

STATE OF NORTH CAROLINA  
COUNTY OF JONES

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 INS 04108

<p>Gina Boccetti, Petitioner,</p> <p>v.</p> <p>NC Department of the State Treasurer/NC State Health Plan, Respondent.</p>	<p><b>FINAL DECISION</b></p>
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**THIS MATTER** came on for hearing before the undersigned Administrative Law Judge (ALJ), Augustus B. Elkins II, at the August 18, 2016 session of the Office of Administrative Hearings (OAH) in New Bern, North Carolina. On April 22, 2016, Petitioner filed a contested case petition with the OAH appealing Respondent's April 14, 2016 denial of Petitioner's request for the \$40.00 non-tobacco user attestation premium wellness credit for the 2016 plan year.

**APPEARANCES**

**For Petitioner:** Gina Boccetti, *Pro se*  
5230 Wyse Fork Rd.  
Dover, NC 28526

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

**ISSUE**

Did the Respondent deprive Petitioner of property, order her to pay a fine or civil penalty, substantially prejudice Petitioner's rights, exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by rule or law when it denied Petitioner the non-tobacco user attestation premium credit?

**RELEVANT STATUTES AND POLICIES**

(including but not limited to)

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 1-6

**WITNESSES**

**For the Petitioner:** Gina Boccetti

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

**BASED UPON** careful consideration of 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. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

**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 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 from October 15, 2015 until November 18, 2015.
3. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the Consumer-Directed Health Plan (“CDHP”) 85/15 PPO Plan or the Enhanced 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 activities in order to participate in the Plan during the 2016 plan year; however, completion of a wellness activity resulted in a premium reduction during the 2016 plan year.

5. Plan members, such as Petitioner, had the option to complete open enrollment, including completion of the wellness activities, electronically or by phone. Respondent required completion of a separate process for each wellness activity in order to receive the three individual wellness credits and the resulting premium reductions.

6. Plan members who previously selected a PCP were not required to select a PCP again during open enrollment in order to receive the wellness 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. Respondent required Plan members to complete the non-tobacco user attestation wellness activity during the open enrollment period from October 15, 2015 until November 18, 2015.

7. Plan members, such as Petitioner, could contact Respondent to confirm that they completed open enrollment and completed the wellness activities and received the wellness credits.

8. Prior to and during open enrollment, Respondent mailed 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 activities. The open enrollment materials contained information about the plan offerings, regarding how to participate in open enrollment, and how complete the wellness activities, either telephonically or electronically. (Respondent’s Exhibits 1-4)

9. 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 included step-by-step instructions to members regarding how to complete each of the three wellness activities, including the non-tobacco user attestation wellness credit, and instructed members to save their enrollment and print out a confirmation statement to confirm their elections and completion of wellness credits for the 2016 plan year. The enrollment guide also provided contact information, including the Plan’s website and phone numbers for Plan members to call if they had questions about annual enrollment. (Respondent’s Exhibit 3)

10. 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. (Respondent’s Exhibit 4)

11. Petitioner received the enrollment guide and other Plan materials, but did not read the specific section of the enrollment guide which provided step-by-step instructions regarding how to complete each of the three wellness activities, including the non-tobacco user attestation wellness credit, and instructed members to save their enrollment and print out a confirmation statement to confirm their elections and completion of wellness credits for the 2016 plan year.

12. Caroline Smart, Chief Operating Officer at the NC State Health Plan, testified that Petitioner completed the health assessment wellness credit electronically prior to the annual open enrollment period and that Petitioner's previous PCP selection rolled over from the prior plan year, but Petitioner's enrollment history indicated that she did not complete and save the non-tobacco user attestation wellness activity during the Annual Enrollment period from October 15, 2015 until November 18, 2015. As a result, Petitioner received the PCP and health assessment wellness credits for the 2016 plan year, but did not receive the non-tobacco user attestation wellness credit.

13. Petitioner testified that she thought she completed the non-tobacco user attestation wellness activity during the Annual Enrollment period from October 15, 2015 until November 18, 2015.

14. Petitioner did not contact Respondent to confirm that she completed all three wellness activities or that she would receive the premium reduction for each credit. Petitioner also did not print out a confirmation statement to confirm that she has completed all three wellness activities for the 2016 plan year.

15. Petitioner enrolled in the CDHP 85/15 PPO Plan for the 2016 plan year. The amount of the wellness credit premium reductions for the CDHP 85/15 PPO Plan during the 2016 plan year are: \$20 monthly reduction for completion of the health assessment, \$20 monthly reduction for election of a PCP, and \$40 monthly reduction for completion of the non-tobacco user attestation. Petitioner received the \$20 reduction for completion of a health assessment and the \$20 reduction for election of a PCP, but she did not receive the \$40 monthly reduction for the non-tobacco user attestation because she did not complete and save the non-tobacco user attestation wellness activity during the open enrollment period.

16. In 2016, Petitioner learned that she did not complete the non-tobacco user attestation wellness activity and did not receive the \$40 monthly premium reduction.

17. On February 18, 2016, Petitioner submitted an internal appeal called an exception request to Respondent in which she requested that she receive the \$40 monthly premium reduction for the non-tobacco user attestation wellness credit during the 2016 plan year because she was positive that she completed all three wellness activities. (Respondent's Exhibit 5)

18. Caroline Smart 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. Mrs. Smart confirmed that Petitioner failed to complete and save the non-tobacco user attestation wellness activity during the open enrollment period October 15, 2015 until November 18, 2015 for the 2016 plan year. Mrs. Smart denied Petitioner's exception request. (Respondent's Exhibit 5)

19. The denial of Petitioner's exception request was upheld by Respondent's Executive Administrator, Mona M. Moon. Petitioner was notified by letter dated April 14, 2016. (Respondent's Exhibit 6) On April 22, 2016, Petitioner appealed the denial of her exception request by filing a Petition for Contested Case Hearing.

**BASED UPON** the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

### CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter. Petitioner timely filed the petition for contested case hearing. The parties received proper notice of the hearing in this matter. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

2. The burden of proof rests on the Petitioner challenging an agency decision. *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447 (2006). The Petitioner bears the burden of proof by a preponderance of the evidence in showing that the Agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

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 85/15 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 activities in order to receive the premium reductions for each credit during the 2016 plan year.

6. Petitioner was required to complete and save the non-tobacco user attestation wellness activity during the open Annual Enrollment period October 15, 2015 until November 18, 2015 in order to receive the non-tobacco user attestation premium credit for the 2016 plan year.

7. Petitioner did not complete and save the non-tobacco user attestation wellness activity during the open Annual Enrollment period October 15, 2015 until November 18, 2015 and is not entitled to the \$40 monthly premium credit during the 2016 plan year.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following Final Decision.

### **FINAL DECISION**

The Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required under N.C. Gen. Stat. § 150B-34.

The Undersigned holds that Petitioner failed to carry her burden of proof by a greater weight of the evidence that the Respondent erred in its denial of Petitioner's request for the non-tobacco user credit. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbears, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent to the ultimate issue and as such, 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 is **AFFIRMED**.

### **NOTICE**

**THIS IS A FINAL DECISION** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the 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 copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

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.

**IT IS SO ORDERED.**

This the 21st day of September, 2016.

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Augustus B Elkins II  
Administrative Law Judge