

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 INS 03357

Jo Murphree Naglich, Petitioner,  v.  NC State Health Plan for Teachers & State Employees, Respondent.	<b>FINAL DECISION</b>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on July 29, 2016, in Raleigh, on the Petitioner's appeal of the denial of her request for a premium credit as a non-smoker. Following the opportunity for the parties to submit additional written arguments and proposed decisions, this Decision was prepared.

**APPEARANCES**

For Petitioner: Jo Murphree Naglich, *pro se*  
Raleigh, N.C.

For Respondent: Heather H. Freeman, Special Attorney  
General North Carolina Department of Justice  
Raleigh, N.C.

**ISSUE**

Did the Respondent substantially prejudice Petitioner's rights by failing to use proper procedure when it denied Petitioner the non-tobacco user attestation premium credit?

**RELEVANT STATUTES AND POLICIES**

N.C. Gen. Stat. § 135-48.24(a); N.C. Gen. Stat. Chap. 150B-23; 11 NCAC 01 .0401; the State Health Plan PPO Benefits Booklet, and State Health Plan enrollment materials.

**EXHIBITS ADMITTED INTO EVIDENCE**

For the Petitioner: Exhibits 1 and 2.  
For the Respondent: Exhibits 1-7

## WITNESSES

For the Petitioner: Jo Murphree Naglich, Petitioner

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

**UPON DUE CONSIDERATION** of the arguments and stipulations of the parties; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the preponderance of the evidence from the record as a whole, in accordance with the applicable law, the undersigned makes the following:

## FINDINGS OF FACT

1. Respondent State Health 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. The Petitioner Jo Murphree Naglich is a State retiree served by the State Health Plan.

3. In recent years, the Respondent has offered "Wellness premium credits" to encourage healthy behaviors among its enrollees. For calendar 2016, Respondent offered to reduce retirees' premiums by \$20 per month for selecting a "Primary Care Provider;" \$20 per month for completing an online "Health Assessment;" and, an additional \$40 per month for attesting that they were either not a "tobacco user," or enrolled in a "tobacco-cessation program." *See*, Respondent's Exhibit 2, page 3, (hereinafter, "R Ex 2, p 3.") In prior years, including 2015, Petitioner had obtained all three credits. (R Ex 6.)

4. State employees and retirees were invited to claim all three incentives during the annual enrollment period for selecting among optional insurance rates and coverages. However, the Respondent's COO testified that enrollees could complete the "Health Assessment" for credit at any time during the year, so that the assessment could be updated immediately following an annual physical, whenever it was done; and, that once an enrollee was established with a "Primary Care Provider," Respondent assumed that the credit was due, until otherwise notified. (R Ex 5.) However, due to the frequency with which smokers and former smokers change that status, it is the "industry standard" practice to request a tobacco attestation annually.

5. During the annual enrollment period for 2016 -- October 15 through November 18, 2015 -- Petitioner visited the Respondent's primary internet site for this purpose, and selected or verified the selection of her Primary Care Provider, and completed the Health Assessment on November 6, 2016. (*See*, Petitioner's Exhibit 1.) In the process of completing the Health Assessment, she stated that she was not a tobacco user.

6. However, Respondent had a separate website to register attestations for the purpose of the tobacco Wellness Credit, and did not consider answers to the tobacco question in the Health

Assessment. Respondent's primary website had a statement warning enrollees of this, and a link to the other site. Petitioner unintentionally failed to check the nonuser tobacco attestation on the secondary site.

7. When she learned in January 2016 that Respondent was not giving her the tobacco Wellness Credit, Petitioner contacted Respondent and requested it. (R Ex 4.) Respondent refused, stating that, "We were unable to find any indication that an attempt [was made] to complete enrollment online during the Annual Enrollment period." (R Ex 5.) After Petitioner sent Respondent a screenshot showing she had completed the Health Assessment, Respondent did concede that she had participated in the enrollment, but again denied the tobacco wellness credit. (R Ex 7.)

8. Petitioner testified credibly, and without contradiction, that she has never been a tobacco user. There is no evidence, inference or allegation to the contrary in the record.

9. Petitioner met the single criteria for obtaining the tobacco wellness credit against her State Health Plan monthly premiums.

10. There is no evidence or allegation in the record that it was impossible or unreasonably difficult for Respondent to give Petitioner the benefit of the tobacco wellness credit.

11. Respondent gave Petitioner due notice of her right to request a contested case hearing in the Office of Administrative Hearings (OAH) on February 10, 2016. The Petition initiating this matter was filed on April 1, 2016. The parties were given due notice of the hearing on June 24, 2016.

Based on the foregoing findings of fact, the undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. The Petition was timely filed, and the Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. § 135-48.24(a); 150B-23(f); 11 NCAC 01 .0401.

2. Petitioner bears the burden of proving at an administrative hearing, by a preponderance of the evidence, that she is entitled to relief from the action of the administrative agency. *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C.App. 697, 635 S.E.2d 442 (2006); N.C. Gen. Stat. §§ 150B-25.1(a); 150B-34(a).

3. Respondent failed to follow the proper procedure of determining whether Petitioner was entitled to the tobacco wellness premium credit by reason of not being a user of tobacco. N.C. Gen. Stat. §§ 150B-23(a)(3).

4. The preponderance, and the totality, of the evidence shows that Petitioner was not a user of tobacco.

5. Petitioner carried her burden of proving that Respondent substantially prejudiced her rights by failing to use proper procedure. N.C. Gen. Stat. § 150B-34(a).

### **DECISION**

Consequently, it is **ORDERED** that Petitioner shall receive of Respondent credit against her State Health Plan premiums or a refund equal to \$40.00 per month, and \$20.00 for her filing fee, pursuant to N.C. Gen. Stat. § 150B-23.2(a).

### **NOTICE**

**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 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 the 3rd day of October, 2016.

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J Randolph Ward  
Administrative Law Judge