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STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 INS 03026

Jason E Poppe Petitioner, v. North Carolina State Health Plan Respondent.	**FINAL DECISION** **SUMMARY JUDGMENT** **FOR PETITIONER**

THIS MATTER is before the undersigned on the *Respondent's Motion for Judgment on the Pleadings or, in the Alternative, Motion for Summary Judgment,* and the *pro se* Petitioner's *Response to Motion*.

RECITATION OF UNDISPUTED FACTS

1. Mr. Poppe, a current employee of the Department of Transportation, timely initiated this contested case on May 23, 2019 with a Petition alleging that the Respondent Teachers' and State Employees' Retirement System of North Carolina (hereinafter, "State Employees' Health Plan" or "SHP") acted erroneously in refusing his request to cancel his daughter's dependent coverage with SHP following her marriage and enrollment, effective on or about March 12, 2019, in her husband's employer's health insurance plan. Petitioner seeks the return of premium payments for his daughter's coverage taken for April 2019 and after.

2. The Petition states that Petitioner's daughter was married to a gentleman named Pope on November 30, 2018. Mr. Pope, a veteran, reenlisted in the U.S. Army effective January 8, 2019, and was apparently covered by the Army's medical plan upon induction. See Respondent's *Motion*, Exhibit B (hereinafter, "Motion, Ex B.") The Petition states that Mr. Poppe's daughter, "was finishing Nursing school here in N.C. before being able to join her husband at Fort Polk on May 05, 2019." However, she and her father inquired about transitioning her healthcare coverage in January. The Army required that Ms. Pope personally come to her husband's duty station in Louisiana for in-processing as an Army dependent, after which she could receive her uniformed services dependent ID, and enroll in the armed services group healthcare plan, "TRICARE." On February 20, 2019, the Ft. Polk Consolidated In & Out Processing office sent Ms. Pope notice of her appointment for this purpose set for March 1, 2019, along with instructions on the original or verified documentation required for her processing. See Petitioner's Prehearing Statement, Attachment C ("P PHS, Att. C.")

3. On March 1, 2019, Ms. Pope attended the "consolidated in & out processing" appointment at Fort Polk, and obtained the Army dependent credentials to apply for Tricare coverage. On March 12, 2019, she was notified by the Army that her "new TRICARE Enrollment Card" could be attained by going online to the armed services website, entering her information, and downloading the card. (P PHS, Att. D.)

4. Petitioner's daughter's TRICARE benefits were not made available to her until she was "in processed" as an Army dependent, and subsequently received her Tricare card on or about March 12, 2019.

5. In his *Response to Motion*, Petitioner states that he knew his daughter could not get TRICARE coverage until after March 1, 2019 and did not seek to have his daughter's SEHP coverage dropped until she had the new coverage. Respondent's affidavit in support of its motion states that "Petitioner uploaded appropriate documentation on March 16, 2019 and then again on March 26, 2019 …," only. See *Affidavit of Caroline Smart*, paragraph j, appended to Respondent's Motion, ("Affidavit ¶ j.")

6. As required by Respondent, Petitioner's agency's health benefit representative ("HBR") filed an appeal on his behalf on March 26, 2019. See Respondent's Affidavit Exhibit A, *State Health Plan for Teachers and State Employees 80/20 PPO Plan Benefits Booklet January 1, 2019-December 31, 2019*, p. 2 ("Benefits Booklet pgs. 2 & 77.") The HBR asked for an enrollment exception, as authorized by 20 NCAC 12 .0101(a). She wrote that Ms. Pope's "new coverage began with her spouse under Tricare 1/8/19," and that the "30-day window is up." (Affidavit Exhibit D.) There is no apparent basis for that assumption in the record.

7. Respondent's Affidavit explains the reasoning behind the denial, and the representations on which the decision was based. "On January 8, 2019 [the date of Mr. Pope's reenlistment], Petitioner's dependent child gained group coverage under her spouse's health benefit plan, which would be considered a qualifying life event. In order to remove the dependent from his coverage, Petitioner was required to provide appropriate documentation of defendant's change in coverage within 30 days of the qualifying life event on January 8, 2019." (Affidavit ¶ i.) "… Petitioner's request was denied on March 28, 2019 based on Petitioner's failure to submit supporting documentation within the 30-day QLE [qualifying life event] window." (Affidavit ¶ l.) Respondent's "document constituting agency action," appended to its Prehearing Statement, states that, "Changes to plan elections must be made within 30 days after the qualifying life event." No other grounds for denying the exception appears in the record.

