

STATE OF NORTH CAROLINA  
COUNTY OF WAYNE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
19 INS 01936

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| Mitchell Todd Smith<br>Petitioner,<br><br>v.<br><br>NC State Health Plan A Division of the<br>Department of State Treasurer<br>Respondent. | <b>FINAL DECISION</b> |
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On April 4, 2019, Petitioner filed a contested case petition with the Office of Administrative Hearings (“OAH”) appealing Respondent’s February 21, 2019 denial of Petitioner’s exception request to receive the non-tobacco user attestation wellness activity premium credit for the 2019 Plan year. On August 5, 2019, Respondent filed a Motion for Summary Judgment. On August 13, 2019, Petitioner filed a response to Respondent’s Motion. Upon consideration of Respondent’s Motion for Summary Judgment, Petitioner’s response thereto, and for good cause shown, the undersigned hereby **GRANTS** Respondent’s Motion as follows:

**APPEARANCES**

For Petitioner: Mitchell Todd Smith, *Pro Se*

For Respondent: Tamara Mary Van Pala, Special Deputy Attorney General  
North Carolina Department of Justice

**ISSUE**

Did Respondent properly deny Petitioner’s request to retroactively grant Petitioner the non-tobacco user attestation premium credit in the 70/30 Plan for 2019, along with Petitioner’s request for a refund of premiums paid, when Petitioner did not complete the non-tobacco user attestation during the annual Open Enrollment period for the 2019 plan year?

**RELEVANT STATUTES**

Chapters 135 and 150B of the North Carolina General Statutes

## FINDINGS OF FACT

1. Respondent State Health Plan (“Respondent,” “the Plan,” or “the State Health Plan”) is a division of the North Carolina Department of State Treasurer, an agency of the State of North Carolina. Pursuant to Chapter 135 of the North Carolina General Statutes, Respondent is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees, and their dependents. Chapter 135 authorizes the Plan to set benefits, premium rates, and offer wellness incentives.

2. Respondent held annual Open Enrollment from September 29, 2018 through October 31, 2018, during which time eligible employees, teachers, and retirees could enroll in the Plan, make election changes, or affect their premium amounts for the 2019 plan year.

3. For the 2019 plan year, Respondent offered two plan options for active employees: 80/20 plan and 70/30 plan. All Plan members were automatically enrolled in the 70/30 Plan for the 2019 plan year, and if a Plan member wanted to be enrolled in a different plan, the member would have to take action to elect a different plan and save their plan selection during the open enrollment period.

4. Each of the plans available to active employees during the 2019 plan year included a monthly employee premium. The 70/30 Plan included an \$85 monthly employee premium and the 80/20 Plan included a \$110 monthly employee premium. Eligible 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”).

5. 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. The open enrollment materials informed members who chose to stay enrolled in the 70/30 PPO Plan that they would pay a higher premium for employee coverage if they did not complete the non-tobacco user attestation during the Open Enrollment period.

6. Petitioner was an employee of the Department of Health and Human Services (“DHHS”) during all relevant periods at issue. Petitioner was enrolled in the 70/30 Plan with the State Health Plan during the 2018 plan year.

7. Prior to, and during, the Open Enrollment period, Respondent mailed enrollment materials to Plan members, including Petitioner, about the Open Enrollment process for the 2019 plan year that contained information regarding the various health plan offerings, how to enroll electronically, how to complete the tobacco attestation in order to receive the tobacco premium credit, as well as the contact information and hours of operation for the Eligibility and Enrollment Support Center.

8. The enrollment materials sent to State Health Plan members, including Petitioner, stated that all members would be automatically enrolled in the 70/30 Plan and if a State Health Plan member wanted to be enrolled in a different plan, the member would have to take action to change their plan election and to save their plan election during the Open Enrollment period. The materials notified members that if active members remained in the 70/30 Plan for 2019, members were required to complete the non-tobacco user attestation to receive the tobacco premium credit.

