

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 02135

<p>Robert Wayne Williams Jr Petitioner,</p> <p>v.</p> <p>NC State Health Plan for Teachers & State Employees Respondent.</p>	<p>FINAL DECISION</p>
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On February 29, 2016, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing Respondent's February 10, 2016 denial of Petitioner's request for the \$40.00 non-tobacco user attestation premium wellness credit for the 2016 plan year. On June 27, 2016, the undersigned conducted an administrative hearing in this case in Raleigh, North Carolina. On July 8, 2016, counsel for Respondent served Petitioner with a proposed Final Decision. Petitioner had one week to respond to Respondent's proposed Final Decision. The record in the case is now closed.

The undersigned hereby issues the Final Decision on the preponderance of the evidence presented in the case:

APPEARANCES

For Petitioner: Robert Wayne Williams
19 Shackelford Drive
Bahama, NC 27503

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 ordered Petitioner to pay a fine or civil penalty, substantially prejudiced Petitioner's rights, failed to use proper procedure, or acted arbitrarily or capriciously when it denied Petitioner the non-tobacco user attestation premium credit?

RELEVANT STATUTES AND POLICIES

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

EXHIBITS ADMITTED INTO EVIDENCE

For the Respondent: Exhibits 1-10

WITNESSES

For the Petitioner: Robert Williams

For the Respondent: Caroline Smart, Chief Operating Officer, NC State Health Plan

FINDINGS OF FACT

1. Respondent State Health Plan (“the Plan”), an agency of the State of North Carolina, is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees and their dependents.

2. Respondent held an open Annual Enrollment period in 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Respondent initially set the open Annual Enrollment period from October 1, 2015 until October 31, 2015, but later moved the enrollment period to be from October 15, 2015 until November 18, 2015 because there was a change in vendors.

3. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the CDHP PPO Plan or the 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.

4. The three wellness activities offered by the Plan were completion of a health assessment, non-tobacco user attestation, and selection of a primary care physician (“PCP”). Plan members were not required to complete any of the three wellness credits in order to participate in the Plan during the 2016 plan year; however, completion of a wellness credit resulted in a premium reduction during the 2016 plan year.

5. Starting in July 2015, Respondent began mailing materials to Plan members, including Petitioner, about the Annual Enrollment process for the 2016 plan year that contained information regarding the various health plan offerings and how to complete the three wellness credits. (Rsp. Exhibits 1-3) The exact timing of the mailings is not clear; however, the Petitioner acknowledges that he received the various mailings.

6. Respondent's Exhibit 3, a card, tells the receiver that there are three methods by which one may save money by reducing their monthly premium. There is nothing about specific instructions of how to accomplish that in this card; merely that there is a video available on line and more details will be forthcoming.

7. Prior to the Annual Enrollment period, Respondent mailed Plan members, including Petitioner, an enrollment guide titled "Welcome to 2016 Annual Enrollment! October 15-November 18, 2015" that provided information to members regarding the various health plan offerings and how to complete each of the three wellness credits. (Rsp. Exhibit 2) Petitioner acknowledges receiving the enrollment guide.

8. Page 4 of the enrollment guide is captioned "the Enhanced 80/20 Plan" in large letters across the top of the page. Members are instructed to respond to the attestation question on "eEnroll" as part of the enrollment process in order to complete the non-tobacco user attestation wellness credit; to sign onto eEnroll to select a PCP, if the member had not already done so; and to visit State Health Plan website or "update or take your assessment by phone: 800-817-7044" in order to complete the health assessment wellness credit.

9. "eEnroll" presupposes that all members have access to computers and are computer savvy. Likewise, the instructions on the second introductory and un-numbered page requires that all members must log in to shpnc.org. Even that directive is under a bolder subheading that directs the member to make changes to the plan between October 15 and November 18. (Emphasis added) Petitioner was not making any changes from the previous year.

10. Respondent acknowledges that plan members, such as Petitioner, had the option to complete open enrollment, including completion of the wellness credits, electronically or by phone. The only phone number given on page 4 of the enrollment guide, which is the only instruction page pertaining to 80/20 plan, is 800-817-7044.

11. Page 4 of the enrollment guide states that the 80/20 plan "remains the same for 2016." Indeed, the 2015 plan had likewise required plan members to access eEnroll. The only evidence is that Petitioner enrolled in 2015 successfully by telephone. The uncontroverted evidence is that Petitioner does not use the computer.

