

**ATTACHMENT C**

**RESPONDENT(S) ARGUMENT**

## Respondent's Argument

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Dear Board,

On January 3, 2023, Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by video conference. The Board of Administration, California Public Employees' Retirement System (Board), limited the appeal to the following issues:

1. Whether respondent Chavis's enrollment into a CalPERS Medicare health plan should be retroactive to November 1, 2010; and
2. Whether respondent Chavis should be reimbursed Medicare Part B premiums retroactive to November 1, 2010.

California law required I prove my case by a preponderance of the evidence. The preponderance of the evidence standard required evidence that has more convincing force than that opposed to it. The ALJ found I did not meet my burden for both issues. I disagree.

The Proposed Decision of the ALJ, in accordance with the Administrative Procedure Act, has no force or effect until the Board takes formal action to either adopt it, remand it, or declined to adopt it in favor of its own decision. I urge the board to remand, or decline to adopt, in furtherance of civic justice considerations. The Record showed I contacted CalPERS on and around November 1, 2010 to establish enrollment in a CalPERS program that would allow me to financially save money as a newly admitted Medicare member. The Record showed to the extent I was not enrolled in a CalPERS Medicare program until February 1, 2022, was the result of a mistake or error correctable by Government Code section 20160.

### **Enrollment**

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The ALJ opined that my testimony that I contacted CalPERS in November 2010 to request enrollment in a CalPERS Medicare plan was not convincing. Contrarily, the Record does not support the ALJ's conclusion on this point because the enrollment process is immensely complicated to a lay person.

The CalPERS Medicare program and enrollment is inherently sophisticated, and beyond the grasp of regular, everyday members. Moreover, opposing counsel brought in Jose Doria, a CalPERS employee who specializes in resolving complex issues that arise in the confluence of these systems, to explain the general layout, functioning, and enrollment process. Doria threw around terms that seemed synonymous with the each other. Doria further confused me with respect to the enrollment process. Doria testified a form is required to enroll. However, I did not need a form when CalPERS enrolled me in January 2022.

The Record showed when I became eligible for Medicare, I immediately sought outreach with CalPERS to switch my account to benefit from my new Medicare status. The Record showed in the Customer Touch Report on my CalPERS account that I made 13 calls to CalPERS generally asking them to help me improve my benefits selection. The Record showed those conversations were titled "Health Benefit Services," "Retirement Application Processing," and "Retirement Adjustment Processing." Moreover, on February 14<sup>th</sup>, 2023, I submitted a Public Records Request (Case No. 6997) to get the audio attached to those logged calls. The notes do not explain everything and are vague.

The ALJ opined that I did not establish by a preponderance of the evidence that the log on November 5, 2010 did pertain to an attempt to enroll in a CalPERS Medicare plan. He furthered that the log is proximate in time to "Delta Dental," thereby subsuming two separate medical conversations into one. Delta Dental is separate from my Medicare package. Moreover, the log from that day clearly established I was trying to set up a CalPERS Medicare plan that would be "reflected in the Dec.' 10 warrant."

I intended to enroll in CalPERS Medicare program at that time. Just because I am not a CalPERS expert witness with enrollment qualifications like Jose Doria does not disqualify an honest attempt to enroll in benefits for which I was newly entitled and sought to redeem. In November 2010 I called, and a CalPERS employee enrolled me in a similar fashion to the exchange I had in January 2022. In both instances, a form was

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never technically required for me to enroll. The Record Showed it was not unreasonable for me to assume the CalPERS employee completed the specific request I intended, despite my lack of technical knowledge on terms and key phrases. On this point I urge the Board to remand the case to decipher the exactness to which a request was made to enroll me into a CalPERS Medicare program in 2010, or until CalPERS makes a determination on the active Public Records Request for relevant information.

### **Mistake or Error**

The ALJ opined that my deemed failure to contact CalPERS in November 2010 was not the result of mistake, inadvertence, surprise, or excusable neglect. He opined that a reasonable person would not have disregarded notices concerning my health plan for 12 years. Contrarily, the Record showed my lack of responses to health benefit plan notifications were of the type that a reasonably prudent person would have done in my shoes.

