ATTACHMENT A

PROPOSED DECISION

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

In the Matter of the Appeal Regarding the CalPERS Health Benefit Enrollment of:

MICHAEL F. BRITT, Respondent

Agency Case No. 2025-1397

OAH No. 2026020976

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 19 and 25, 2026, by videoconference and telephone from Sacramento, California.

Cristina Andrade, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Michael F. Britt (respondent) represented himself.

Evidence was received and the record left open until September 4, 2026, for certain post-hearing submissions, including written closing arguments, as outlined in an Order Regarding Post-Hearing Submissions and Record Closure. All required post-

hearing submissions were received. On September 4, 2026, the record was closed and the matter submitted for decision.

ISSUES

1. Did CalPERS on January 1, 2025, appropriately correct its mistake of placing Medicare annuitants with foreign addresses, such as respondent, in holding plans and providing them with coverage and benefits under the PERS Platinum Basic Plan (Basic Plan) while charging them for the lower cost of the PERS Platinum Supplement to Original Medicare Plan (Medicare Supplement Plan)?

2. Did CalPERS appropriately deny respondent's request for retroactive enrollment into the Basic Plan from 2019 through the present, without requiring him to pay additional member contributions?

FACTUAL FINDINGS

Background

ANNUITANT HEALTH BENEFITS

1. CalPERS is the agency charged with administering the Public Employees' Medical and Hospital Care Act (PEMHCA) (Gov. Code, § 22750 et seq.) and its implementing regulations (Cal. Code Regs., tit. 2, § 599.500 et seq.). PEMHCA authorizes and requires CalPERS to provide health benefits for State employees and retirees (referred to as annuitants).

2. An annuitant may enroll in a health benefit plan either as an individual or for self and family. The State and each annuitant contribute a portion of the cost of providing benefit coverage afforded under the health benefit plan in which the annuitant is enrolled. The contribution of each annuitant is the total cost per month of the benefit coverage afforded to them under the health benefit plan in which they are enrolled, less the portion contributed by the employer. Enrollment serves as an authorization to deduct the contributions required from the retirement allowance of an annuitant.

3. The employer contribution portion for State annuitants is calculated annually pursuant to a statutory formula. Annuitants receive a percentage of the employer contribution based on their bargaining unit, the year that they were employed, and their credited years of service at retirement. Annuitants who retire for disability receive 100 percent of the employer contribution. If the employer contribution does not cover the entire cost of the health benefit plan in which the annuitant is enrolled, the remainder is withheld from their retirement allowance.

2013/2014 CREATION OF HOLDING PLANS FOR ANNUITANTS WITH FOREIGN ADDRESSES

4. Generally, Medicare-eligible annuitants must enroll in a Medicare health benefit plan, unless they are specifically excluded by federal law or regulation. Around 2013 or 2014, CalPERS implemented an Employer Group Waiver Plan (EGWP). The EGWP is offered by the Centers for Medicare and Medicaid Services (CMS) to allow plan sponsors, such as CalPERS, to waive certain Medicare regulations. Qualification for an EGWP requires CalPERS to demonstrate that every annuitant enrolled in a CalPERS Medicare health benefit plan complies with federal Medicare law and regulations,

including demonstrating that each such annuitant resides in the United States or its territories.

5. Upon implementation of the EGWP in 2013 or 2014, CMS rejected the enrollment of annuitants with foreign addresses into Medicare health benefit plans, including the Medicare Supplement Plan.[1] This abruptly left those annuitants without health or prescription coverage. The affected population of annuitants was relatively small—less than 100 people.

6. To avoid disruption of those annuitants' essential health and pharmacy benefits during the EGWP implementation process, CalPERS directed Anthem Blue Cross, the administrator of the Medicare Supplement Plan, to place Medicare annuitants with foreign addresses in a "holding plan." A holding plan is generally designed as a stopgap mechanism to provide annuitants with continued benefits during short periods of time, typically to address enrollment timing issues between CalPERS, the health plans, and CMS.

7. CalPERS also directed Anthem Blue Cross to provide Basic Plan[2] benefits to Medicare annuitants with foreign addresses who were placed in a holding plan. The

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[1] The Medicare Supplement Plan is a Preferred Provider Organization (PPO) plan for Medicare-eligible annuitants. In 2013 and 2014, it was known as the PERS Care Supplement to Original Medicare Plan. Its subsequent name change is irrelevant to the issues in this appeal. The decision refers to it as the Medicare Supplement Plan throughout for convenience.

