STATE OF NORTH CAROLINA

COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 07485

Shane H Tolliver Petitioner, v. North Carolina State Health Plan Respondent.	**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the undersigned on Respondent's Motion for Summary Judgment ("the Motion"), submitted and filed on October 20, 2016. Petitioner submitted a response thereto on or about October 30, 2016. Upon considering the Motion and memoranda, all supporting documentation, Petitioner's response, the issues in this matter, and the pleadings and relevant legal authorities, the undersigned hereby determines that there exists no genuine issue as to any material fact and that Summary Judgment for Respondent is proper. The following are the undisputed facts:

1. The NC State Health Plan (the "Plan") is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees and their dependents.

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

3. The plan year for the State Health Plan runs from January 1st to December 31st each year. At the beginning of each plan year, new deductible and coinsurance amounts are applicable to State Health Plan members. A member must pay the first health care costs each plan year as a deductible amount, after which the State Health Plan will pay medical claims subject to its coinsurance and copayment provisions according to the specific provisions of the healthcare plan the member is enrolled in for that plan year.

4. Petitioner was enrolled in the 80/20 PPO Plan during the 2015 plan year. Petitioner was a member of the Respondent's 80/20 PPO Plan and was a covered person under the Plan during the 2015 plan year at all times at issue.

5. From July 23, 2015 to August 19, 2015, Petitioner received physical therapy services from an in-network provider. Claims for the physical therapy services were submitted to BCBSNC, as the Plan's third party administrator, for payment of those services. Pursuant to the provisions of Petitioner's 80/20 PPO Plan, copayments for physical therapy visits are a maximum

of $52.00 each visit. BCBSNC applied the applicable copayments according to Petitioner's 80/20 PPO Plan to the claims submitted on behalf of Petitioner for the physical therapy services he received in 2015.

6. The State Health Plan provides member identification cards to State Health Plan members, including Petitioner, for each plan year. The member identification cards contain various information, including but not limited to the member's name, member identification number, and specific information regarding the member's copayment responsibility for certain services provided by in-network providers under their PPO Plan.

7. Petitioner was provided a member identification card for the 2015 plan year. Petitioner's member identification card for the 2015 plan year stated that Petitioner's copayment responsibility for physical therapy (PT) visits under the 80/20 PPO Plan was $52.00.

8. Benefits Booklets specific to each PPO Plan offered by the State Health Plan are made available to all State Health Plan members, including Petitioner, for each plan year. The 2015 80/20 PPO Plan Benefits Booklet, revised June 24, 2015 and the 2015 Basic 80/20 Plan Benefits Booklet, revised August 10, 2015, applied to the dates of service at issue.

9. In the "Enhanced 80/20 Plan (PPO) Summary of Benefits" section of the 2015 80/20 PPO Plan Benefits Booklet, revised June 24, 2015, it states that "copayment amounts are fixed dollar amounts the member must pay for some covered services depending on the provider network selection made at the time of service" and "[b]enefit payments are based on where services are received and how services are billed." The same language regarding the benefits at issue in this case is stated in the 2015 80/20 PPO Plan Benefits Booklet, revised August 10, 2015.

10. The "Enhanced 80/20 Plan (PPO) Summary of Benefits" section of the 2015 80/20 PPO Plan Benefits Booklet, revised June 24, 2015, states that "Short-Term Rehabilitative Therapies" include physical therapy, which requires a $52.00 copayment for in-network provider services. The same language regarding the benefits at issue in this case is stated in the 2015 Basic 80/20 Plan Benefits Booklet, revised August 10, 2015.

11. The "Understanding Your Share of the Cost" section of the 2015 80/20 PPO Plan Benefits Booklet, revised June 24, 2015, states that "[c]opayments are not credited to the benefit period deductible" and "copayments … are not included in the coinsurance maximum." The same language regarding the benefits at issue in this case is stated in the 2015 Basic 80/20 Plan Benefits Booklet, revised August 10, 2015.

12. As the State Health Plan's third party processor, BCBSNC answers and addresses customer service calls from State Health Plan members regarding Plan benefits. When a State Health Plan member contacts BCBSNC customer service regarding benefits there is an automatic pre-recorded message delivered to the caller by BCBSNC that states: "Any information about benefits and eligibility provided to you during this call does not guarantee payment. Decisions about payments will be made when the claim is reviewed."

