

ATTACHMENT C

RESPONDENT'S ARGUMENT



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9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In the Matter of the Appeal of Denial of Health
12 Benefit Enrollment of Brock A. McDonald,
13 Disabled Dependent of
14 EDDIE A. MCDONALD,
15 Respondent.

16 AGENCY CASE NO. 2019-0141
17 OAH NO. 2019060263
18 WRITTEN ARGUMENT OF RESPONDENT
19 EDDIE A. MCDONALD IN FAVOR OF
20 ADOPTING PROPOSED DECISION
21 Admin. Law Judge: Hon. David B. Rosenman
22 Date of Decision: December 4, 2019
23 Board Meeting Date: February 19, 2020

24 COMES NOW RESPONDENT EDDIE A. MCDONALD ("MCDONALD") and files
25 this, his written argument in favor of the Board of Administration of the California Public
26 Employees' Retirement system adopting the Proposed Decision of Administrative Law Judge
27 David. B. Rosenman.

28 I. FACTUAL/PROCEDURAL SUMMARY

The Proposed Decision contains a lengthy recitation of the factual testimony, but a brief summary is as follows:

EDDIE A. MCDONALD was a 29-year employee of the California Department of Corrections. In 2000, he was offered and accepted an opportunity to drop his family medical coverage provided by CalPERS, including coverage for his disabled son Brock, for coverage

1 provided by his wife's employer. This decision was made to support the State's financial crisis,
2 and to demonstrate leadership as supervisor of hundreds of employees.

3 Upon his impending retirement in 2009, Mr. and Mrs. MCDONALD met with a CalPERS
4 retirement counselor and inquired about adding medical coverage after Mrs. MCDONALD
5 retired. They were informed that they could add medical coverage, including coverage for their
6 disabled son, at any open enrollment period.

7 In September of 2018, they did just that, and CalPERS accepted them, but denied the
8 application of their disabled dependent son Brock.

9 Respondent MCDONALD appealed the decision in October of 2019, and requested an
10 administrative review. The review upheld the denial and a timely request for an administrative
11 hearing was made.

12 The hearing was held on November 4, 2019 before ALJ David B. Rosenman. After
13 testimony and the submission of evidence, a proposed decision in favor of Respondent ordering
14 the enrolling of Respondent's disabled dependent in medical coverage was filed on December 4,
15 2019.

16 II. ARGUMENT

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18 A. BASED ON THE TESTIMONY AND THE TOTALITY OF THE
19 CIRCUMSTANCES, THE BOARD SHOULD ADOPT THE PROPOSED DECISION
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21 The gravamen of the instant matter is simple, in order to prevail the Respondent is
22 required to prove that CalPERS made a mistake by providing Respondent with erroneous
23 information, upon which he relied in not enrolling his son in coverage before the deadline. The
24 decision confirmed that a correctable mistake was made and, as a result, their disabled dependent
25 should be entitled to coverage.

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1 1. CREDIBLE TESTIMONY OF RESPONDENT

2 In his detailed 24-page decision Judge Rosenman confirmed, that Respondent and his wife
3 testified credibly to the crucial fact of the case, to wit: They were told they could re-enroll their
4 entire family in medical coverage in a future open enrollment period. (Page 6, Para. 13 and 14).

5 2. LACK OF CREDIBILITY OF CALPERS REPRESENTATIVE

6 Conversely, the Judge found the testimony of the retirement counselor, James Santiago to
7 be “negatively affected” by his lack of recollection, as opposed to the specific and credible
8 recollections of Mr. and Mrs. MCDONALD (Page 22, Para. 13, 14). In fact, even though he was
9 available Mr. Santiago did not appear in person to testify, but submitted a written declaration
10 instead.

11 3. OMISSION AND MISTAKE COMMITTED BY CALPERS REPRESENTATIVE

12 The Respondent has the burden of proof in this matter. (Page 14, Para. 1).

13 The Judge specifically found that Mr. and Mrs. MCDONALD established by credible
14 testimony that they were told by Mr. Santiago that they could add their disabled son back onto the
15 medical plan during any open enrollment period. (Page 22, Para 14).

16 In addition, he found that the foregoing was an omission by the CalPERS representative in
17 “not providing complete information about the availability of medical benefits to a disabled child
18 to an employee considering retirement.” (Page 23, Para 15).

19 This resulted in a correctable mistake pursuant to Cal. Govt. Code Section 20160. (Page
20 23, Para 18). The burden of proof has been satisfied, the mistake should be corrected and the
21 Judgment ordering the same accepted.

22 III. CONCLUSION

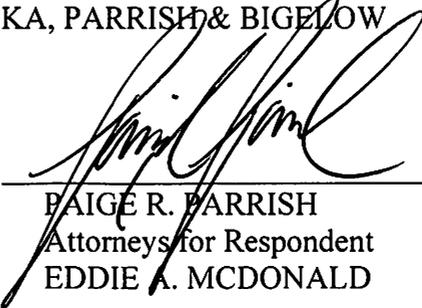
23
24 Respondent MCDONALD has conclusively demonstrated that a mistake was made by the
25 CalPERS representative by giving him erroneous information. Mr. MCDONALD relied on that
26 information, which caused the application of his disabled son for medical coverage to be denied.

27 Having proven his case, the Judge properly ordered that the mistake be corrected, ruling
28 that his disabled son be provided medical coverage from September, 2018.

1 This is the proper and just result. The Board should adopt the proposed decision.

2
3 DATED: January 15, 2020

KLIKA, PARRISH & BIGELOW

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5 By: 

6 PAIGE R. PARRISH
7 Attorneys for Respondent
8 EDDIE A. MCDONALD
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1 PROOF OF SERVICE

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3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is: 133 North Altadena Drive, Suite 403,
Pasadena, CA 91107.

5 On January 15, 2020, I served the foregoing document described as: WRITTEN
6 ARGUMENT OF RESPONDENT EDDIE A. MCDONALD IN FAVOR OF ADOPTING
7 PROPOSED DECISION in this action by placing a true copy thereof enclosed in sealed
envelopes addressed as follows:

8 Cheree Swedensky
9 Assistant to the Board
10 CalPERS Executive Office
11 P.O. Box 942701
12 Sacramento, CA 94229-2701
Phone: [REDACTED]
Fax: (916) 795-3972

13 VIA PRIORITY MAIL: I enclosed the document in an envelope or package provided by
14 an overnight delivery carrier and addressed as above. I placed the envelope or package for
15 collection and overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.

16 STATE I declare under penalty of perjury under the laws of the State of California, that the
17 foregoing is true and correct.

18 Executed on January 15, 2020, at Pasadena, California.

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21 Donna Martin
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