[2] The Basic Plan is a PPO plan primarily intended for active employees. In 2013 and 2014, it was known as the PERS Care Basic Plan. Its subsequent name change is

Basic Plan is the most expensive health benefits plan offered by CalPERS and the only plan that has no geographical restrictions, providing coverage anywhere in the world. It is not subject to compliance with federal Medicare laws or regulations because it is not a Medicare health benefit plan.

8. However, internal to CalPERS, Medicare annuitants with foreign addresses who were placed in a holding plan continued to be enrolled in the Medicare Supplement Plan. Thus, they continued to be charged the lower premiums for the Medicare Supplement Plan while receiving Basic Plan coverage and benefits. CalPERS never informed those Medicare annuitants that they were placed in a holding plan.

9. The placement of annuitants with foreign addresses into holding plans was intended to continue only for a limited time during the EGWP implementation process. However, some annuitants were mistakenly kept or put into holding plans through the end of 2024.

History of Respondent's CalPERS Health Benefits

10. Respondent established membership with CalPERS effective November 2, 1987, through his employment with the California Department of Housing and Community Development. By virtue of that employment, respondent is eligible for CalPERS health benefits under PEMHCA.

11. On September 14, 1999, respondent retired for disability, and his health coverage continued into his retirement. The parties agree that respondent is eligible to

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irrelevant to the issues in this appeal. The decision refers to it as the "Basic Plan" throughout for convenience.

receive 100 percent of the employer contribution towards the cost of the health benefit plan in which he is enrolled. Since January 1, 2014, respondent was enrolled in the Medicare Supplement Plan.

12. Until December 31, 2024, the Evidence of Coverage (EOC) for the Medicare Supplement Plan included the following provision:

> If you move, other than temporarily, outside the United States as defined in the Federal Social Security Act, you are no longer eligible for this Plan. You must change enrollment to a Basic Plan as Medicare does not provide benefits when you are permanently outside the United States. Please contact the Health Benefits Officer at your agency (actives) or the CalPERS Health Account Services Section (retirees) as soon as possible to enroll in a Basic Plan and to get a copy of the Basic Plan Evidence of Coverage document. Once you are enrolled under the Basic Plan, all applicable deductibles, copayments, benefit maximums, and exclusions described under the Basic Plan will apply. Any benefits provided under this [Medicare Supplement Plan] will no longer apply. You will need a copy of the Basic Plan Evidence of Coverage in order to determine what your medical benefits are.

Starting on January 1, 2025, the EOC for the Medicare Supplement Plan was amended to remove the foregoing language and provide coverage outside the United States for urgent and emergency services only.

13. Respondent's wife is Swiss. Sometime in 2018, respondent and his wife decided to relocate to Switzerland. Respondent contacted CalPERS multiple times to inquire about his health coverage overseas. The CalPERS Customer Touch Point records show that CalPERS staff members provided respondent with confusing and at times conflicting information. That was because at least some CalPERS frontline staff were not even aware of the existence of holding plans for annuitants with foreign addresses. Respondent and his wife ultimately moved to Switzerland in December 2018.

14. On January 24, 2019, CalPERS updated its records with respondent's new address in Switzerland. CalPERS then directed Anthem Blue Cross, the Medicare Supplement Plan's administrator, to place respondent in a holding plan because he was a Medicare annuitant with a foreign address. It also directed Anthem Blue Cross to provide respondent with Basic Plan coverage and benefits. Meanwhile, CalPERS internally continued respondent's enrollment in the Medicare Supplement Plan and charged him the lower contributions associated with that plan. Additionally, respondent was reimbursed for his Medicare Part B premiums through a credit on his retirement check, consistent with being enrolled in the Medicare Supplement Plan.[3] This holding plan arrangement continued until December 31, 2024.

15. Between January 2019 and December 2024, CalPERS never notified respondent that he was placed in a holding plan. Additionally, consistent with CalPERS's instructions to provide respondent with Basic Plan coverage and benefits, Anthem Blue Cross issued respondent Basic Plan enrollment cards and plan

[3] Eligible annuitants in CalPERS Medicare health benefit plans receive standard Medicare Part B premium reimbursements on their retirement allowance checks.

documents. However, some correspondence from CalPERS to respondent noted that respondent was actually enrolled in the Medicare Supplement Plan. For example:

- CalPERS health plan statements from 2019 through 2024 indicated that respondent was enrolled in the Medicare Supplement Plan.