ARGUMENTS AND LAW

8. In keeping with Title 26 of the Federal Code of Regulations governing the tax status of group health plans, State employees must, "except as provided by applicable federal law," either enroll themselves and their dependents in SHP within 30 days of their employment, or enroll and disenroll during the health plan's annual enrollment period. N.C. Gen. Stat. § 135-48.42(a); 26 CFR § 1.125-4(a). Employees that do not enroll when first eligible for health insurance may "be subject to a 12-month waiting period for pre-existing health conditions[.]" N.C. Gen. Stat. § 135-

48.42(a). By preventing employees from joining and leaving the Plan based on their anticipation of healthcare expenses, SHP receives the full benefit of the risk-spreading mechanism of insurance, and thus can give members, as a group, more economical coverage.

9. The insurance schema can accommodate enrollment coinciding with genuine, verifiable changes in life circumstances, and thus "[e]ligible employees" are also allowed to "change their elections, including adding or removing dependents, during the Plan year due to ***a qualifying event as defined under federal law***." N.C. Gen. Stat. § 135-48.42(e) (emphasis added). The election to disenroll is effective on the last day of the month in which the notification of the election is received. (Benefits Booklet pg. 78.) As the "SHP Rule on Enrollment Exceptions" recognizes, it seeks to "implement[ ]" the federal laws and regulations, and that **"[t]hose laws or regulations, not this rule, shall take priority if they conflict in any way**." 20 NCAC 12 .0101(a) (emphasis added).

10. The applicable federal law provides that a "group health plan" "may permit an employee to revoke an election during a period of coverage … and to make a new election only as provided in paragraphs (b) through (g)" of 26 CFR § 1.125-4. See 26 CFR § 1.125-4(a) and (b). Section 1.125-4(b) adopts the "**special enrollment periods**" set out in 26 U.S.C.A. § 9801(f) (a/k/a, Section 9801 of the Internal Revenue Code) for individuals who have undergone a "**change in status**" as defined in Section 1.125-4(c). New employment is a "change in status" for "**the employee, the employee's spouse, or the employee's dependent."** 26 CFR §1.125-4(c)(2)(iii). Many factors may affect the eligibility of employees to elect to enroll and disenroll themselves and their dependents between annual enrollment periods. Consequently, rather than writing a rule for each of the astronomical number possible combinations of these factors, the federal regulations provide "examples" for various scenarios, which can be inferred to apply to similarly situated affected persons.

11. The situations that Respondent refers to as "qualifying life events" are "changes in status" creating "special enrollment periods" within the meaning of the federal regulations, including those applicable in this case, *i.e*., "You obtain a *dependent* through marriage …," and, "You or your *dependents* experience an employment status change that results in the loss or gain of coverage under another group health benefit plan." (Benefits Booklet pgs. 75 – 76; 26 C.F.R. §1.125-4(c)(2)(ii) through (iv).

12. When two employees can elect to ensure a dependent, the election of one to do so permits the other employee to drop the dependent from his or her coverage, as referenced in these scenarios in the federal regulations:

> Employee A's marriage to B is a change in status under paragraph [26 CFR §1.125-4](c)(2)(i) of this section, pursuant to which B has become eligible for coverage under [A's Employer] M's health plan under paragraph (c)(3)(i) of this section. Two possible election changes by A correspond with the change in status: Employee A may elect family health coverage under M's plan to cover A and B; or A may cancel coverage under M's plan, if B elects family health coverage under [B's employer] N's plan to cover A and B. Thus, M's cafeteria plan may permit A to make either election change.

26 CFR §1.125-4(c)(4) Example 1(ii).

> [I]f a[ ]… dependent gains eligibility for coverage under a family member plan (as defined in paragraph (i)(5) of this section [including "employee's spouse"]) as a result of a change in marital status under paragraph (c)(2)(i) of this section or a change in employment status under paragraph (c)(2)(iii) of this section, an employee's election under the cafeteria plan to cease or decrease coverage for that individual under the cafeteria plan corresponds with that change in status … if coverage for that individual becomes applicable or is increased under the family member plan.

26 CFR §1.125-4(c)(3)(iii). In this instance, the affected persons are a "dependent" (Ms. Pope) -- a term encompassing "children" and "spouses" -- and, "employees" (Messrs. Poppe and Pope) who have the privilege of electing and revoking group health coverage for themselves and their "dependents." The opportunity to enroll in a different group health benefits plan entails the right to cancel current coverage, provided the action satisfies the "consistency rule," discussed *infra*. Ms. Pope's opportunity to enroll in her husband's employer's TRICARE plan allowed Mr. Poppe to remove her from his SEHP coverage.

13. The "consistency rule" generally prohibits an election to drop coverage in favor of other coverage that would benefit the employee or another person in his family at the expense of another eligible dependent. See, *e.g.*, 26 CFR § 1.125-4(c)(4), Example 3., (i) and (ii). It is not clear that the consistency rule would ever prevent Ms. Pope from being insured under her husband's health plan, regardless of the comparative quality of her old and new health plans. However, it appears that SEHP's coverage is significantly less valuable to a person living out-of-State. For example, the benefit booklet that Respondent cites warns that, "When you see an out-of-network provider, you may be responsible for more of the cost," and notes that most out-of-state suppliers of durable medical equipment are out-of-network providers. (Benefits Booklet pgs. 7 and 32.)

14. Respondent's *Motion* acknowledges that, "Obtaining alternate coverage for dependents would be a qualifying life event ("QLE") under the terms of Petitioner's policy. *See* 26 C.F.R. 1.125-4; N.C.G.S. § 135-48.42(e); Benefits Booklet, pp 75-77." The motion's supporting affidavit states that, "Petitioner uploaded appropriate documentation on March 16, 2019 and then again on March 26, 2019[.]" However, Respondent continued to charge Petitioner monthly premiums for his daughter because the Plan's benefits booklet mandates that plan members seeking to remove a dependent must do so "within 30 days of the qualifying life event." Specifically, "Petitioner's request was denied on March 28, 2019 based on Petitioner's failure to submit supporting documentation within the 30-day QLD [qualifying life event] window." See Affidavit of Caroline Smart, paragraphs e., j. and l.

15. The "applicable federal law" provides that the "special enrollment period" for "dependent beneficiaries" who are eligible due to marriage to an enrolled individual "shall be a

period of **not less than 30 days and shall begin on the *later* of- (i) the date dependent coverage is made available, *or* (ii) the date of the marriage**[.]" 26 U.S.C.A. 9801(f)(2) (emphasis added); 26 C.F.R. § 54.9801-6(a)(iii) Example 3. This statute makes clear that the 30 day period does not always run from the date of the "change in status" (or "qualifying life event"), and that an otherwise qualified person's opportunity for continuous health coverage will not be defeated by the employer's practical requirements. These "special enrollment rights" were adopted by 26 CFR §1.125-4(b) from legislation intended to improve access to health care coverage, entitled "Increased portability through limitation on preexisting condition exclusions."

16. In an Article 3 contested case, "the pleadings … includ[e] both the petition and the prehearing statement," for the purpose of assessing the parties' allegations. *Lee v. N.C. Dep't of Transp.*, 175 N.C. App. 698, 703, 625 S.E.2d 567, 571 (2006), *aff'd and remanded,* 360 N.C. 585, 634 S.E.2d 887 (2006); *R.R. Friction Prods. Corp. v. N.C. Dep't of Revenue*, 2019 NCBC 12, 2019 WL 856295, 2019 NCBC 12 (N.C. Super., Feb. 21, 2019).

