

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 INS 05249

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| <p>Gaby E. Quinteros Petitioner,</p> <p>v.</p> <p>North Carolina Department of State Treasurer Respondent.</p> | <p>FINAL DECISION</p> |
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This contested case was heard on April 29, 2022, by Michael C. Byrne, Administrative Law Judge, at the Office of Administrative Hearings in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Gaby E. Quinteros, *pro se*
6840 Fox Landing Way, Apt. 722
Raleigh, NC 27616

For Respondent: Tamara M. Van Pala Skrobacki
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

EXHIBITS ADMITTED

Petitioner:

1. Emails
2. Screenshot
3. State Human Resources Manual

Respondent:

1. Highlighted Open Enrollment Decision Guide
2. Highlighted Open Enrollment Poster
3. Highlighted Open Enrollment Powerpoint
4. Highlighted Rule on Member Terminations and Reinstatements
5. Highlighted 2021 80/20 Benefits Booklet

6. Redacted Exception Request
7. Appeal Denial Letter

WITNESSES

Petitioner: Petitioner Gaby E. Quinteros

Respondent: Beth Horner, Director of Customer Experience, NC State Health Plan

ISSUE

Did the Respondent violate N.C.G.S. § 150B-23 when it denied Petitioner's exception request to retroactively move her to the 80/20 PPO Plan and award her the tobacco premium credit for the 2022 plan year when she did not complete annual Open Enrollment while on FMLA leave?

Based upon the testimony of the witnesses, the exhibits admitted into evidence, the governing law, and all evidence in the record, the Tribunal makes these Findings of Fact:

FINDINGS OF FACT

1. Petitioner Gaby E. Quinteros ("Petitioner") is an employee of the State of North Carolina ("State of North Carolina"). Petitioner is employed by the North Carolina Department of Health and Human Services in that agency's Division of Public Health. Petitioner was a credible witness unless as otherwise indicated. Petitioner was the sole witness in support of her contested case.
2. Ms. Beth Horner ("Horner") is Director of Customer Experience for Respondent North Carolina State Health Plan. Horner was a credible witness unless as otherwise indicated. Horner was the sole witness testifying for the North Carolina State Health Plan.
3. The North Carolina 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 in accordance with the applicable North Carolina General Statutes, the benefit booklet for Respondent's preferred provider organization ("PPO") plan, and Respondent's health care policies. The Plan is a division of the North Carolina Department of State Treasurer, an agency of the State of North Carolina. Petitioner is enrolled in the Plan and is a covered person under the Plan.
4. The Plan held annual Open Enrollment from October 11, 2021, until October 29, 2021 ("2022 Open Enrollment"), during which time eligible employees, teachers, and retirees could enroll or make election changes in the Plan for the 2022 Plan Year. Open Enrollment is the only time during the year where Plan members can make changes to their health plan without a "qualifying life event," as defined by federal law.
5. Plan members, such as Petitioner, were offered an 80/20 Plan at an employee-only

monthly premium of \$110 and a 70/30 Plan at an employee-only monthly premium of \$85. Plan members were offered the opportunity to reduce their employee-only monthly premium by \$60 by attesting they either were tobacco-free or would participate in a tobacco cessation program (“the tobacco premium credit”). With the tobacco premium credit, the 80/20 plan would cost a Plan member \$50 per month and the 70/30 plan would cost \$25 per month. Plan members who do not take action during Open Enrollment to make a selection are automatically enrolled in the 70/30 Plan. Plan members who do not affirmatively attest they were tobacco-free or would participate in cessation are automatically assumed, for practical purposes, to be tobacco users – thus causing a measurable increased cost to their premiums.

6. Petitioner has been employed with the State of North Carolina since 2016. Each year, until the time at issue in this case, Petitioner participated in Open Enrollment. Each year, Petitioner selected the 80/20 plan and completed the required attestation for the tobacco premium credit. Petitioner was and is a non-tobacco user.
7. Accordingly, Petitioner’s benefits under the Plan for the year 2021 were (a) the 80/20 Plan, and (b) the tobacco premium credit.
8. Petitioner was on duly approved FMLA maternity-related leave from August 16- November 15, 2021. Petitioner accordingly was on FMLA leave for the entire duration of the 2022 Open Enrollment period. During this period, Petitioner did not check her work emails, nor as noted, did she receive mailed promotional/information materials from the Plan. Petitioner testified credibly that she did not receive mailed materials from the Plan, and the Tribunal finds this as a fact.
9. Petitioner’s FMLA leave was paid, using sick leave time. Petitioner had no choice in using sick leave. Thus, none of Petitioner’s FMLA leave was unpaid.
10. Petitioner did not participate in Open Enrollment while on FMLA leave. This includes selecting a Plan for 2022 and completing the tobacco attestation for the tobacco premium credit.
11. As a result, the Plan automatically enrolled Petitioner in the 70/30 Plan, and treated Petitioner as though she was a tobacco user, denying her the tobacco premium credit.
12. Thus, while Petitioner was on FMLA leave, the Plan changed Petitioner’s health insurance benefits and their costs. Petitioner was changed from 80/20 to 70/30. Petitioner was changed from being treated as a non-tobacco user getting the tobacco premium credit to being treated as a tobacco user not eligible for the tobacco premium credit.
13. Petitioner, as noted, was on FMLA for purposes of maternity – i.e., giving birth. There is no evidence that the Plan made any acknowledgement of Petitioner’s giving birth as a qualifying life event for purposes of making changes to her health insurance coverage.
14. On November 18, 2021, after Open Enrollment had closed and three days after she

