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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 INS 01407

Virginia Twiford Petitioner, v. North Carolina State Health Plan Respondent.	**FINAL DECISION**

THIS CONTESTED CASE came on to be heard before the Honorable Karlene S. Turrentine, Administrative Law Judge, on September 15, 2022 in the Historic Halifax County Courthouse in Halifax County, North Carolina, pursuant to N.C. Gen. Stat. § 150B-23 and Petitioner's contested case Petition appealing Respondent's Denial of Exception Request to Terminate [Petitioner's] Spouse's 2022 Health Benefit Coverage ("Notice") issued March 24, 2022, which asserts that Petitioner failed to request said termination in a timely manner. Also before the Tribunal was Respondent's Motions for Judgment on the Pleadings and for a Stay/Continuance pending the Tribunal's decision on judgment on the pleadings, both filed August 18, 2022. (On August 26, 2022, the Undersigned issued an Order Denying Respondent's Motion for Stay/Continuance and noticing that the Motion for Judgment on the Pleadings to be heard on September 15, 2022, just prior to the hearing on the merits of the contested case.)

Appearing on behalf of Respondent-North Carolina State Health Plan ("the Plan") was Special Deputy Attorney General Tamara Van Pala Skrobacki, and Petitioner Virginia Twiford appeared on her own behalf *pro se*. (Following the parties' opening arguments, the Tribunal found and concluded that there were issues of fact still remaining, the Undersigned denied Respondent's Motion for Judgment on the Pleadings and the case went on to be heard on its merits.)

WITNESSES

For Petitioner:

The Petitioner testified on her own behalf and called no other witnesses.

For Respondent:

The Respondent presented testimony from Howard Michael, Respondent's Senior Manager for Customer Experience.

EXHIBITS

For Petitioner:

EXHIBIT NO.	PETITIONER'S EXHIBITS ADMITTED WITHOUT OBJECTION
1	Petitioner's emails with Erren Gibbs (October 15, 2021)
2	Petitioner's emails with Erren Gibbs (December 10, 2021)
3	Petitioner's emails with Erren Gibbs (February 16, 2022)

For Respondent:

EXHIBIT NO.	RESPONDENT'S EXHIBITS ADMITTED WITHOUT OBJECTION
1	Highlighted excerpt from SHP's 2022 70/30 Benefits Booklet
2	Active Subscribers Rate Sheet
3	Redacted Exception Request
4	Respondent's Denial Letter with redacted attachment
5	Qualifying Life Event supporting documentation notice
6	Petitioner's Appeal Letter (March 2, 2022)

ISSUES

1. Did Respondent err in denying Petitioner's request to disenroll her husband from the State Health Plan at any time during the thirty (30) days following the Qualifying Life Event of his turning sixty-five (65) on January 15, 2022, and thereby becoming eligible for Medicare?

2. If the answer to issue #1 is affirmative, to what remedy is Petitioner entitled?

APPLICABLE STATUTES AND REGULATIONS

N.C. Gen. Stat. § 150B *et seq.*
N.C. Gen. Stat. § 135, Art. 3B *et seq.*
26 C.F.R. § 1.125-4
25 N.C.A.C. 12 .0101

BASED UPON the pleadings all the documents and exhibits received and admitted into evidence and, having carefully considered the sworn testimony of the witnesses presented at the hearing, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the following Findings of Fact, the Undersigned weighed all the evidence and assessed the credibility of the many witnesses, taking into account the appropriate factors for judging credibility including but not limited to: a) the demeanor of each witness; b) any interests, bias, or prejudice the witness may have; c) the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; d)

whether the testimony of the witness is reasonable, and; e) whether the witness' testimony is consistent with all other believable evidence in the case.

AFTER CAREFUL CONSIDERATION of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following:

FINDINGS OF FACT

1. The North Carolina State Health Plan for Teachers and State Employees, a division of the NC Department of State Treasurer ("the Plan" or "Respondent"), is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees, and their dependents.

2. It is undisputed that Petitioner is a kindergarten teacher's assistant in North Carolina and, thereby, a member of the Plan.

3. The Plan holds an Open Enrollment every year during which time eligible employees, teachers, and retirees ("Plan members") may enroll and/or make election changes for themselves and/or their spouses for the next plan year.

4. For plan year 2022 (hereinafter, "PY 2022"), the Plan held Open Enrollment from October 11, 2021, until October 29, 2021, during which time Plan members could make whatever changes they wished to their plan coverage.