12. Page 5 of the enrollment guide is captioned "the Traditional 70/30 Plan" just as the previous page applied to the 80/20 plan. Page 5 provides additional instructions regarding how to enroll and complete wellness activities; however, there is nothing about that page to alert the member that those instructions would apply to every plan one might want to choose. In fact, by the setup of the page as compared especially to the facing page 4, it would be most reasonable to assume that those instructions applied only to the 70/30 plan. (Rsp. Exhibit 2)

13. The back page of the enrollment guide provided additional phone numbers for Plan members to call if they had questions about annual enrollment, including an 855-859-0966 number for questions about eEnroll. The back page also contained customer service phone numbers for the Respondent's pharmacy benefits manager, Express Scripts; its third party administrator, Blue Cross Blue Shield of NC ("BCBSNC"); and, a number for NC HealthSmart. (Rsp. Exhibit 2)

Other than these separate phone numbers, there is nothing to explain to members that the Respondent had multiple vendors nor which services each offered.

14. Respondent contends Plan members, such as Petitioner, could contact Respondent to confirm that they completed open enrollment and completed the wellness credits. While it was permissible, there was nothing to have put Petitioner on alert that he needed to do so, and nothing required him to do so. Petitioner was under the impression that he had done everything that he needed to do, and that was the same process which he had followed the prior year.

15. Respondent contends that if Plan members called any of the customer service numbers provided on the back page of the guide to inquire about annual enrollment or to complete wellness credits, customer service representatives with Express Scripts, BCBSNC, and NC HealthSmart would transfer them directly to the Plan's Annual Enrollment vendor to allow the member to complete annual enrollment and the wellness credits. Again, there was nothing to alert Petitioner to the need to call any number.

16. Plan members who previously selected a PCP were not required to select a PCP again during open enrollment in order to receive the credit and premium reduction, as their PCP selection rolled over from plan year to plan year. Respondent allowed Plan members to complete the health assessment prior to the open enrollment period from October 15, 2015 until November 18, 2015 in order to receive the credit and premium reduction.

17. Respondent contends that plan members are required to complete the non-tobacco user attestation wellness during the open enrollment period from October 15, 2015 until November 18, 2015. Nothing in any of the mailers says that. While it is true that those dates are displayed on the mailers, Respondent acknowledges that members could complete the PCP and health assessment prior to those dates. How is anyone to differentiate between what is accepted and what is not? There is nothing to say.

18. Respondent's instruction of page 4 of the enrollment guide indicates that there are three separate "wellness activities" which are to be completed by November 18, 2015; note that there is no start date mentioned. Each activity does have a different set of instructions. Even by the Respondent's requirements, one wellness activity was carried over, one and possibly two could be by phone and the third had to be by computer in order to receive the three individual wellness credits and the resulting premium reductions. It's difficult to decipher that information from the instructions given.

19. On September 29, 2015, prior to the open Annual Enrollment period, Petitioner called the 800-817-7044 phone number provided in the enrollment guide. Petitioner questions whether or not that is the correct date that he called Respondent; however, he offers no other date for consideration. He does not contend that the phone call was made after October 15, 2015, although he states that it could have been. The number 800-817-7044 is in the block designated to "update or take your assessment;" however, it is the only phone number given on the entire page dedicated to the instructions for the 80/20 plan.

20. Respondent understands that Petitioner's phone call was solely to complete the health assessment, one part of the wellness credits. During the phone call the Petitioner was asked questions about his smoking habits, and he assumed that he was answering questions that would satisfy the tobacco related wellness credit.

21. Petitioner states that he even asked the person to whom he was speaking if he needed to do anything else and was told that he did not. While it is not known, that person conceivably was answering that Petitioner had done all required for that particular one issue, but Petitioner's question was more global. Respondent contends that if a member called the numbers on the back page of Exhibit 2, and it was the incorrect number for the information sought, then the vendor would have directed the caller to the appropriate vendor and number. That did not happen in this instance.

22. As part of the health assessment, members are asked whether they have a PCP and if they use tobacco products. Petitioner thought that he also completed the non-tobacco attestation wellness credit when he completed the health assessment wellness credit by calling the 800-817-7044 phone number for Plan members to update or take the health assessment as provided in the enrollment guide.

23. Petitioner had previously selected a PCP and, therefore, received the PCP wellness credit and premium reduction for the 2016 plan year.

24. During the open enrollment period from October 15, 2015 until November 18, 2015, Respondent mailed Plan members, including Petitioner, a reminder postcard titled "2016 State Health Plan Annual Enrollment is Happening Now!" The postcard instructed members to "Complete your wellness activities by November 18, 2015" by visiting the State Health Plan website or calling 855-859-0966. (Rsp. Exhibit 3) Petitioner acknowledges receiving this mailer, but felt that he had already done all that he needed to do, so he disregarded this postcard.

25. Petitioner did not complete the specific non-tobacco user attestation wellness credit during the Annual Enrollment period from October 15, 2015 until November 18, 2015.

26. Petitioner did not contact Respondent to confirm that he completed all three wellness credits and that he would receive the premium reduction for each credit. There was nothing to put him on notice that he should contact Respondent to confirm that he had completed all three wellness credits. The only place in the guide that tells members that they should contact Respondent is on page 5, which is labeled for the 70/30 plan.