California Code of Civil Procedure section 473 (Code), in interpreting mistake, inadvertence, surprise or excusable neglect, considers “whether a reasonably prudent person under the same or similar circumstances might have made the same error.” The Code denies relief where the record shows only ignorance of the law coupled with negligence in ascertaining it. Further, the Code denies relief where an alleged mistake of the law was the result of laxness or indifference.

I became eligible for Medicare in November 2010. That same month I contacted CalPERS to enroll me in a comparable Medicare plan that would allow be to receive the reimbursements I desired. That was the main gist of those conversations in 2010. The Record showed I did not receive, or experience outreach, for a Health Plan Statement from November 2010 until September 2012. The Record does not show why there was a two-year hiatus from statement notifications. Neither the ALJ, nor the opposing counsel, were able to offer evidence to explain the gap in annual notification process. I made a reasonable conclusion I was enrolled in a CalPERS Medicare program in November 2010. Therefore, when I did not receive notifications for 2 years, I concluded everything was going according to plan.

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When I saw that I was enrolled in in a CalPERS Basic plan in 2012, that fact did not alarm me. CalPERS led me to believe I was already enrolled, and a CalPERS Basic plan must be the qualifying medical plan to receive the benefits I sought in November 2010. Moreover, when I received two notifications – January 19, 2019 and April 1, 2020 – informing me I was eligible to enroll in a CalPERS Medicare health benefits plan, I could not appreciate the difference between the CalPERS Medicare health program CalPERS enrolled me in November 2010 and the CalPERS Medicare health benefits plan I was eligible for in January 2019.

A decade separates those two interactions. If you are enrolled in a CalPERS Medicare plan, a reasonable person would not inquire about enrolling in a CalPERS Medicare plan. The Record showed CalPERS was not consistent with Health Plan Notifications. Where were annual notifications of my health plan from 2010-2012? Where were notifications advising me of my eligibility for a CalPERS Medicare health plan (one for which I concluded I was already enrolled) from 2010-2019? The inconsistency and complex health care market does not entitle the ALJ to opine my lack of response amounts to a laxness or indifference uncorrectable by the Code. The systems were not communicating until 2019. I did not delay in reaching out to CalPERS the moment I became Medicare eligible to enroll in CalPERS Medicare program. A reasonable person would have been just as diligent as I was in contacting CalPERS in November 2010 and trusting my health care providers with quality assurance. On this point, I urge the Board to remand the case for further proceedings to determine the “reasonableness” of my actions.

### **Due Process Denial**

The denial process has turned out to be more convoluted than the enrollment process and has resulted in an effective denial of my due process rights. I do not feel adequately heard and compensated, while at the same time facing a substantive loss to my benefits.

I talked with Kathryn Budd on January 19, 2022, who denied my request for retroactive enrollment and reimbursement. That denial was oral. That denial came with no guidance on procedure or the rules. Budd simply said no. Then denied my ability to talk with a supervisor. Then told me to file a written complaint to speak with a supervisor.— She stated unless I wrote in a complaint, I could not speak to a supervisor. In my 30

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years as an adjudicator and administrator, I never heard of such a thing. Then she enrolled me into a CalPERS Medicare plan without a written form (Certification of Medicare Status). Budd was not pleasant on the phone. I felt criminalized for asking about the nature of my Medicare status. She acted as a judge, adjudicator, and jury without any mention of the actual guidelines she was to follow or advise on appeal of her oral decision.. It appeared this agency has no official appeal process or steps were omitted to elevate to appeals level and my instructed complaint to speak with a supervisor has now become the appeal. Her conduct was so egregious, she was removed from my case and June Ramos, another account manager, apologized to me on March 25, 2022 for Budd's manner of handling me. The Record evidenced all the above statements of fact. The whole process felt predatory. I came with my truth,

never objected to the States presentation, and I feel mishandled. This was a hardship request. My hardship was not honored.

Because of Budd's character assault on me, the ALJ smeared my 30 years of public service integrity. The combination of which has suppressed my ability to properly be heard. I received the relevant documents for the trial just 2 days prior. It felt like an ambush. It felt unfair. I urge the board to decline to adopt the ALJ's Proposed Decision in favor of an outcome geared toward justice for a California Public Servant. As a pro se respondent, I feel abused by a Health Care Entity I've trusted for over 30 years to provide basic care, healing, and attention to detail.

