

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 INS 11279

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MEGHAN ROSE GARSON-ANGERT )  
Petitioner, )  
 )  
vs. )  
 )  
 )  
BCBS OF NC, STATE EMPLOYEE HEALTH )  
PLAN )  
Respondent )

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**FINAL DECISION**

This matter comes on before the undersigned Donald W. Overby, on Respondent’s Motion for Summary Judgment (“the Motion”), submitted on May 21, 2013. Petitioner submitted response thereto on June 4, 2013. On June 6, 2013, the undersigned denied Respondent’s May 21, 2013 Motion for Summary Judgment. The case was set for hearing before the undersigned on June 24, 2014. At hearing, after reconsidering the Motion, the issue in this matter, arguments of the parties, the pleadings and relevant legal authorities, the undersigned concluded that this is a matter proper for summary judgment.

**APPEARANCES**

For Petitioner: Meghan Garson-Angert  
Nancy Garson-Angert  
117 Hunters Ridge Rd.  
Chapel Hill, NC 27517

For Respondent: Heather H. Freeman  
Special Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

**ISSUE**

Whether Respondent substantially prejudiced Petitioner’s rights, acted erroneously or acted arbitrarily or capriciously when it denied Petitioner’s claim for formula, a non-covered benefit under Petitioner’s PPO plan?

## **RELEVANT STATUTES AND POLICIES**

N.C. Gen. Stat. Chap. 135; N.C. Gen. Stat. Chap. 150B, Article 3; and, the State Health Plan PPO Benefits Booklet.

## **FINDINGS OF FACT**

1. Respondent is an agency of the State of North Carolina, and offers health care benefits to eligible active and retired employees and their enrolled dependents in accordance with the applicable North Carolina General Statutes, the benefit booklet for Respondent's preferred provider organization (hereinafter "PPO") plan, and Respondent's health care policies. Blue Cross Blue Shield of North Carolina ("BCBSNC") is the claims processing contractor for the State's PPO plan.

2. At all times relevant to the issues in this contested case, Petitioner Meghan Garson-Angert was a member of Respondent's Standard PPO plan. Meghan Garson-Angert is the adult daughter of Nancy Garson-Angert in this matter, and is a covered dependent under the health care coverage with the Respondent. Meghan Garson-Angert suffers from auto-immune disease and is allergic to any food protein.

3. During 2012, Petitioner requested coverage of a formula for Megan under her health benefit plan with the State Health Plan. For sustenance Megan requires the medical formula which is by prescription only. Respondent does not contest that the formula is a medical necessity.

4. Petitioner's requests for coverage for the formula were denied as non-covered. Petitioner filed an internal appeal of the denial of coverage. The denial of coverage for the formula was upheld on internal appeal by BCBSNC and Petitioner was notified by letter dated November 20, 2012.

5. In the November 20, 2012 letter, Petitioner was notified that the denial of coverage for the formula was upheld because Petitioner's PPO Plan Benefits Booklet states that the State Health Plan "does not cover food supplements or replacements, nutritional or dietary supplements, formulas or special foods of any kind". Petitioner's PPO Plan Benefits Booklet further states that the State Health Plan does not cover "anything specifically listed in this benefits booklet as not covered or excluded, regardless of medical necessity."

6. Pursuant to the signed Affidavit of Sally Morton, Clinical Pharmacist at the State Health Plan, "services, supplies, drugs or charges" that are "for food supplements or replacements, nutritional or dietary supplements, formulas or special foods of any kind" are specifically excluded from coverage under Petitioner's PPO plan with the State Health Plan and the exclusion "for food supplements or replacements, nutritional or dietary supplements, formulas or special foods of any kind" "applies to all Plan members regardless of whether the services, supplies, drugs or charges are medically necessary."

## CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter.
2. Petitioner has the burden of proof by a preponderance of the evidence, regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).
3. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its state employees, retired employees and their eligible dependents. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide healthcare coverage under optional benefit plans and benefits are to be provided under contracts between the Plan and the claims processor.
4. Respondent's State Health Plan Benefit Booklet for the Standard PPO Plan sets forth the benefits available to members.
5. Summary judgment is proper where, as here, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c) (2013). "Summary judgment is appropriate when movant proves that an essential element of a claim is nonexistent or that the opposing party cannot produce evidence to support an essential element of his claim." Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 452 S.E.2d 233, 240 (1994).
6. To avoid summary judgment, the nonmovant "must come forward with facts, not mere allegations, which controvert the facts set forth in the moving party's case." Graham v. Hardee's Food Systems, Inc., 121 N.C. App. 382, 386, 465 S.E. 2d 558, 560 (1996).
7. As there are no genuine issues of material fact at issue in this matter precluding entry of judgment as a matter of law, the Respondent is entitled to summary judgment as a matter of law.

## DECISION

Based on the forgoing Findings of Facts and Conclusions of Law, it is hereby recommended that the Respondent's Motion for Summary Judgment be **GRANTED**.

## NOTICE

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 the date it was placed in the mail as indicated by the date on 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.

This is a **Final Decision** pursuant to N.C. GEN. STAT. § 150B-36(c).

**IT IS SO ORDERED.**

This the 17th day of September, 2014

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Donald W. Overby  
Administrative Law Judge