9. Plan members were informed, including via emails, phone calls, and written materials, that all Plan members would be automatically enrolled in the 70/30 plan unless a Plan member took action to be enrolled in the 80/20 plan, which required selecting that plan and saving the plan selection during the Open Enrollment period. Information and instructions on Open Enrollment and the tobacco premium credit are also available to members in the Plan's Benefits Booklet, available on the Plan's website.

10. The Open Enrollment materials provided the telephone number and hours of operation for the Eligibility and Enrollment Support Center. Plan members could contact the Plan, their Health Benefits Representative or human resources representative, or the enrollment support center with questions about Open Enrollment.

11. The enrollment materials contained the following notice:

REMINDER: All members will be automatically enrolled in the 70/30 Plan, but YOU MUST TAKE ACTION to reduce your premium. If you prefer the 80/20 Plan, YOU MUST TAKE ACTION! If you want to reduce your monthly premium on either Plan, YOU MUST TAKE ACTION by completing the tobacco attestation!

(State Health Plan Enrollment Materials)

12. The enrollment materials also provided State Health Plan members with step-by-step instructions regarding how to complete Open Enrollment electronically, which included the following notices:

You MUST click SAVE. A green congratulations message will appear once you have successfully completed your online enrollment.

.....

The choices you pick Will NOT stick Unless you SAVE them with a CLICK!

*Id.*

13. The step-by-step instructions contained in the enrollment materials further directed State Health Plan members to print a Confirmation Statement for their records.

The State Health Plan posted pictorial instructions along with the step-by-step instructions that show members the screenshots of the tobacco attestation process.

14. The State Health Plan provided the Eligibility and Enrollment Support Center, a customer service call center, for members during the Open Enrollment period. The Open Enrollment materials provided the telephone number and hours of operation for the Enrollment and Enrollment Support Center available to State Health Plan members. The Eligibility and Enrollment Support Center provided assistance to members regarding open enrollment and was administered by Benefitfocus, the Plan's eligibility and enrollment vendor.

15. There were no known or reported technical or IT issues with the online Open Enrollment system during the Open Enrollment period. There were no known or reported computer data input errors or glitches with the online Open Enrollment system during the Open Enrollment period.

16. All updates made to an individual's enrollment record, including, but not limited to, demographic updates, enrollment elections, and the completion of premium wellness activities can be viewed in the "History of Changes" report that is available to the Plan and the individual's Health Benefit Representative. The Plan's records reflect any online enrollment activity after a Plan member logs in. A review of Petitioner's "History of Changes" do not reflect any updates to his medical plan, such as completing the tobacco attestation, during Open Enrollment for the 2019 Plan Year. (Exhibit E to Smart Affidavit, Resp. Motion for Summary Judgment)

17. Petitioner's Confirmation Statement is accessible from the "Important Documents" section on the home page of the Eligibility and Enrollment System. Petitioner's Confirmation Statement shows that Petitioner is enrolled in the 70/30 plan with an \$85 monthly premium for 2019. Petitioner's Confirmation Statement also shows that between 8:12 p.m. and 8:19 p.m. on September 30, 2018, Petitioner made changes to his enrollment in his NC Flex Health Care FSA, Dependent Day Care FSA, Group Term Life, Vision, and Dental benefits. The Confirmation Statement shows that such changes were "✓ Approved by MTSMITH2." (Exhibit D to Smart Affidavit; Resp. Motion for Summary Judgment).

18. While the Confirmation Statement showed that Petitioner completed his NC Flex elections, it does not show that Petitioner completed the tobacco attestation portion of the online enrollment during the Open Enrollment period. As a result, Respondent enrolled Petitioner in the 70/30 plan but did not grant Petitioner a tobacco attestation premium credit.

19. On January 18, 2019, Petitioner submitted an exception request to the Plan, which the Plan denied on January 24, 2019. On February 5, 2019, Petitioner submitted an appeal to Respondent. Respondent denied Petitioner's appeal by letter dated February 21, 2019.