5. Outside of the Open Enrollment window, Plan members must demonstrate that they have a Qualifying Life Event ("QLE") in order to be able to make changes to their coverage for the plan year.

6. According to the Plan's own document entitled State Health Plan Required Documentation for Qualifying Life Events & Dependent Eligibility: "Employees must upload documents into eBenefits ***or provide supporting documentation to their Health Benefits Representative*** to verify the QLE in accordance with State Health Plan rules **within 30 days of the QLE** or 60 days of becoming entitled to or losing eligibility for Medicaid…." Resp's Exh. 5, p.1 (emphasis added). This document is part of the Plan's 2022 Benefits Booklet.

7. Additionally, prior to and throughout Open Enrollment, the Plan informed members via emails, webinars, website information, and written materials, that Plan members had several contacts to whom they could reach out to obtain information and assistance in getting enrolled or making changes to their coverage, specifically in pertinent part: the Plan's Customer Service call line, the Plan's Eligibility and Enrollment Center call line, the Plan's website and, their employer's Health Benefits Representative ("HBR") or Human Resources officer. However, A member's health benefits representative is the *only* way a member can obtain face-to-face assistance.

8. On January 15, 2022, Petitioner's husband turned 65 and became eligible for Medicare coverage.

9. *When* Mr. Twiford became eligible for Medicare is a contentious issue in that, **all** of Respondent's advertisements, emails, mailings, website postings and Benefits Booklet specifically state a member has 30 days from the Qualifying Life Event (as outlined in FOF, ¶6 above) to make changes. *See* Resp's Exh. 5. Yet, because *Medicare* grants eligibility to a person on the first day of the month in which the person turns 65 *and* since *Medicare* will not prorate the cost for a partial month, Respondent asserts that Petitioner, a Plan member must have made changes regarding Medicare between the 1st and 31st of January, 2022.[1]

10. Nevertheless, according to Respondent's Plan documents, Petitioner's eligibility to remove her husband from her coverage *should have run from January 15, 2022, to February 14, 2022.*

11. It is undisputed that Petitioner began researching her options and working on getting him covered by Medicare. Petitioner contacted her HBR on October 15, 2021, three (3) months prior to her husband's birthday, to advise that her husband was turning 65 in January and inquire about removing him from her Plan coverage. The evidence at trial revealed the HBR was relatively new and erroneously told Petitioner that her plan "will still cover him but [Petitioner will] have the choice to remove him during open enrollment and get [Medicare P]lan B if it is cheaper." Pet's Exh. 1. Based on this advice, Petitioner and her husband continued working with Medicare to complete the task of getting him enrolled therein.

12. Later, in an exercise class with friends, one of her classmates told her about qualifying events but they did not mention any timelines therefore.

13. Petitioner thereafter reached out to her HBR again on December 10, 2021 and asked directly whether her husband's qualifying for Medicare in January was a "lifechanging" [sic] event and if she could remove him from her insurance. The HBR responded "Yes and yes" but the HBR did not tell Petitioner there was a specific window in which it must be done. Pet's Exh. 2.

14. Petitioner testified credibly at trial that she visited with the HBR twice between December 10, 2021, and the end of January and each time, the HBR (Ms. Erren Gibbs) called one of the numbers from the Plan's contact list. On one visit, Ms. Gibbs called the Enrollment Center and, on another visit, she called the Plan's customer service line. Both calls were placed on speaker so Petitioner could hear the conversations. The Plan employees gave Ms. Gibbs instructions and Petitioner understood Ms. Gibbs would handle the rest. However, in February it became apparent to Petitioner that her husband had still not been removed from her health insurance.

15. Petitioner reached out to Ms. Gibbs yet again on February 16, 2022, and Ms. Gibbs gave her the same information as before—which, at that time, proved to be inadequate and inaccurate. Pet's Exh. 3.

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[1] It is clear Respondent's rationale is faulty in that, if counting January 1 as the first day of eligibility, then January 30 would be the 30th (and last) day of eligibility. If, in fact, members born in months with 31 days get the full 31 days to make changes, then members born in every other month are "gipped" as they are only given the 30 days of April, June, September, November to make their changes. Moreover, as noted later in this Decision, Respondent argues that members are not entitled to notice of this strange rule which is nowhere to be found within their documents.

16. The Plan's Benefit Booklet states that State Health Plan members have the responsibility to "[n]otify your employer and the State Health Plan if you have any other group coverage or become eligible for Medicare." 70/30 PPO Plan Benefits Booklet (2022), p.3.