- On July 8, 2019, CalPERS sent respondent a letter notifying him of the option to enroll in the Basic Plan while residing outside the United States to allow him to maintain comprehensive medical coverage abroad. Although he was not required to change to the Basic Plan, CalPERS advised him that he was at risk of unpaid claims as explained in the EOC for the Medicare Supplement Plan.

- On August 1, 2023, CalPERS sent respondent another letter providing substantially the same information as the July 8, 2019 letter.

16. In 2024, CalPERS selected Blue Shield of California (Blue Shield) to be the new administrator of the Medicare Supplement Plan and the Basic Plan effective January 1, 2025. CalPERS first notified respondent of the administrator change in a letter dated July 24, 2024.

17. Upon the administrator change on January 1, 2025, CalPERS directed Blue Shield to cease the practice of placing and keeping Medicare annuitants with foreign addresses in holding plans. CalPERS did so because it exposed CalPERS to a high risk of liability for claims—annuitants in holding plans received more generous Basic Plan coverage and benefits while only being assessed the lower premiums for the Medicare Supplement Plan. Such annuitants, if eligible, had also been receiving reimbursements for Medicare Part B premiums.

18. Although CalPERS notified respondent of the administrator change to Blue Shield, it did not notify respondent that he was no longer in a holding plan effective January 1, 2025. Respondent remained enrolled in the Medicare Supplement Plan.

19. In mid-January 2025, respondent contacted CalPERS requesting proof that he had comprehensive health coverage as required by the Swiss government. Blue Shield had refused to provide him with such proof because he was enrolled in the Medicare Supplement Plan; that plan provided coverage outside the United States for only urgent and emergency services starting on January 1, 2025; and, unbeknownst to respondent, he was no longer in a holding plan providing him with Basic Plan coverage and benefits.

Respondent asserted he was permitted to be enrolled in the Basic Plan because he resides out of the country. CalPERS agreed, and on January 23, 2025, it enrolled respondent in the Basic Plan retroactive to January 1, 2025. However, CalPERS explained that the employer contribution would not cover the higher cost of the Basic Plan and respondent would have to pay the remaining cost, which would be deducted from his retirement allowance. Respondent objected to having to contribute to the cost of the Basic Plan because he had never been required to do this since moving to Switzerland. He requested CalPERS to rescind his enrollment in the Basic Plan and re-enroll him in the Medicare Supplement Plan. CalPERS granted that request in a letter dated February 3, 2025. Through the present, respondent remains enrolled in the Medicare Supplement Plan.

Respondent's Request for Administrative Review and Subsequent Appeal

20. On May 23, 2025, respondent sent CalPERS a "Request for Resolution and Administrative Review of Longstanding Enrollment Error." It summarized respondent's prior communications with CalPERS staff regarding his move to Switzerland and health coverage while living abroad. It also requested, among other things, a "full investigation and correction of my plan history to reflect my effective enrollment in the Basic Plan from 2019 onward" and "[i]mmediate reinstatement of appropriate international coverage, including any applicable retroactive correction."

21. After several communications between CalPERS and respondent, CalPERS sent respondent a determination letter dated June 18, 2025. That letter stated, in part:

> Dear [Respondent],
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> We are responding to your recent communication to the California Public Employees' Retirement System (CalPERS) regarding your request to enroll in the [Basic Plan] retroactive to February 1, 2019 through January 1, 2025. You are also requesting to continue receiving [Basic Plan] benefits effective January 1, 2025 to current, with no change to your current member contributions.
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> CalPERS performed an administrative review of your account and your request to enroll in [the Basic Plan] effective January 1, 2025, at no cost is denied. Pursuant to Gov. Code 22830 (b), enrollment in a health plan shall serve as authorization of the deduction of contribution required

from the allowance of an annuitant. In addition, if we update the enrollment to reflect you are enrolled in the [Basic Plan] retroactive to February 1, 2019, through January 1, 2025, you will owe CalPERS retro-premiums in the amount of $36,034.54. In addition, you will need to return the Medicare reimbursements received during this time which total $8,269.12.

However, changing the enrollment during this period is not necessary. As stated in previous emails and verbal communications from CalPERS and Anthem, although you were enrolled in the [Medicare Supplement Plan], the benefits you received from February 1, 2019, through January 1, 2025, were under the [Basic Plan] benefits evidence of coverage. This has been confirmed to you via the annual creditable coverage letters sent to you from Anthem each year from 2019 to 2024. Therefore, it is not necessary to retroactively update the enrollment, and that request is also denied.

