

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 INS 00087

<p>Susanne Chostner Willis, Petitioner,</p> <p>v.</p> <p>The North Carolina State Health Plan for Teachers and State Employees, Respondent.</p>	<p>ORDER GRANTING RESPONDENT'S MOTION TO DISMISS ADDITIONAL CLAIMS</p>
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THIS MATTER is before the undersigned Administrative Law Judge upon Respondent, the North Carolina State Health Plan's Motion to Dismiss Additional Claims, pursuant to N.C.G.S. § 1A-1, Rules 12(b)(1), (2), and (6), and 26 NCAC 03 .0101 and .0115. The Plan seeks an order dismissing additional claims made by Petitioner in supplemental filings to Petitioner's Response to Respondent's Motion for Summary Judgment. Petitioner seeks retroactive termination of her 2020 Plan coverage and refund of her 2020 Plan premiums. However, Petitioner seeks this relief for the first time in a responsive filing over a year later. Petitioner did not seek this relief in an internal agency appeal. Having carefully reviewed the Motion and Petitioner's response, the Undersigned concludes that Petitioner's additional claims for retroactive termination of her 2020 coverage and return of premiums are dismissed based upon grounds of lack of jurisdiction over the Plan for Petitioner's failure to exhaust administrative remedies. The following are undisputed facts:

1. On January 8, 2021, Petitioner filed her Petition seeking the termination of her Plan coverage for the 2021 Plan year. On January 27, 2021, Petitioner filed a Prehearing Statement, again, asking for the termination of her Plan coverage for 2021. No other claims were made in Petitioner's Petition or Prehearing Statement. Petitioner did not seek retroactive termination of her 2020 coverage and return of 2020 premiums in her Petition or Prehearing Statement.

2. Respondent filed its Motion for Summary Judgment and Amended Motion for Summary Judgment on April 8, 2021. Petitioner filed her response on April 22, 2021. Petitioner did not mention retroactive termination of her 2020 coverage and return of 2020 premiums in her Response.

3. On April 23, 2021, Petitioner filed another letter as an exhibit seeking retroactive termination of her coverage for the 2020 Plan year, in addition to the termination of her coverage for the 2021 Plan year, for the first time. Petitioner did not seek retroactive termination of her 2020 coverage in her agency appeal or Petition.

CONCLUSIONS OF LAW

1. “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).

2. Petitioner’s letter, filed April 23, 2021, is the first time Petitioner has asked for the retroactive termination of her 2020 State Health Plan coverage. As such, Petitioner failed to exhaust her administrative remedies and OAH lacks subject matter jurisdiction to hear those claims.

3. The Plan established an internal appeal process for members to appeal enrollment issues. The first level of internal appeal is the enrollment exception request. To make an enrollment exception request, active employee members are required to contact their Health Benefits Representative (“HBR”) and request that the HBR file an enrollment exception request with the Plan within sixty (60) days of enrollment or thirty (30) days of the payroll deduction, whichever is later. The Plan enrollment exception process is contained in the Benefits Booklet and is codified in the rule found at 20 NCAC 12.0101(a), both are available for member viewing and download online.

4. Petitioner’s exception request submitted to the plan sought the termination of her coverage for the 2021 Plan year. It was this request, and resulting appeal, that was subsequently denied by the Plan and appealed to OAH in Petitioner’s Petition. Petitioner’s request to terminate her 2020 coverage is raised for the first time in a letter filed after her Response to the Plan’s Motion for Summary Judgment. Because Petitioner did not request the relief in her agency appeal, relief is now barred because she failed to exhaust her administrative remedies. Petitioner cannot request additional relief for the first time at this stage in her appeal to OAH. Petitioner failed to follow the Plan’s internal appeal procedure when she failed to file any internal appeal regarding cancelling her enrollment and returning premiums for her 2020 coverage. Petitioner failed to exhaust her administrative remedies prior to seeking this relief in her letter. The deadline to file a first level appeal or exception request has now expired.

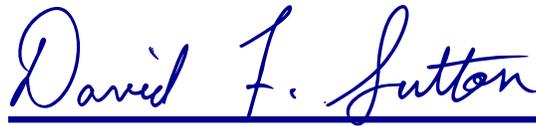
5. Ultimately, OAH lacks subject matter jurisdiction. “Petitioner failed to follow the internal appeal procedure established by the State Health Plan when she failed to timely file an internal appeal regarding her enrollment for the [2020] plan year. As such, Petitioner failed to exhaust her administrative remedies before filing her Petition.” *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). *See also Frances Arlene Harris Burke v. Dep’t of State Treas. NC State Health Plan*, Final Decision Granting Summary Judgment for Respondent, No. 19 INS 04792 (OAH May 22, 2020) (same); *Matthew Rosone v. NC State Health Plan for Teachers & Emps.*, Final Decision Order of Dismissal, No. 20 INS 05158 (OAH February 10, 2021) (same).

DECISION

Petitioner failed to exhaust her administrative remedies and OAH lacks subject matter jurisdiction. THEREFORE, the Plan's Motion to Dismiss Additional Claims is GRANTED and Petitioner's additional claims for retroactive termination of 2020 coverage and return of premiums are DISMISSED with prejudice.

IT IS SO ORDERED

This the 21st day of July, 2021.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

David F Sutton
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 21st day of July, 2021.



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