

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 INS 00799

## FINAL DECISION

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

## **EXHIBITS ADMITTED INTO EVIDENCE**

For the Petitioner: Exhibits 1-2

For the Respondent: Exhibits 1-3

## **WITNESSES**

For the Petitioner: Kathy Fields

For the Respondent: Connie Rominger, Medical Team Lead, Blue Cross Blue Shield of North Carolina

## **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 booklets for Respondent's preferred provider organization (hereinafter "PPO") plans, and Respondent's health care policies.

2. Blue Cross Blue Shield of North Carolina ("BCBSNC") is the third party administrator for the State's healthcare plans. As the State Health Plan's third party administrator, BCBSNC processes State Health members' claims on behalf of the State Health Plan.

3. At all times relevant to the issue in this contested case Petitioner Kathy Fields was a member of Respondent's 70/30 PPO Plan. The Petitioner had received a copy of the then current 70/30 PPO Plan Benefits Booklet.

4. On August 13 2014, at 11:56 am, Petitioner emailed her employer's health benefits consultant, Nancy Maltais, to inquire about coverage under her 70/30 PPO Plan. In the email, Petitioner specifically inquired about coverage for a breast pump.

5. Two minutes later, Ms. Maltais responded that she too could not locate the information about coverage for breast pumps in the 70/30 Benefits Booklet. Ms. Maltais suggested that Petitioner call Respondent's Customer Service and gave her the toll free number. (Pet. Ex. 1)

6. Almost four and a half hours later, at 4:23 pm on the same day, Petitioner called the number supplied by Ms. Maltais and spent nine minutes on the phone call. (Pet. Ex. 1)

7. Thereafter, Petitioner ordered a breast pump from Byram Healthcare. By invoice dated September 23, 2014, Byram sought payment for \$216.74, and Petitioner now seeks that amount as payment for the breast pump. Byram's invoice notes "NON-COVERED ITEM PER BENEFIT PACKAGE." (Rsp. Ex. 1)

8. In September 2014, Petitioner requested coverage of a breast pump under her health benefit plan with the State Health Plan. Petitioner's request for coverage for the breast pump was denied as non-covered.

9. Petitioner filed an internal appeal of the denial of coverage with BCBSNC. The denial of coverage for the breast pump was upheld on internal appeal by BCBSNC and Petitioner was notified by letter dated December 17, 2014.

10. In the December 17, 2014 letter, Petitioner was notified that the denial of coverage for the breast pump was upheld because Petitioner's 70/30 PPO Plan Benefits Booklet states that "your health benefit plan does not cover charges for breast pumps."

11. The December 2014 letter does not deny that Petitioner called Respondent; only that there is no notation that the customer service representative advised Petitioner that the pump was covered.

12. Even after the denial, apparently Petitioner telephoned Respondent and was told that Respondent had her entered as being on the 80/20 plan which might have accounted for some of the confusion.

8. In the "What is NOT Covered" section of Petitioner's 70/30 PPO Plan Benefits Booklet, it states that Petitioner's "health benefit plan does not cover services, supplies, drugs or charges . . . for breast pumps." Breast pumps are covered in the 80/20 Plan.

### **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 third party administrator.

4. Respondent's State Health Plan Benefit Booklet for the 70/30 PPO Plan sets forth the benefits available to members. There is no question that Petitioner's 70/30 PPO Plan excluded services, supplies, drugs or charges for breast pumps.

5. Case law is clear that a person is justified in relying on representations by a state agency and its representatives or agents when the inquiry is made directly to the agency or its agent/representative, even if the information given by the agent/representative is erroneous. *See, e.g., Fike v. Board of Trustees, State Employees' Retirement System*, 53 N.C. App. 78, 279 S.E.2d

910, *rev. den.* 304 N.C. 194 (1981); Stallings v. North Carolina Department of the State Treasurer Retirement Systems Division, 194 N. C. App. 372 (2008) (Unpublished opinion); Walker v. Department of State Treasurer, Retirement Systems Division, 207 N.C. App. 266 (2010)(Unpublished opinion affirming Undersigned's decision); Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N. C. App. 246 (1996), 472 S.E.2d 592 (1996), *aff'd on other grounds*, 345 N.C. 734, 483 S.E.2d 153 (1997).

6. The fact that the 70/30 Plan specifies that the pump is not covered is not controlling under the facts and circumstances of this case. Petitioner looked in the booklet on her own without success. She contacted her benefits representative, who likewise had no success in finding the answer about coverage for the pump. The Petitioner then contacted Respondent directly. The credible evidence is that she engaged in a 9 minute telephone call with Respondent. The only question was about coverage for the breast pump. From the evidence, there was no other reason for Petitioner to contact Respondent. It is only logical that Petitioner inquired of the Respondent about coverage for the pump. Why there was no documentation of that conversation is not known. There is no evidence of what Respondent contends was documented as the essence of the phone call.

7. Had Petitioner relied solely on representations made to her by Ms. Maltais, Respondent would not have been responsible since Ms. Maltais is not employed by nor acting as an agent of Respondent. Petitioner's contention that she was told by Byram Healthcare that the breast pump was covered likewise would not have been sufficient to make Respondent responsible. Likewise, Byram's notation on the invoice about coverage for the breast pump is of no consequence. In this contested case, Petitioner spoke directly with Respondent and acted in reliance on the representations of Respondent.

8. In Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N. C. App. 246 (1996), 472 S.E.2d 592 (1996), *aff'd on other grounds*, 345 N.C. 734, 483 S.E.2d 153 (1997), the Court of Appeals cites with particularity a statute which would have precluded Ms. Weibenson from participation in the retirement system for the time period at issue because she did not meet the required definition of "employee." In ruling for the Petitioner in that case, the Court of Appeals disregards that she is not an "employee" and decides the case on the basis of estoppel.

9. Estoppel is a cause of action recognized in and based on law. While it may have been founded in "equity", many if not most civil causes of action have a historical basis in equity, i. e. trying to right a wrong by doing what is fair and just. Courts of equity were created as a corollary to courts of law in order to mete out "equity" when none was available by strict adherence to the law. Those distinctions between the courts no longer exist and courts of law may rely on equity as a remedy.

10. The Office of Administrative Hearings is not a "constitutional" court and is a statutory creation and with only the authority granted to it by the General Assembly. OAH does not grant equitable relief; however, estoppel is a cause of action based in law, and is not merely an equitable remedy. Estoppel is a cause of action within the jurisdiction of the Office of Administrative Hearings. As an example, Weibenson began as a contested case in OAH, just as many other cases have.

11. Petitioner did meet her burden of proving that Respondent deprived Petitioner of property or acted erroneously by denying Petitioner's request for coverage of a breast pump.

### **DECISION**

**NOW THEREFORE, based on the foregoing**, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. It is hereby **ORDERED** that Respondent's denial of Petitioner's request for coverage of a breast pump under the State Health Plan be **REVERSED**.

### **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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, 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 the Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires services 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 2<sup>nd</sup> day of December, 2015.

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Donald W Overby  
Administrative Law Judge