returned to work from maternity leave, Petitioner submitted an exception request to be moved to the 80/20 Plan with the tobacco premium credit, which the Plan denied the same day.

15. Petitioner submitted an appeal dated November 19, 2021, which the Plan denied by letter on December 2, 2021. Petitioner then appealed to OAH.
16. The Plan contends that Petitioner's exception request and appeal were denied because the Plan sent Open Enrollment materials that outlined the requirements and timelines to successfully complete 2022 enrollment and Petitioner could have completed Open Enrollment by telephone.
17. On March 8, 2022, almost 5 months after Open Enrollment ended and Petitioner submitted her exception request, Petitioner's Health Benefits Representative emailed Petitioner to inform her that she was given the tobacco premium credit erroneously. \$180.00 was recouped (taken) from Petitioner's paycheck.

Based on these Findings of Fact, the Tribunal makes the following:

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946). A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the resolution of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
2. Petitioner has the burden of proof by a preponderance of the evidence, regarding the issues presented in this contested case. N.C.G.S. § 150B-34(a) (2015).
3. The great majority of contested cases involving the Plan and Open Enrollment involve petitioners who simply failed to complete the process, were unable to complete it, or could not prove they completed it. In essence, such petitioners argue that the consequences (change in their benefits and costs) were effectively unfair. "[T]o the degree that Petitioner's request seeks equity relief, this Tribunal is without authority to grant equitable relief." Schauer v. N.C. State Health Plan, No. 18 INS 02058 (OAH Aug. 20, 2018) (Bawtinhimer, ALJ) (quoting Wojcik v. N.C. State Health Plan, No. 09 INS 6649 (OAH Apr. 6, 2010) (Overby, ALJ)).
4. To some extent, that is the case here. Petitioner's argument is one of fairness. What separates Petitioner's case from the others mentioned here is that the Petitioner in this case, during the entire 2022 Open Enrollment, was on FMLA leave. This fact changes a number of things.

5. In recognition of the growth of “single-parent households and two-parent households in which the single parent or both parents work,” the importance of parental participation “in early childrearing” and “care of family members who have serious health conditions,” the inadequacy of “employment policies to accommodate working parents,” and the lack of “job security for employees who have serious health conditions,” 29 U.S.C.A. § 2601(a), Congress enacted the Family and Medical Leave Act (“FMLA”) in 1993. In this legislation, Congress sought “to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, . . . to promote national interests in preserving family integrity,” and “to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.” Id. § 2601(b)(1)-(2). The legislature sought to “accomplish” these purposes “in a manner that accommodates the legitimate interests of employers.” Id. § 2601(b)(3). Yashenko v. Harrah’s NC Casino Co., LLC, 446 F.3d 541, 545-46 (4th Cir. 2006)
6. Leave taken under the FMLA “shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.” Id. § 2614(a)(2). Yashenko, Id.
7. As Petitioner was on approved FMLA leave, she did not check her work email and see materials from the Plan. Simply put, she did not have to. Petitioner’s employer and the Plan, while different agencies, are one and the same thing – the State of North Carolina. The State of North Carolina is not free to impose work-related performance obligations on an employee while that employee is on approved FMLA leave – other than the very minimal communications permitted under that law regarding leave status, return date, etc. The Tribunal, after extensive research, finds no legal authority supporting the Plan’s contention that Petitioner remained obligated to participate in work-related activities, including Open Enrollment, while on FMLA leave, and particularly (as here) in the absence of notice of such from her employer.
8. “Furthermore, regulations clearly provide that an employer is required to maintain an employee’s health benefits during qualified FMLA leave. 29 C.F.R. § 825.209.” Hosler v. Jay Fulkroad & Sons, No. 1:13-CV-1153, 2015 WL 3865877, at *7 (M.D. Pa. June 23, 2015). When Petitioner went on FMLA leave in August 2021, she was enrolled in the Plan’s 80/20 plan and was treated as a non-tobacco user. While Petitioner was on FMLA leave, the Plan disenrolled Petitioner from the 80/20 Plan and enrolled her in the 70/30 Plan for the 2022 year. The Plan also changed Petitioner’s status (and costs) from non-tobacco user to (effectively) tobacco user. That this is a change in Petitioner’s benefits could hardly be clearer.
9. “(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave.” 29 C.F.R. § 825.209. Here, that clearly did not occur. While Petitioner remained on her 2021 Open Enrollment Plan selection for the rest of 2021, her benefits were, for the reasons stated, not “maintained.” Rather, they were materially changed.
10. Further, under the same Federal regulation:

Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage **upon the birth of a child** or otherwise add new family members, **such a change in benefits must be made available while an employee is on FMLA leave.** If the employee requests the changed coverage it must be provided by the employer.

29 C.F.R. § 825.209(d) (emphasis supplied).

11. The Tribunal has found that Petitioner did not receive notice, as determined in the Findings of Fact, of either Open Enrollment or opportunities to change her Plan “upon the birth of a child” while on FMLA leave. Birth of a child is a “change in status” and “qualifying event” for purposes of the Plan. See N.C.G.S. § 135-48.42(e); 26 C.F.R. § 1.125-4. Petitioner’s return from FMLA leave in itself was not a qualifying event under the governing law, as none of Petitioner’s leave was unpaid.
12. In some cases the Tribunal has reviewed, there is a question of “employer” action and notice required on the one hand and an insurer on the other. Here there is no such problem. “FMLA extends to all those who controlled ‘in whole or in part’ [the employee’s] ability to take a leave of absence and return to her position.” Petty v. Carolina Biological Supply, No. 1:05CV00954, 2006 WL 2571047, at *8 (M.D.N.C. Sept. 5, 2006). The employer and the insurer here are the same in both cases: the State of North Carolina.
13. The Tribunal concludes as a matter of law that the Plan erred in this case in that:
 - a. The Plan failed to maintain Petitioner’s health benefits while Petitioner was on qualified FMLA leave, in violation of 29 C.F.R. § 825.209;
 - b. The Plan erroneously required Petitioner to participate in Open Enrollment, a work obligation, while on qualified and approved FMLA leave, on pain of being deprived of certain health care benefits (her existing 80/20 Plan and tobacco premium credit), without authority to do so;
 - c. The Plan failed to give Petitioner notice of her opportunity to change plans or benefits, both with respect to Open Enrollment and the birth of a child, the latter of which is a qualifying event, while Petitioner was on qualified and approved FMLA leave, in violation of 29 C.F.R. § 825.209; and,
 - d. The Plan erred when under these circumstances, it failed to return Petitioner to her former 80/20 Plan and tobacco premium credit status.
14. The Plan has thus deprived Petitioner of property and/or substantially prejudiced Petitioner’s rights, and additionally both acted erroneously and failed to act as required

by law or rule, in violation of N.C.G.S. § 150B-23.

15. The Plan did not act in a manner that the Tribunal determines to be arbitrary and capricious. Petitioner's direct agency employer, DHHS, failed to take appropriate steps to ensure that its employee, whom it knew to be on leave, had notice of Open Enrollment and other Plan opportunities. Ordinarily, the Tribunal will not impute agency employer errors to the plan. However, in this case, the collective State of North Carolina, which operates both agencies, acted in such a manner as to violate Federal regulations regarding FMLA coverage and health care benefits. The Tribunal is unaware of any authority permitting a State government employer to be less attentive to FMLA requirements than a private sector employer.
16. The Plan's agency action in this contested case must be **REVERSED**, and Petitioner must be granted an exception for the reasons stated herein. Petitioner should be retroactively restored to the 80/20 Plan effective 1/1/2022. Petitioner should be retroactively restored to tobacco premium credit status effective the same date. The \$160.00 taken from Petitioner should be refunded to her, as should any monies in excess of the 80/20 Plan, tobacco premium rate cost paid by Petitioner during 2022.

FINAL DECISION

Respondent's agency action is **REVERSED**. Petitioner shall be retroactively restored to the 80/20 Plan effective 1/1/2022. Petitioner shall be retroactively restored to tobacco premium credit status effective the same date. The \$160.00 taken from Petitioner shall be refunded to her, as should any monies in excess of the 80/20 Plan, tobacco premium rate cost paid by Petitioner during 2022.

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 13th day of June, 2022.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

The Tribunal 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 13th day of June, 2022.



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