13. As third party administrator for the State Health Plan and part of its regularly conducted business activities, BCBSNC electronically records and maintains customer service calls also known as "Service First Notes" from State Health Plan members.

14. On July 27, 2015, Petitioner contacted customer service and inquired about benefits. The BCBSNC customer service representative informed Petitioner of the benefits under his 80/20 PPO Plan for physical therapy services, including that the 80/20 PPO Plan required a $52.00 maximum per visit copayment.

15. After BCBSNC applied the applicable copayments to the claims submitted on Petitioner's behalf for the physical therapy services he received in 2015, Petitioner submitted an internal appeal to BCBSNC requesting that the copayments be waived. Petitioner alleged that after the July 27, 2015, telephone conversation he had with a BCBSNC customer service representative, he understood he would not be paying copayments.

16. BCBSNC reviewed customer service call records during Petitioner's internal appeal. BCBSNC found no record of any calls or communications between BCBSNC and Petitioner indicating that a BCBSNC customer service representative told Petitioner that he would not be required to pay a copayment for physical therapy visits.

17. By the Notice of First Internal Adverse Determination letter dated January 7, 2016, Respondent notified Petitioner that his request to waive the application of copayment amounts to his 2015 physical therapy services claims was denied during the first level internal appeal.

18. Petitioner was provided a second level appeal with BCBSNC. As part of the second level appeal, BCBSNC submitted Petitioner's appeal to an external benefit specialist outside of BCBSNC to review the case. The external benefit specialist upheld the application of copayments to Petitioner's physical therapy services pursuant to the provisions of Petitioner's 80/20 PPO Plan. By the Notice of Final Internal Adverse Determination letter dated May 20, 2016, Respondent notified Petitioner that his request to waive the application of copayment amounts to his 2015 physical therapy service claims was denied during the second level appeal.

19. Petitioner appealed Respondent's action by filing a Petition for a Contested Case Hearing in the Office of Administrative Hearings on July 18, 2016, Case No. 16 INS 07485.

20. Respondent filed its Prehearing Statements on August 13, 2016.

21. On or about September 16, 2016, Petitioner filed Prehearing Statements.

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter.

2. 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 its third party administrator.

3. Respondent's 2015 80/20 PPO Plan Benefits Booklets set forth the benefits available to Petitioner regarding the physical therapy services at issue in this matter.

4. Petitioner's claim is grounded in the theory that Respondent should be equitably estopped from asserting that he be required to make copayments when Petitioner alleged that after the July 27, 2015 telephone conversation he had with a BCBSNC customer service representative, he understood he would not be paying copayments.

5. The essential elements of an equitable estoppel claim as related to the party estopped are: (1) conduct on the part of the party sought to be estopped which amounts to a false representation or concealment of material facts; (2) the intention or expectation that such conduct will be acted on by the other party, or conduct which at least is calculated to induce a reasonably prudent person to believe such conduct was intended or expected to be relied upon; and (3) knowledge, actual or constructive, of the real facts. Hawkins v. M & J Finance. Corp., 238 N.C. 174, 177-178, 77 S.E.2d 669, 872 (1953). A party asserting estoppel must show: "(1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party sought to be estopped; and (3) action based thereon of such a character as to change his position prejudicially." Id.

6. Petitioner was provided correct information regarding his benefits and was provided notice by Respondent regarding the $52.00 copayment for physical therapy services on his member identification card and in the applicable 80/20 PPO Plan Benefits Booklets, prior to his receipt of such services from July 23, 2015 through August 19, 2015. Petitioner had the "means of knowledge of the truth as to the facts in question" and was or should have been properly informed of the $52.00 copayment applied to physical therapy services under his 80/20 PPO Plan.

7. The application of copayments to Petitioner's physical therapy services visits was proper pursuant to the stated benefits in Petitioner's 80/20 PPO Plan with the State Health Plan.

8. 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). "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).

9. 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).

10. Petitioner has come forward with only an allegation which supports his claim. Further, Petitioner has not established any facts which would controvert the facts set forth by Respondent

11. 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 undisputed facts and Conclusions of Law, Respondent's Motion for Summary Judgment is **GRANTED**.

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 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 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 7th day of November, 2016.

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David F Sutton
Administrative Law Judge