27. Petitioner enrolled in the 80/20 PPO Plan for the 2016 plan year. The amount of the wellness credit premium reductions for the 80/20 PPO Plan during the 2016 plan year are: \$40 monthly reduction for completion of the health assessment, \$25 monthly reduction for election of a PCP, and \$40 monthly reduction for completion of the non-tobacco user attestation. Petitioner received the \$40 reduction for completion of a health assessment on September 29, 2015 and the \$25 reduction for election of a PCP, but he did not receive the \$40 monthly reduction for the non-tobacco user attestation because he did not satisfactorily complete that wellness credit during the open enrollment period.

28. In January 2016, Petitioner was informed that he did not complete the non-tobacco user attestation wellness credit and did not receive the \$40 monthly premium reduction.

29. On January 12, 2016, Petitioner submitted an internal appeal called an exception request to Respondent in which he requested that he receive the \$40 monthly premium reduction for the non-tobacco user attestation wellness credit during the 2016 plan year. (Rsp. Exhibit 4) Petitioner would not have seen Exhibit 4 since it is an internal form for use by the agency.

30. Caroline Smart, Chief Operating Officer at the State Health Plan, reviewed Petitioner's exception request. As part of her review, Mrs. Smart reviewed Petitioner's enrollment history during annual enrollment for the 2016 plan year, as well as Petitioner's enrollment history for the 2014 and 2015 plan years. Mrs. Smart confirmed that Petitioner failed to complete the non-tobacco user attestation wellness credit during the open enrollment period October 15, 2015 until November 18, 2015 for the 2016 plan year. Mrs. Smart denied Petitioner's exception request and notified him by letter dated January 28, 2016. (Exhibit 5)

31. Ms. Smart's letter states that the "materials were clear" that the tobacco attestation had to be made during the open enrollment period. While an interpretation of the materials might come to that conclusion, it is equally correct to conclude otherwise. The Petitioner's assumptions, although incorrect in the Respondent's interpretation of its own document, is in the very least an equally reasonable interpretation.

32. During her review of Petitioner's exception request, Mrs. Smart confirmed that Petitioner successfully completed each wellness credit, including the non-tobacco user attestation wellness credit, during the open enrollment periods for both 2014 and 2015 plan years. Respondent required Plan members to complete the same processes to receive the three wellness credits for the 2014 and 2015 plan years, as were required for the 2016 plan year open enrollment. Respondent provided similar open enrollment materials to Plan members, such as Petitioner, during open enrollment for the 2014 and 2015 plan years, as provided for open enrollment for the 2016 plan year. (Exhibits 7-10)

33. Petitioner's uncontradicted testimony is that he completed the enrollment process for both 2014 and 2015 plan years on the telephone just as he did for the plan under consideration herein, the 2016 plan. He received credit for all three wellness activities for 2014 and 2015.

34. The denial of Petitioner's exception request was upheld by Respondent's Deputy Executive Administrator, Lotta Crabtree, and Executive Administrator, Mona M. Moon. Petitioner was notified by letter dated February 10, 2016. (Exhibit 6)

35. On February 29, 2016, Petitioner appealed the denial of his exception request by filing a Petition for Contested Case Hearing.

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 held an open Annual Enrollment period from October 15, 2015 until November 18, 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the CDHP PPO Plan or the 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.
5. Petitioner was required to complete all three wellness credits in order to receive the premium reductions for each credit during the 2016 plan year.
6. According to Respondent, Petitioner was required to complete the non-tobacco user attestation premium credit during the open Annual Enrollment period October 15, 2015 until November 18, 2015. Respondent allowed members to complete the wellness assessment and PCP outside of the enrollment period. There is nothing in the materials sent by Respondent that clearly makes registration for the tobacco attestation mandatory only during the open enrollment period, just as there is nothing in the materials that allows enrollment for other credits outside of that time.
7. Petitioner did not complete the non-tobacco user attestation premium credit as Respondent intended during the open Annual Enrollment period October 15, 2015 until November 18, 2015. Based upon the findings of fact in this case as set forth above, Petitioner was completely reasonable in assuming that he had successfully completed the non-tobacco user attestation credit.
8. Requiring all enrollees to access the enrollment process by computer is not reasonable. While we live in a technological age, not all state government employees, both current and retired, own a computer with internet access, have access to a computer and/or are computer literate. Respondent properly allows enrollees to enroll by telephone but the ability to do so is not articulated clearly in the information sent for this enrollment period.
9. Petitioner did meet his burden of proving that Respondent ordered Petitioner to pay a fine or civil penalty, substantially prejudiced Petitioner's rights, or failed to use proper procedure

when it denied Petitioner the \$40 monthly non-tobacco user attestation premium credit. Petitioner is entitled to the \$40 monthly premium credit during the 2016 plan year.

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 the \$40 premium credit for the non-tobacco user attestation wellness credit during the 2016 plan year 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).

This the 9th day of September, 2016.

Donald W Overby
Administrative Law Judge