20. On April 4, 2019, Petitioner appealed the denial of his exception request by filing a Petition for Contested Case Hearing with OAH. Petitioner has not contested the plan in which he was enrolled but has asserted there was a “computer glitch” or “data input error” resulting in him not receiving the tobacco premium credit. Petitioner admits that he did not personally perform the Open Enrollment tasks. Rather, Petitioner states a secretary completed Open Enrollment for him. Petitioner did not submit a Confirmation Statement showing that he completed the tobacco attestation, nor did Petitioner submit any evidence, documentary or by affidavit from his secretary, proving that the secretary properly completed the tobacco attestation for Petitioner.

21. A preponderance of the evidence shows that Petitioner was provided sufficient notice of and instructions on how to complete the tobacco attestation in order to receive the tobacco premium credit. A preponderance of the evidence shows that Petitioner did not complete the Open Enrollment and tobacco attestation portion and that there were no known or reported technical or IT issues with the online Open Enrollment system during the Open Enrollment period.

22. A preponderance of the evidence shows that Petitioner failed to complete and save the tobacco attestation during the Open Enrollment period.

### **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. Respondent timely filed its Motion for Summary Judgment and Petitioner timely filed his response. 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. Petitioner has the burden of proof by a preponderance of the evidence regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).

3. With Chapter 135 of the North Carolina General Statutes, the General Assembly created an optional State Health Plan that provides health care benefits to eligible North Carolina teachers, state employees, retirees, and their dependents.

4. Respondent held an Open Enrollment period from September 29, 2018 through October 31, 2018, 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 2019 plan year. Plan members were automatically enrolled in the 70/30 Plan for the 2019 plan year and were required to take action during the Open Enrollment period to elect a different plan. Eligible employees, teachers, and retirees were offered the option to complete the tobacco attestation, which resulted in a reduction in their monthly premiums. To receive a \$60 premium credit for the 70/30 Plan, active members were required to complete the non-tobacco user attestation during the Open Enrollment period.

5. Petitioner was required to complete the non-tobacco user attestation during the annual Open Enrollment period to receive the premium credit for the 70/30 Plan during the 2019 plan year.

6. Petitioner concededly took no action and failed to complete the non-tobacco user attestation wellness activity during the Open Enrollment period. The record before the undersigned shows that the State Health Plan provided sufficient notice of and instructions for completing the tobacco attestation in order to receive the tobacco premium credit under the 70/30 Plan. The record shows that Petitioner failed to complete and save the non-tobacco user attestation wellness activity during the Open Enrollment period. Therefore, Petitioner is properly enrolled in the 70/30 Plan and is not entitled to the tobacco premium credit for the 2019 plan year.

7. A preponderance of the evidence shows that Petitioner did not meet his burden of proving that the State Health Plan acted erroneously or arbitrarily and capriciously when it denied Petitioner's request to grant him the tobacco premium credit for the 2019 plan year and refund the corresponding monthly premiums paid.

8. Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." N.C. Gen. Stat. § 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, 351, 452 S.E.2d 233, 240 (1994). 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).

9. Having considered Respondent's Motion for Summary Judgment, the attached Affidavit and Exhibits, and all other matters of record, the undersigned finds as fact and concludes as a matter of law that Petitioner has not produced any facts, evidence, or law that would require the State Health Plan to award Petitioner the tobacco attestation premium credit. As such, there are no genuine issues of material fact and, therefore, the State Health Plan is entitled to a judgment as a matter of law.

### **FINAL DECISION**

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby **AFFIRMS** Respondent's decision to deny Petitioner the non-tobacco user attestation premium credit for the 2019 plan year.

## 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.

This the 28th day of August, 2019.



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Melissa Owens Lassiter  
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:

Tamara Mary Van Pala  
NC Department of Justice  
[tvanpala@ncdoj.gov](mailto:tvanpala@ncdoj.gov) (served electronically on August 28, 2019)  
Attorney For Respondent

Mitchell Todd Smith  
4774 Liddell Short Cur Rd  
Seven Springs NC 28578  
Petitioner

This the 29<sup>th</sup> day of August, 2019.



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Jerrod Godwin  
Administrative Law Judge Assistant  
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