As a college educated women and graduate from University Of Alaska and California State San Bernardino, Charter Member and Chapter President of a National/International Organization Alpha Kappa Alpha Sorority with over 355,000 members 1,061 chapters "Invitational Only", Public Servant for State Parole, Ca State Licensing Division, State Of Ca Employment Development Department, Mental Health Division and Director of (5) care facilities. It is in my opinion that the ALJ made some inappropriate fallacious/ pejorative filled references about my character i.e. "indifferent, Laxness" and other derogatory expressions to demean me as anything other than a woman who does everything with excellence. My life experience reflects understanding of Compliance, Regulation and Accountability..

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### **Employing Agency Recoupment**

The ALJ opined that even if I made a correctable mistake or error under the Code, there is no way from my employing agency to recoup the additional premiums it paid while I had a Basic health plan. So, I could not recover, too. However, my benefit entitlement is not subject to a calculation mechanism for Kaiser. The Record showed an “unidentified” CalPERS employee, who was not subpoenaed for the hearing, was able to create a spreadsheet for the amount of reimbursed dollars to which I am entitled. Further, if Kaiser believes they have been wronged they are qualified to appeal, or file directly.

### **Summary**

The ALJ opined he was not convinced I satisfied my burden of proof, and that I was not more convincing than the other side. The Record showed a variety of gaps and inconsistencies that now allow me to seek the relief I desire. Namely, I urge the Board to remand the case for further proceedings, or wholly declined to adopt the ALJ's proposed decision in favor on your own decision based on the clear facts of the Record and civic justice considerations for a California Public Servant. I will not give up until I receive Justice in this matter of confusion.

Respectfully Submitted

Phyllis Chavis

CC: ACLU

US Attorney General's Office

**From:** [REDACTED].com  
**To:** [Savala, Sabrina](#)  
**Subject:** Re: Courtesy Copy: Agenda Item 8a2  
**Date:** Tuesday, March 7, 2023 2:51:12 PM  
**Attachments:** [In re Matter of Phyllis Chavis.docx](#)

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[External Email Caution]

Thank you so much Ms. Savala for responding to my concerns.

I am submitting another electronic copy of my argument for clarity of the record. I would like this email thread attached to the corrected compiled submission to prevent any confusion in this matter. There are so many misunderstandings and overlooked documentation to include improper processing and neglect until I am monitoring all communication closely.

I have read the file with a meticulous review and hope I have sufficiently provided all that is required for March 15th Board Hearing.....If anything else is needed please inform me accordingly.....,

I do have a question as to whether or not I participate in this schedule hearing or if able to witness via video conference call ?...

Thank you

Phyllis Chavis

-----Original Message-----

**From:** Savala, Sabrina [REDACTED]  
**To:** [REDACTED]  
**Sent:** Tue, Mar 7, 2023 8:04 am  
**Subject:** RE: Courtesy Copy: Agenda Item 8a2

Good morning Ms. Chavis,

Please send me an electronic version of your argument and I will ask the Board Services Unit to replace the scanned version with the e-copy.

Thank you,  
Sabrina

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**From:** [REDACTED] >  
**Sent:** Monday, March 6, 2023 8:28 AM  
**To:** Savala, Sabrina [REDACTED]  
**Subject:** Re: Courtesy Copy: Agenda Item 8a2

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[External Email Caution]

Goodmorning Ms Savala

Thank you for sending the courtesy copy of the arguments...

Upon reading and review I have some concerns..

Verbage Issue:

- 1..The first page of my response to the ALJ decision is unaligned compared to the rest of the package for the board..
2. Also the ink appears faint and the document looks physically scanned..
3. The ALJ's Decision and the opponents argument documents looks electronically compiled.....

I am afraid the presentation of my work will look unprofessional to the Board and I would like it corrected. I sent an electronic copy however will send another one if needed.....if nothing can be done i am requesting a note be added to the Boards record describing the errors identified and contained in the management / compilation of my respondent argument.....If the package has been submitted to the Board I am requesting this communication email be submitted as an addendum as well .....

Thank you so much for understanding my concerns in this legal matter.....  
Please call if needed with any questions

On Friday, March 3, 2023 at 02:25:08 PM PST, Savala, Sabrina  
<[REDACTED]> wrote:

Please see the attached agenda item and cover letter. Hard copies will be provided via first class mail.

Thank you,