17. It is uncontroverted that Petitioner notified her employer's HBR and, while in the HBR's office, they together notified the State Health Plan that her husband was becoming eligible for Medicare. Yet, the Plan did not do its due diligence to assist her in removing her husband from the Plan.

18. Respondent's only witness, Howard Michael, the Senior Manager for the Plan's Customer Experience, testified that Petitioner should have called his office directly *"if she doubted what her HBR was telling her."* **He testified that with a simple call to his office, someone there could have uploaded online Petitioner's removal request on the spot.** But Mr. Michael had no response of what else Petitioner should have done when she *did not* doubt what her HBR told her. Petitioner had no reason to doubt what Ms. Gibbs was telling her—at least not until Respondent issued notice that the very thing for which she had been asking for four (4) months was now being denied her. In light of Ms. Gibbs' failures, Respondent took the position that, even though the Plan trains and certifies the HBRs of the various agencies of the State (including Ms. Gibbs), those HBRs do not work for the Plan and thus, the Plan is not responsible if members are given poor or inaccurate information.

19. Mr. Michael admitted that "members are encouraged by the Plan to contact their HBR for help."

20. Mr. Michael stated Petitioner alternatively could have removed her husband during Open Enrollment which lasted "two or three weeks in October [2021]". Mr. Michael subsequently admitted that Petitioner's husband was not eligible for Medicare coverage until January 2022.[2]

21. **Respondent argued that the Benefits Booklet told Petitioner everything she needed to know** and others she could have called for assistance. Contrarily, Petitioner argued that the State had stopped providing hardcopy Benefits Booklets which was a problem for her because she did not have internet access or a computer at home. Mr. Michael testified that, "as noted in the benefits book," Petitioner could have requested a copy of the book. But when the Tribunal asked, "Wouldn't a person have to have access to a copy of the book to know what the book said?" Mr. Michael agreed they would. (Even so, it became clear the Benefits Booklet and Respondent's position regarding Petitioner's issue are divergent.)

22. Mr. Michael initially said he never received a call from Petitioner and Ms. Gibbs but later stated that he remembered talking to one or the other but did not remember which one. He was, however, certain they did not ask him anything about removing Mr. Twiford from Petitioner's plan coverage. When asked what they did discuss with him, he said he had no memory of the call.

[2] No one explained to Petitioner that because Open Enrollment is for the following January 1-December 31 and Medicare would allow Mr. Twiford to join on January 1, there would be no lapse in coverage if he were removed from the Plan during Open Enrollment 2021. Further, as all Respondent's documentation started change events on the date of the change, it was logical (*and correct from the documentation*) for Petitioner to understand if she removed her husband during Open Enrollment, he would have had a lapse in coverage—from January 1 to at least January 14.

23. Calls to Mr. Michael's division of the Office of the Treasurer, State Health Plan, are not recorded. It is incumbent upon the agent who receives the call to make note of each call. Only calls to vendors (i.e., Blue Cross Blue Shield, United Healthcare, etc.) are recorded. Yet, Mr. Michael admitted that even though he spoke to either Petitioner or Ms. Gibbs, he believed it was during the appeals process, he did not remember the call and, he did not make note what was discussed on the call.

24. Even later in Mr. Michael's testimony, he remembered he "spoke to Petitioner for the first time on February 25, 2022 [and]…to the best of his knowledge, it was just Petitioner" on the phone. Mr. Michael has "no knowledge of whether any of his employees spoke to Petitioner or Ms. Gibbs" at any time.

25. Yet, based on this testimony—even after having spoken to Petitioner on February 25, 2022, Petitioner's exception form was not submitted until February 28, 2022…and then, by Ms. Gibbs. Resp's Exh. 3. When asked why he did not enter the exception when he spoke to Petitioner on the 25th, Mr. Michael responded, "A member has to specifically ask to make an election change. Unless asked, we would not make any changes." Still, the record is replete with evidence that removing her husband from her health plan coverage was the ***only thing*** for which Petitioner repeatedly asked, sought, and reached out for help.

26. Respondent initially asserted it sent notice to Petitioner on November 2, 2021, advising of the qualifying life event soon to come and giving details as to what Petitioner needed to do. Petitioner denies this, credibly testifying that neither she nor her husband received any such notice. At trial, Mr. Michael admitted notice was sent to Mr. Twiford and *not* Petitioner. Nevertheless, evidence offered by Respondent does not reflect *any* named party to whom notice was sent. *See* Resp's Exh. 4, p.2.