Effective January 1, 2025, the [Medicare Supplement Plan] transitioned to a new third party administrator, Blue Shield of California. With the transition to Blue Shield, the benefits under the [Medicare Supplement Plan] changed for members living out of the country. Effective January 1, 2025, members will only receive emergent and urgent services as indicated in the 2025 Evidence of Coverage.

The letter then provided respondent with three options:

(1) Enroll in the Basic Plan effective June 1, 2025, with a deduction from respondent's monthly retirement allowance for the portion of the Basic Plan cost not covered by the employer contribution, no reimbursement of Medicare Part B premiums, and comprehensive coverage overseas.

(2) Remain enrolled in the Medicare Supplement Plan, with no deduction from respondent's monthly retirement allowance since the employer contribution covered the Medicare Supplement Plan's cost, reimbursement of Medicare Part B premiums, and coverage for only urgent and emergency services overseas.

(3) Cancel CalPERS coverage effective July 1, 2025, and enroll in a health plan outside of CalPERS.

The letter requested respondent to choose by June 30, 2025. It advised him that if CalPERS did not receive respondent's choice by that deadline, he would remain enrolled in the Medicare Supplement Plan. It also notified respondent of his right to appeal CalPERS's determination.

22. Respondent timely appealed CalPERS's determination and requested an administrative hearing. On February 24, 2026, Yesenia Croft, in her official capacity as Chief of CalPERS's Health Account Management Division, signed and later filed the Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Additional Hearing Testimony

23. Switzerland requires all residents to have comprehensive health insurance and has strict penalties for being uninsured. Swiss health insurance policies are also expensive. Thus, it was important for respondent to maintain comprehensive health coverage through CalPERS after moving to Switzerland.

24. Respondent contacted CalPERS multiple times before moving to Switzerland. He knew that Medicare plans generally do not cover medical treatment overseas. Thus, he understood that CalPERS would enroll him in the Basic Plan once he moved to Switzerland.

25. In January 2019, respondent promptly notified CalPERS of his new address in Switzerland. Respondent believed he was then enrolled in the Basic Plan because Anthem subsequently sent him enrollment cards and plan booklets associated with the Basic Plan. Additionally, the Swiss government granted him an exemption from obtaining Swiss health insurance each year between 2019 and 2024 based on the comprehensive health coverage provided by CalPERS.

26. Between 2019 and 2024, respondent also used his CalPERS health coverage to pay for non-urgent, non-emergency health care services in Switzerland. He did not experience problems except for slow payment at times and the plan's refusal to pay for overseas prescription medications. Thus, he was required to buy prescription medications with his own funds.

27. CalPERS never told respondent he was placed in a holding plan. It also did not inform him that he was removed from a holding plan in January 2025 or that his coverage and benefits would change in January 2025. Respondent only learned about the apparent change to his coverage and benefits when he contacted CalPERS

in mid-January 2025 after Blue Shield refused to attest that he had comprehensive health coverage for 2025 as required by the Swiss government. At that point, CalPERS staff told respondent he had to enroll in the Basic Plan to receive comprehensive coverage overseas. That took respondent by surprise because he believed he had been enrolled in the Basic Plan since January 2019.

28. According to respondent, CalPERS's enrollment mistake in January 2019 has placed respondent in a precarious position. He is 74 years old and continues to reside in Switzerland. As of January 1, 2025, he has not had comprehensive health coverage through CalPERS because the Medicare Supplement Plan only covers urgent and emergency services in Switzerland. Respondent cannot afford the higher costs of the Basic Plan, resulting in a deduction from his retirement allowance. Nor can he afford a Swiss health insurance policy. He is thus presently in violation of Swiss law, which requires him to have comprehensive health coverage in Switzerland. Respondent feels "stuck in the house" and like he "can't go anywhere" due to his lack of comprehensive health coverage.

LEGAL CONCLUSIONS

1. Government Code section 20160 provides, in pertinent part:

> [¶] . . . [¶]
>
> (b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of . . . this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(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.

2. Government Code section 22830 provides:

(a) An employee or annuitant, under eligibility rules as prescribed by board regulations, may enroll in a health benefit plan approved or maintained by the board either as an individual or for self and family.

(b) Enrollment shall serve as authorization of the deduction of the contributions required under this part from the salary of an employee or allowance of an annuitant.