17. The "principal difference" between the motions under N.C. Gen. Stat. § 1A-1, Rules 12(c) and 12(b)(6) of the N.C. Rules of Civil Procedure is that the "motion for judgment on the pleadings" is properly made after the pleadings are closed, rather than before or with a required responsive pleading like the motion to dismiss for "[f]ailure to state a claim upon which relief can be granted." *Robertson v. Boyd*, 88 N.C. App. 437, 440, 363 S.E.2d 672, 675 (1988). "A motion for judgment on the pleadings is the proper procedure when all the material allegations of fact are admitted in the pleadings and only questions of law remain." *Ragsdale v. Kennedy,* 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974). "The party moving for judgment on the pleadings must show that no material issue of fact exists and that he is entitled to judgment as a matter of law." *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 682, 360 S.E.2d 772, 780 (1987) (citation omitted). In considering a motion for judgment on the pleadings, '[a]ll well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false.' As with a motion to dismiss, '[t]he trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party.' A Rule 12(c) movant must show that 'the complaint ... fails to allege facts sufficient to state a cause of action or admits facts which constitute a complete legal bar' to a cause of action." *Tully v. City of Wilmington*, 370 N.C. 527, 532, 810 S.E.2d 208, 213 (2018), quoting *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 51-52, 790 S.E.2d 657, 659-60 (2016). As with a 12(b)(6) motion, where "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." N.C. Gen. Stat. § 1A-1, Rule 12(c). "If, however, documents are attached to and incorporated within a complaint," a Petition, or a Prehearing Statement, they become part of the "pleading," and "may, therefore, be considered in connection with a Rule 12(b)(6) or 12(c) motion without converting it into a motion for summary judgment." *Bank of America v. Rice*, 244 N.C. App. 358, 370, 780 S.E.2d 873, 882 (2015). In this case, Respondent augmented its pleading with an affidavit that, in pertinent part, recited undisputed facts and the procedure followed in concluding that the Petitioners 30-day period for disenrolling his daughter from SHP began with her husband's reenlistment.

18. Summary Judgment is appropriate where the movant shows "that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law."

N.C. Gen. Stat. § 1A-1, Rule 56(c). "Rule 56 does not require that a party move for summary judgment in order to be entitled to it." *N.C. Coastal Motor Line, Inc. v. Everette Truck Line, Inc.,* 77 N.C.App. 149, 151, 334 S.E.2d 499, 501 (1985), *disc. review denied,* 315 N.C. 391, 338 S.E.2d 880 (1986). "Summary judgment, when appropriate, may be rendered against the moving party." *Erthal v. May*, 223 N.C. App. 373, 387, 736 S.E.2d 514, 523 (2012). Judgment "shall be rendered forthwith" if the pleadings and evidence of record show "that ***any*** party is entitled to judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (emphasis added). "Although a party does not have to move for summary judgment to be entitled to it, the nonmovant must be entitled to the judgment as a matter of law." *Carriker v. Carriker*, 350 N.C. 71, 74, 511 S.E.2d 2, 5 (1999). All evidence must be viewed in the light most favorable to the opposing party, taking its asserted facts as true, and drawing all reasonable inferences in its favor. *Kennedy v. Guilford Tech. Community College*, 115 N.C. App. 581, 583, 448 S.E.2d 280, 281 (1994). A factual dispute is "material" only if it might affect the outcome of the suit and "genuine" only if there is sufficient evidence for a reasonable jury to find for the opposing party. *Anderson v. Liberty Lobby,* 477 U.S. 242, 247–48 (1986).

19. Based on upon the undisputed facts of record, and the applicable statutes and regulations, the Petitioner was entitled to disenroll his "dependent" daughter from the State Employees Health Plan within 30 days of March 12, 2019, and timely sought to do so on or about that date.

FINAL DECISION

It appearing that there is no genuine issue of material fact for hearing, and that the Petitioner is entitled to summary judgment as a matter of law, Respondents' motions to dismiss are **DENIED,** summary judgment for Petitioner is **GRANTED**, the agency's denial of Petitioner's request to disenroll his dependent daughter from the State Employees Health Plan is **REVERSED**, and Respondent shall refund Petitioner the premium obtained in respect to this coverage for the month of April 2019 and since. N.C. Gen. Stat. § 150B-34(e); 1A-1, Rule 56.

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 31st day of December, 2019.

J Randolph Ward
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 December, 2019.

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