

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 INS 00663

<p>Jacklyn Sue Fannin Miracle Petitioner,</p> <p>v.</p> <p>NC State Health Plan for Teachers and State Employees NC Dept of State Treasurer Respondent.</p>	<p><b>FINAL DECISION GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT (Pursuant to N.C.G.S. 1A-1, Rule 56(c))</b></p>
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**THIS MATTER** comes before the Honorable Karlene S. Turrentine, Administrative Law Judge, pursuant to Respondent’s Motion for Summary Judgment (“Motion”), filed May 26, 2022, in which Respondent asserts that there is no genuine issue of material fact and, therefore, Petitioner’s Petition for a Contested Case Hearing (“Petition”) must be dismissed pursuant to N.C.G.S. § 1A-1, Rule 56(c), N.C.G.S. § 150B-34, and 26 NCAC 03 .0101 and .0115. Having reviewed the Parties’ pleadings, the Undersigned makes the following

**FINDINGS OF FACT**

1. Respondent North Carolina State Health Plan for Teachers and State Employees (“the Plan” or “Respondent”), is a division of the North Carolina Department of State Treasurer and, is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees, and their dependents. *Respondent’s Prehearing Statement* (“PHS”), p.1, ¶2.

2. It is undisputed that the Petitioner is a retired member of the Plan, as defined by N.C.G.S. § 135-48.1(18).

3. The Plan holds an Open Enrollment every year during which time eligible employees, teachers, and retirees (“Plan members”) may enroll and/or make election changes for the next plan year.

4. For plan year 2022 (“PY 2022”), the Plan held Open Enrollment from October 11, 2021 until October 29, 2021, during which time Plan members were offered an 80/20 plan and a 70/30 plan. *Respondent’s PHS*, p.1, ¶2.

5. PY 2022’s subscriber-only monthly premium for the 80/20 plan without the tobacco premium credit was \$110, and the subscriber-only monthly premium for the 70/30 plan was \$0.00. *Respondent’s PHS*, p.2, ¶2.

6. Eligible members were also offered the opportunity to reduce their 80/20 plan subscriber-only monthly premium by \$60 by either attesting that they were tobacco-free or that they would participate in a tobacco-cessation program (“the tobacco premium credit”). Thus, with the tobacco premium credit, the 80/20 plan would cost a Plan member \$50 per month. *Respondent’s PHS*, p.2, ¶2.

7. Prior to Open Enrollment, Plan members were informed, including via emails, webinars, website information, and written materials, that all Plan members were required to take action in order to receive the tobacco premium credit.

8. Written materials with instructions for enrolling were also sent to Plan members’ homes at the last known address the Plan had for them. Petitioner admits she received “the NC State Health Plan folded 2022 Open Enrollment booklet” along with other mail but did not see or open it until December 27, 2021 due to having been out of town. *Petition*, p.4.

9. The enrollment materials provided Plan members with, among other things, step-by-step instructions on how to complete Open Enrollment electronically, including the need to print a confirmation statement at the conclusion of the enrollment process (which included a confirmation number) for their own records. The enrollment materials also advised Plan members of the deadlines within which they must proactively respond in order to be placed in the 80/20 plan and/or take advantage of the tobacco premium credit.

10. **Plan members had the option to complete Open Enrollment online or telephonically, and the Open Enrollment materials provided both the website address and the telephone number and hours of operation for the enrollment support center.** Finally, Plan members could contact the Plan, their Health Benefits Representative or Human Resources representative, or the enrollment support center with any questions they had about Open Enrollment.

11. In her Petition, Petitioner asserts that her failure to enroll in the 80/20 plan was due to “... extreme extenuating circumstances for the 2022 Open Enrollment” period. She further states that Respondent “acted arbitrarily or capriciously [and] did not consider extenuating circumstances.” *Petition*, p.1, ¶¶3 and 5. Thereafter, Petitioner recites with excruciating detail various serious health issues experienced by her sister and mother for whom she had or took on obligations of care. *See Petition*, p.3-4 and, *Petitioner’s PHS* ¶2, *Supporting Exhibits* 4-6.

12. Petitioner lives in Pennsylvania (and her mail is sent to her home there). However, because her sister, mother and, grandchildren live out of state, Petitioner was in Illinois and Kentucky from September 19, 2021 through December 26, 2021. Petitioner returned to her home in Pennsylvania on December 27, 2021. *Petitioner’s PHS* p.3.

13. While she was away from home, Petitioner’s husband checked the mail and forwarded to her whatever he deemed important. He did not forward to Petitioner the Plan’s enrollment documents. Thus, on December 27, 2021, after returning to her residence in Pennsylvania, Petitioner discovered the North Carolina State Health Plan 2022 Open Enrollment

Booklet which her husband had placed “in a box” along with Petitioner’s other mail received during the period of time Petitioner was away from home. *Petition*, p.4.

14. On December 28, 2021, Petitioner called the Plan’s customer service department and filed her 2022 Open Enrollment Exception Request (*Petition*, p.4), which request was denied the same day. *Respondent’s PHS*, p.3, ¶2.

15. Petitioner appealed that denial on January 18, 2022 but, the Plan denied her appeal in a letter dated January 28, 2022. *See Document Constituting Agency Action* (“Final Agency Decision”), filed March 24, 2022.