3. Government Code section 22870 provides, in pertinent part:

(a) The state and each employee or annuitant shall contribute a portion of the cost of providing the benefit coverage afforded under the approved health benefit plan in which the employee or annuitant is enrolled.

[¶] . . . [¶]

(c) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the health benefit plan or plans

in which he or she is enrolled less the portion thereof to be contributed by the employer. The employer contribution for each employee or annuitant shall commence on the effective date of enrollment.

4. CalPERS bears the burden of demonstrating that it appropriately corrected a mistake on January 1, 2025, and that it appropriately denied respondent's subsequent requests. (Gov. Code, § 20160, subd. (d); Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"].) The applicable standard of proof is a preponderance of the evidence. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) The term "preponderance of the evidence" means "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1387–1388.)

5. CalPERS established by a preponderance of the evidence that it made a mistake in January 2019 when it placed and kept respondent in a holding plan through December 31, 2024, providing him with coverage and benefits under the Basic Plan while charging him for the lower cost of the Medicare Supplement Plan and reimbursing his Medicare Part B premiums. Once respondent became a Medicare annuitant who resided overseas, CalPERS should have enrolled him in the Basic Plan if respondent desired comprehensive health coverage overseas. CalPERS appropriately corrected its mistake on January 1, 2025, to comply with applicable law. Indeed, CalPERS is required to correct its own mistakes. (Gov. Code, § 20160, subd. (b).)

Moreover, CalPERS reasonably and equitably decided not to seek retroactive reimbursement for the higher costs associated with the Basic Plan and the Medicare

Part B premiums between 2019 and 2024. (See Gov. Code, § 20160, subd. (e).) Even though respondent received Basic Plan coverage and benefits during that period for which he did not pay, respondent was not to blame for CalPERS's mistake.

Finally, in January 2025, CalPERS also provided respondent an opportunity to enroll in the Basic Plan retroactive to January 1, 2025, and going forward, thus allowing for uninterrupted comprehensive medical coverage in Switzerland. However, respondent declined due to the increased costs associated with the Basic Plan.

6. CalPERS also established by a preponderance of the evidence that it appropriately denied respondent's subsequent request for retroactive enrollment into the Basic Plan from 2019 through the present, without requiring respondent to pay additional member contributions.

As an initial matter, retroactively enrolling respondent in the Basic Plan from 2019 through December 31, 2024 would serve no practical purpose. During that period, respondent received Basic Plan coverage and benefits[4] but was only charged for the lower cost of the Medicare Supplement Plan. He also received reimbursement of his Medicare Part B premiums. Nevertheless, as noted above, CalPERS does not seek any retroactive reimbursement for this period. Thus, respondent actually received a substantial windfall due to CalPERS's mistake. Notably, if CalPERS had enrolled

[4] To the extent respondent suggests that he was improperly denied coverage for overseas prescription medications during this period of Basic Plan coverage and benefits, that issue falls outside the scope of this appeal. Moreover, respondent provided no evidence that he had initiated and exhausted review of any such denial within the plan or with CalPERS.

respondent in the Basic Plan in January 2019 as he requested, he would have had to pay higher plan premiums and would not have received reimbursement of his Medicare Part B premiums from 2019 through 2024.

Moreover, once CalPERS corrected its mistake and took respondent out of the holding plan in January 1, 2025, it appropriately demanded that respondent pay the higher costs associated with the Basic Plan going forward, if he chose to enroll in it. Enrollment in a health benefit plan serves as authorization to deduct any contributions required from an annuitant's allowance. (Gov. Code, § 22830, subd. (b).) Although respondent receives 100 percent of the employer contribution, it is insufficient to cover the monthly cost of the Basic Plan. Thus, respondent must pay the difference if he enrolls in the Basic Plan. (Gov. Code, § 22870.)

7. To be sure, respondent's confusion and frustration about his CalPERS health coverage was understandable given CalPERS's at times confusing and conflicting communications. However, at bottom, respondent received a windfall between 2019 and December 31, 2024, and was given an opportunity to maintain uninterrupted comprehensive medical coverage in Switzerland starting on January 1, 2025. Although the court is sympathetic to respondent's financial circumstances and reportedly precarious legal situation in Switzerland, neither it nor the Board has discretion to depart from the binding statutes governing CalPERS.

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ORDER

The appeal of respondent Michael F. Britt is DENIED.

DATE: October 2, 2026

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings