

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 INS 01239

Carla Anderson Morris Petitioner, v. North Carolina State Health Plan Respondent.	FINAL DECISION
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THIS MATTER is before the Undersigned upon Respondent’s Motion for Summary Judgment (“Motion”), and accompanying filings, filed on August 4, 2022, pursuant to N.C. Gen. Stat. § 1A-1, Rule 56(c), N.C. Gen. Stat. § 150B-34, and 26 NCAC 03 .0101 and .0115. Having provided Petitioner an opportunity to file a response, and having received none, the Motion is ripe for adjudication. Upon consideration of the Motion, and accompanying exhibits, the Motion is **GRANTED**.

APPEARANCES

For Petitioner: Carla Anderson Morris, *pro se* (no response)
12412 Tappersfield Ct.
Raleigh, North Carolina 27613

For Respondent: Tamara Van Pala Skrobacki
North Carolina Department of Justice
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ISSUE

Whether Respondent correctly denied Petitioner’s untimely request to retroactively terminate her spouse’s coverage under the North Carolina State Health Plan and, as a result, whether the Office of Administrative Hearings lacks subject matter jurisdiction in this matter?

STANDARD OF REVIEW

Summary judgment shall be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(a). A factual dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is material only if it might affect the outcome of the suit under governing law. *Id.* The movant has the “initial responsibility of informing the

district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (internal citations omitted). “The burden on the moving party may be discharged by ‘showing’ . . . an absence of evidence to support the nonmoving party’s case.” *Id.* at 325. When ruling on a summary judgment motion, a court must view the evidence and any inferences from the evidence in the light most favorable to the nonmoving party. *Anderson*, 477 U.S. at 255.

UNDISPUTED FACTS

Findings of fact are neither necessary nor desirable when granting a motion for summary judgment, *Hyde Ins. Agency, Inc. v. Dixie Leading Corp.*, 26 N.C. App. 138, 142, 215 S.E.2d 162, 165 (1975), and OAH decisions granting such motions need not include such findings. A Court need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993). If the findings of fact are actually the trial court’s summation of the undisputed facts which support the judgment, findings of fact and conclusions of law do not render a summary judgment void or voidable. *Noel Williams Masonry, Inc. v. Vision Contractors*, 103 N.C. App. 597, 406 S.E.2d 605 (1991). The Tribunal thus summarizes the following undisputed facts in its legal analysis to provide context for its ruling. *Hyde Ins. Agency, Inc.*, 26 N.C. App. at 142, 215 S.E.2d at 165.

1. The North Carolina State Health Plan (“the Plan”) is a division of the 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. Petitioner is a retired member of the Plan who participated in the 2022 Open Enrollment.

2. The Plan held annual Open Enrollment from October 11, 2021 until October 29, 2021, during which time eligible employees, teachers, and retirees (“Plan members”) could enroll or make election changes for the 2022 plan year, including adding or removing dependents and spouses from their coverage. *See* Aff. of Caroline Smart ¶ a. Plan records show that Petitioner is enrolled in the Humana Group Medicare Advantage Base health plan for retirees. *See* Aff. of Caroline Smart ¶ c.

3. On October 26, 2021, during the 2022 Open Enrollment, Petitioner logged into eBenefits, the Plan’s online enrollment platform, and enrolled herself and her spouse in the Humana Base Plan for 2022. *See* Aff. of Caroline Smart ¶ c.

4. Moreover, on November 19, 2021, Petitioner called Benefitfocus, the Plan’s eligibility and enrollment services vendor, and confirmed that she had intended to enroll her husband in the Humana plan and wanted to update his date of birth. *See* Aff. of Caroline Smart at ¶ d. During a phone conversation with a Plan representative, after Open Enrollment had ended, Petitioner confirmed she had intentionally enrolled her spouse.

5. Petitioner's husband did not have Medicare in place, so he could not be enrolled in the Humana Base Plan, pursuant to Plan rule. *See* 20 NCAC 12 .0101(d), Aff. of Caroline Smart ¶ e.

6. Petitioner acknowledged, by admission in her pleadings, that she received a letter from Humana informing her that, as her husband was not on Medicare, he did not qualify for the Medicare Advantage Plan. *See* Petition, p. 5, and Pet.'s Prehearing Statement, p. 7.

7. As such, Petitioner's husband was automatically enrolled in the 70/30 PPO Plan per Plan rule:

All Group Medicare Advantage PPO Plan enrollments must be approved by the Centers for Medicare and Medicaid ("CMS"). If CMS does not approve a retiree or dependent's enrollment into one of the Plan's Group Medicare Advantage Plans, then that retiree or dependent will be automatically enrolled into the 70/30 PPO Plan. CMS can deny the enrollment into one of the Plan's Group Medicare Advantage PPO Plans for a variety of reasons including, but not limited to, enrollment into another Medicare Advantage Plan, lack of Medicare Part A or Part B, inaccurate Medicare Identification Number, or invalid address.

Resp. Ex. 1, p. 3.

8. Petitioner later filed an exception request on February 9, 2022 asking that the Plan retroactively terminate her spouse's coverage under the Plan effective January 1, 2022. This exception request was denied the same day. Petitioner's exception request was denied because it was submitted after the deadline for filing exception requests.

9. The Plan's Rule on Enrollment Exception and Appeals and the Benefits Booklet, both of which are available for member viewing and download online, informs Plan "subscribers of the rules on how to file exceptions and appeals related to enrollment related activities, including enrollment, changes in benefit elections, premiums and premium credits, and terminations" and is codified at 20 NCAC 12 .0101(a). *See* Resp. Ex. 3, p. 3, and Aff. of Caroline Smart ¶ k.

10. The Plan established an internal appeal process for members to appeal enrollment issues. Exception requests are required to be submitted within sixty (60) days of enrollment, termination, or change in benefit election; or thirty (30) days of the payroll deduction, or premium payment due date reflecting enrollment, termination, or change in benefit election, whichever is later. *See id.*

11. On April 1, 2022, Petitioner appealed by filing this contested case alleging, *inter alia*, that Respondent deprived Petitioner of property and otherwise substantially prejudiced Petitioner's rights by exceeding its authority or jurisdiction, acting erroneously, failing to use proper procedure, and acting arbitrarily or capriciously as follows:

Removed funds from my NC pension check for January 2022 as well as February 2022 without my permission or knowledge.

SHP stated on January 25, 2022 that the funds would be refunded which they did not do.

Continued to make mistakes in February by removing an additional deduction of \$425.00. These funds were not returned to me until March 12, 2022.

See Petition and attached letter.

12. On August 4, 2022, Respondent filed a Motion for Summary Judgment and accompanying filings pursuant to N.C. Gen. Stat. § 1A-1, Rule 56(c), N.C. Gen. Stat. § 150B-34, and 26 NCAC 03 .0101 alleging that Petitioner failed to submit a timely exception request, which constitutes a failure to exhaust administrative remedies, and deprives OAH of subject matter jurisdiction in this matter.

13. Additionally, Respondent alleges that Plan records establish that Petitioner intentionally added her husband as a dependent on her health plan, that the Plan did not err in enrolling her husband in the Plan, and that as a result, there is no genuine issue of material fact that Petitioner's exception request was properly denied.

14. On August 4, 2022, the Undersigned issued a Request for Response to Motion, which allowed Petitioner up to and including August 17, 2022 to file a response to Respondent's Motion. Petitioner has not filed a response as of the date of this Final Decision. Therefore, the Motion is ripe for adjudication.

CONCLUSIONS OF LAW

1. "Factual allegations in Defendants' unverified answer are not competent evidence." *Brown v. Refuel Am., Inc.*, 186 N.C. App. 631, 634, 652 S.E.2d 389, 392 (2007). In opposing a motion for summary judgment, the non-moving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." N.C. R. Civ. P. 56(e). *Dixon v. Hill*, 174 N.C. App. 252, 261-62, 620 S.E.2d 715, 721 (2005).

2. "An action is properly dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction where the plaintiff has failed to exhaust administrative remedies." *Shell Island Homeowners Ass'n v. Tomlinson*, 134 N.C. App. 217, 220, 517 S.E.2d 406, 410 (1999). It is well-settled that "[t]he right to appeal to an administrative agency is granted by statute, and compliance with statutory provisions is necessary to sustain the appeal." *Lewis v. N.C Dep't of Human Res.*, 92 N.C. App. 737, 739, 375 S.E.2d 712, 714 (1989).

3. The Office of Administrative Hearings lack subject matter jurisdiction over a contested case when a petitioner fails to follow the internal appeal procedure established by the State Health Plan, failing to exhaust administrative remedies before filing a petition for a contested case. *See, e.g., Rollinson v. N.C. State Health Plan*, Final Decision Order of Dismissal, No. 17 INS

03672, 2017 WL 6261785 (OAH Oct. 19, 2017) (noting the failure to file a timely exception request constitutes a failure to exhaust administrative remedies, which deprives OAH of subject matter jurisdiction); *Jamie Synan v. State Health Plan*, Final Decision Order of Dismissal, No. 21 INS 03141 (OAH Oct. 22, 2021) (chronicling numerous OAH decisions where motion to dismiss allowed in favor of the Plan where petitioners fail to timely file exception request and exhaust administrative remedies).

4. Petitioner's exception request was due by January 31, 2022, which is 30 days after the January premium deduction. This is also the last day where members can submit an exception request about Open Enrollment. Petitioner filed an exception request with the Plan on February 9, 2022. Thus, it was untimely. As a result, Petitioner's exception request was properly denied because it was received after the Open Enrollment exception period had ended. Therefore, Petitioner failed to timely exhaust her administrative remedies and the Office of Administrative Hearings lacks subject matter jurisdiction over this matter.

5. As the Office of Administrative Hearings lacks subject matter jurisdiction over this matter and addressing Petitioner's remaining mooted arguments raised in the Petition, *arguendo*, Petitioner advances no legal argument entitling her to relief and makes no allegations that the Plan broke the law by denying her exception request. The Plan followed the applicable statutes and Plan Rules. Thus, Petitioner cannot meet her burden of showing a violation of N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. Petitioner's allegations of errors on the part of the Plan are not supported by fact or opposing affidavit.

6. In sum, Petitioner took action during Open Enrollment and enrolled herself and her spouse in Plan coverage. Petitioner failed to submit a timely exception request, which constitutes a failure to exhaust administrative remedies and deprives the Office of Administrative Hearings of subject matter jurisdiction in this matter.

FINAL DECISION

NOW, THEREFORE, based on the forgoing Undisputed Facts and Conclusions of Law, Respondent's Motion is **GRANTED** and this matter is **DISMISSED WITHOUT 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.

IT IS SO ORDERED.

This the 30th day of August, 2022.



Stacey Bice Bawtinhimer
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.

Carla Anderson Morris
12412 Tappersfield Ct
Raleigh NC 27613
Petitioner

Tamara Van Pala Skrobacki
NC Department of Justice
tskrobacki@ncdoj.gov (served electronically on August 30, 2022)
Attorney For Respondent

This the 31st day of August, 2022.



Jerrod Godwin
Law Clerk
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