16. In its Final Agency Decision, the Plan stated that Petitioner “... did not take action during the Open Enrollment period, and thus [was] automatically enrolled in the 70/30 Plan without the \$60/month Wellness Credit for completing the Tobacco Attestation. All 2022 benefit elections must be made during the Open Enrollment period. Therefore, your appeal is denied.” *Id.*

17. Petitioner filed her Petition on February 22, 2022 with the North Carolina Office of Administrative Hearings.

18. Thus, there is no dispute that Petitioner did not complete enrollment with the Plan during the Plan’s 2022 Open Enrollment period. As a result, Petitioner was automatically enrolled in the 70/30 plan and was not granted the tobacco premium credit.

19. There is no dispute that Petitioner is a “retired employee” as defined by N.C.G.S. § 135-48.1(18).

Based upon the above findings of fact, the Undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep’t of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c). “A ‘genuine issue’ is one that can be maintained by substantial evidence.” *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000).

4. The moving party bears the burden of showing that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Hensley v. Nat'l Freight Transp., Inc.*, 193 N.C. App. 561, 563, 668 S.E.2d 349, 351 (2008). "If the movant successfully makes such a showing, the burden then shifts to the non-movant to come forward with specific facts establishing the presence of a genuine factual dispute for trial." *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579, 573 S.E.2d 118, 124 (2002).

5. A Court must view the evidence in the light most favorable to the non-movant. *Dobson*, 352 N.C. at 83, 530 S.E.2d at 835. A Court may also grant summary judgment against the moving party, if appropriate, and may be done on a judge's own motion. N.C. R. Civ. P. 56(c); *Carriker v. Carriker*, 350 N.C. 71, 74, 511 S.E.2d 2, 5 (1999); *A-S-P Assoc. v. City of Raleigh*, 298 N.C. 207, 212, 258 S.E.2d 444, 447 (1979); *Stegenga v. Burney*, 174 N.C. App. 196, 198, 620 S.E.2d 302, 303 (2005).

6. As a "retired employee," Petitioner is entitled to coverage under the Plan.

7. N.C.G.S. § 135-48.42(e) provides, in pertinent part, that "Eligible employees and retirees may only change their elections, including adding or removing dependents, during the Plan year due to a qualifying event as defined under federal law."

8. Thus, the only way Petitioner is entitled to make changes outside of the Open Enrollment period is if she had a "qualifying event."

9. In reading N.C.G.S. § 135-48.42(e), it is clear that our North Carolina Legislature has placed the sole authority to define a "qualifying event" in the hands of Congress. To that end, federal law specifies that:

**(c)(1)** A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan (defined in paragraph (i)(8) of this section) to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances—

- (i)** A change in status described in paragraph (c)(2) of this section occurs; and
- (ii)** The election change satisfies the consistency rule of paragraph (c)(3) of this section.

**(2) Change in status events.** The following events are changes in status for purposes of this paragraph (c):

- (i) Legal marital status.** Events that change an employee's legal marital status, including the following: marriage; death of spouse; divorce; legal separation; and annulment.
- (ii) Number of dependents.** Events that change an employee's number of dependents, including the following: birth; death; adoption; and placement for adoption.

**(iii) Employment status.** Any of the following events that change the employment status of the employee, the employee's spouse, or the employee's dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the employer of the employee, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this paragraph (c) (e.g., if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid with the consequence that the employee ceases to be eligible for the plan, then that change constitutes a change in employment status under this paragraph (c)(2)(iii)).

**(iv) Dependent satisfies or ceases to satisfy eligibility requirements.** Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.

**(v) Residence.** A change in the place of residence of the employee, spouse, or dependent.

**(vi) Adoption assistance.** For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

26 C.F.R. § 1.125-4(emphasis in original).

10. Petitioner's reasons for requesting an exception do not come within the definition of a "qualifying event".

11. Yet, Petitioner seeks equitable relief since her request is unable to come under a qualifying event. In *Melanie Bearror v. North Carolina State Health Plan for Teachers and Employees (A Division of the Department of State Treasurer)*, 2021 WL 2457972 (N.C.O.A.H.), Docket Number 21 INS 00076, North Carolina Administrative Law Judge J. Randall May stated in paragraph 14 of his decision that, "Petitioner argues extenuating circumstances justify giving her the credit. She also argues that her family is going through financial hardship. While Petitioner's situation is sympathetic, she is requesting equitable relief based on fairness and compassion. OAH lacks jurisdiction to consider equitable arguments. See *Schauer v. N.C. State Health Plan*, No. 18 INS 02058 (OAH Aug. 20, 2018) (Bawtinheimer, ALJ) (quoting *Wojcik v. N.C. State Health Plan*, No. 09 INS 6649 (OAH Apr. 6, 2010) (Overby, ALJ)) ("[T]o the degree that Petitioner's request seeks equity relief, this Tribunal is without authority to grant equitable relief"). Unfortunately, in the case at bar, the Undersigned also concludes that this Tribunal is without authority to grant equitable relief to Petitioner.

12. With Petitioner have no qualifying event and this Tribunal without authority to grant equitable relief, Respondent is entitled to summary judgment.

Based on the foregoing Findings of Fact and Conclusions of Law,

**FINAL DECISION**

**IT IS ORDERED, ADJUDGED AND DECREED** that Respondent's Motion for Summary Judgment is hereby **GRANTED**. Petitioner's Petition is **DISMISSED** with prejudice.

**NOTICE OF APPEAL**

**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 as indicated by 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.

**SO ORDERED.** This the 31st day of May, 2022.



Hon. Karlene S. Turrentine  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 31st day of May, 2022.



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