27. When asked what was the point of giving notice to Mr. Twiford when he had no authority to remove himself from the Plan, Mr. Michael stated that Mr. Twiford was a "member" and so he absolutely could remove himself from the Plan. The Tribunal inquired whether it was true that: a) the Petitioner alone—as the State's employee[3]—had the authority to add her spouse to her Plan, and; b) the Petitioner alone—as the State's employee—was the only one with whom the State had a contract which granted Petitioner and her spouse coverage and granted the State the authority, right and obligation to pay itself from Petitioner's paycheck for the coverage each month, and; c) no non-employee had either the right to change the agreement between the State and its employee nor the obligation to pay for any coverage provided for under the State/employee agreement. Mr. Michael admitted all the Tribunal's inquiries were correct and true.

28. Thereafter, Respondent took the position that: a) it had no legal obligation to give Petitioner notice; b) the notice to Mr. Twiford was simply a "courtesy", and; c) therefore, it did not matter that Petitioner did not receive it. Granted, the Tribunal has been unable to find a statute or rule requiring such notice to be given. However, the 2022 Benefits Booklet upon which Respondent relies states, in pertinent part:

> "**Please read this benefits booklet carefully so that you will understand your benefits.** … If any information in this booklet conflicts with North Carolina state

[3] The Tribunal notes that throughout this decision, the words "employee" and "teacher" are used interchangeably when referring to health coverage under the Plan.

law or it conflicts with medical policies adopted under your health benefit plan, North Carolina law will prevail, followed by medical policies. If any of the *Blue Cross NC* medical policies conflict with the *State Health Plan* medical policies or benefits…the *State Health Plan* medical policies and benefits will be applied.

. . .

The *State Health Plan* mails a Medicare eligibility letter prior to your 65th birthday that outlines your coverage options once you become Medicare eligible and the timelines for making any changes."

Resp's Exh. 1, pp. *i* & 71 (emphasis in original with underlining added).

29. On March 1, 2022, Respondent denied Petitioner's request for an exception stating only, that "[t]he enrollment window for this event has ended." Resp's Exh. 3.

30. On March 2, 2022, Petitioner filed her appeal of the denial with the Plan. Resp's Exh. 6.

31. On March 24, 2022, Respondent sent Petitioner notice that it was denying her Appeal of Denial of Exception Request to terminate your depended spouse's 2022 health benefit coverage. Resp's Exh. 4. In that letter, Respondent states, in pertinent part:

> "[Y]our spouse initially became eligible for Medicare on January 1, 2022. Your husband was also mailed a letter (attached) dated November 2, 2021, which provided information about the timeline for enrolling in Medicare and terminating Plan coverage. The letter stated that any change to your dependent's health benefit elections must have been made within thirty days of the date your spouse became eligible for Medicare, in your husband's case, by January 31, 2022. You did not request to make the change until February 28, 2022, beyond the thirty-day window for a change of elections after a qualifying life event."

Id.

32. Petitioner timely appealed to this Tribunal the agency's final decision.

BASED UPON THE FOREGOING findings of fact, the Undersigned makes the following

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. N.C.G.S. § 150B-23(f) and § 135-48.24(a).

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*,

210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. At all times relevant hereto, Petitioner was a teacher and an eligible and enrolled "subscriber" or "member" of the North Carolina State Health Plan for Teachers and State Employees. N.C.G.S. §§ 135-1(13) and 135-48.47. Petitioner was also entitled to enroll her spouse an "eligible dependent." N.C.G.S. § 135-48.40(d)(7).

4. The burden of proof is on Petitioner to show by a preponderance of the evidence that she requested to have her husband terminated from her health plan coverage prior to the closing of the window for making qualifying life event changes. N.C.G.S. § 150B-25.1(a).

5. The evidence is uncontroverted that Petitioner began asking her HBR for assistance to remove her husband from the Plan some three (3) months prior to the qualifying life event. Moreover, there is competent evidence that during the months of December and January, Petitioner and her HBR reached out to Respondent for assistance to do the same.

6. Mr. Michael initially said those calls did not occur. Then Mr. Michael admitted remembering he spoke with *either* Petitioner or Ms. Gibbs but he made no notes of the call and has no memory what the call was about. There was no evidence presented at trial to show Petitioner and Ms. Gibbs did not call Respondent for help. To the contrary, Petitioner's uncontroverted testimony solidified that they did call Respondent and, since Petitioner had no other reason to contact the Plan but to have her husband removed from her plan coverage, Mr. Michael's admission that he received a call from Petitioner or her HBR regarding her, tends to show Petitioner did her due diligence to have her husband removed in a timely fashion.

