member interactions in the CTP Notes. Respondent's CTP Notes reflect the 2009 retirement consultation with Respondent, but the CTP Notes do not mention Respondent's Son's possible CalPERS' health enrollment or the purported misinformation about the enrollment.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted the appeal. The ALJ found Respondent to be more credible than CalPERS staff regarding his 2009 retirement counseling session with CalPERS. Since CalPERS' staff had no independent recollection of the 2009 retirement counseling session, and instead relied on notes and policies, CalPERS' staff's credibility was negatively affected. The ALJ held that because Respondent was purportedly misinformed by CalPERS regarding his Son's future health enrollment eligibility, Respondent's failure to enroll his Son into health coverage continuously prior to the age of 26 was a mistake correctable by Government Code section 20160. Respondent is thus allowed to enroll Son into health coverage with CalPERS.

¹ Prior to January 1, 2011, 23 was the maximum age that a dependent could be enrolled under his or her parent's health plan. Effective January 1, 2011, the maximum age was increased to 26. So, Regulation 599.501(g) increased the age requirement for continuous enrollment from 23 to 26.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the Proposed Decision.” In order to avoid ambiguity, staff recommends “Herman G. Stark” in paragraph 2 of page 3 be changed to “Heman G. Stark.”

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

February 19, 2020

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Senior Attorney