7. Moreover, when Mr. Michael later admitted speaking with Petitioner in February about appealing the initial denial, he also admitted that he still did not file the requested paperwork on her behalf—though he acknowledged he could have done so. Instead, he suggests that Petitioner *must not have asked for* such—even though that is the *only* reason for Petitioner's continued reaching out.

8. Thus, a preponderance of the evidence supports that just as Respondent failed in February 2022 to assist Petitioner in filing the requested *appeal* paperwork, Respondent also failed in December 2021 and January 2022 to assist Petitioner when she and the HBR timely asked to remove Petitioner's husband from her coverage *prior to* the expiration of the QLE change window.

9. Petitioner's request for assistance was timely. Respondent erred in failing to assist Petitioner with her request to remove her husband as a covered dependent from the State Health Plan as requested on October 15, 2021, December 10, 2021, and in her two (2) calls in December, 2021 and January, 2022, contrary to its own rules, as set out in its 2022 "70/30 PPO Plan Benefits Booklet."

10. Respondent argues the HBR is not their employee. Yet, all of Respondent's offered ways of obtaining help directed Petitioner to her HBR. Clothed with apparent and actual authority to act on Respondent's behalf, the HBR spoke with Petitioner several times—as did

someone in Mr. Michael's department—all for the purpose of removing Mr. Twiford from Petitioner's health plan coverage. Mr. Michael would suggest Petitioner failed to use some magic words because no one got the job done; but there can be no doubt that Petitioner continued to seek assistance to have her husband removed from her plan coverage and, even when she called the Plan directly—Mr. Michael himself—she was not given the assistance requested.

11. Where, as in this case, Petitioner reasonably relies on the representations of Respondent to her own detriment, the doctrine of equitable estoppel bars Respondent from subsequently denying Petitioner the relief she seeks on the grounds that she failed to disenroll her husband from the health plan within 30 days of his January 15, 2022, birthday. *Gore v. Myrtle/Mueller,* 362 N.C. 27, 33, 653 S.E.2d 400, 405 (2007).

12. Respondent erred in denying Petitioner's election to disenroll her husband from the State Health Plan, made within 30 days of his enrollment in Medicare, effective January 1, 2022 (or January 15, 2022), on the grounds that the election was made more than 30 days from the occurrence of a "qualifying event." N.C. Gen. Stat. § 135-48.42(e); 26 CFR § 1.125-4(e).

13. Petitioner met her burden of proving by a preponderance of the evidence that Respondent erred in denying her many requests to disenroll her spouse from the State Health Plan effective January 2022. N.C. Gen. Stat. § 150B-25.1(a).

14. Furthermore, regarding notice, the 2022 Benefits Booklet—listing the parties' rights and responsibilities—is part of the State's *contract* with its teachers and employees and, thereby, the State has waived any defense of sovereign immunity related to claims therefore. ("[W]henever the State of North Carolina, through its authorized officers and agencies, enters into a valid contract, the State implicitly consents to be sued for damages on the contract in the event it breaches the contract [] …and in causes of action on contract, …the doctrine of sovereign immunity will not be a defense to the State. *Smith v. State*, 289 N.C. 303, 320, 222 S.E.2d 412, 423–24 (1976).)

15. Pursuant to its contracted promise in its Benefits Booklet, the State had an obligation to notice Petitioner of her husband's Medicare eligibility and the related "timelines for making any changes []" to her family's health care plan coverage. 2022 Benefits Booklet, p.71. Although Respondent asserted it noticed Petitioner's husband, Petitioner stated neither she nor her husband received notice and, the notice of record filed by Respondent has no name thereon. Thus, there is no evidence in the record to show the Plan gave Petitioner the required notice.

16. Having concluded that Respondent did not give notice Petitioner of her husband's Medicare eligibility, the timeline for when Petitioner had to remove her husband from her plan did not trigger. As such, Petitioner cannot be held to be untimely even in her February 28, 2022, request to Respondent for such removal.

BASED UPON the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED that:

1. Petitioner's spouse shall be considered to have been removed from the Plan, effective February 1, 2022; and,

2. Respondent shall refund Petitioner all premium payments for dependent coverage, for Mr. Twiford, made for the month of February 2022 up to the present, after deducting the amount of the payments the Plan has made to providers on Mr. Twiford's behalf for services rendered during that same period.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision**. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision**. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

SO ORDERED.

This the 21st day of November, 2022.

Karlene S Turrentine
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 21st day of November, 2022.

Chesseley A Robinson
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