

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><b>FINAL DECISION SUMMARY JUDGMENT FOR RESPONDENT</b></p>
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THIS MATTER comes before David F. Sutton, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings on April 8, 2021. On April 22, 2021, Petitioner filed a Response to Respondent's Motion for Summary Judgment.

At issue in this contested case is the Respondent's December 15, 2020, denial of Petitioner's exception request to terminate her 2021 health benefit coverage.

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.G.S. §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).

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 permit the State Health Plan to grant Petitioner's exception request to terminate her 2021 health benefit coverage and as such, there are no genuine issues of material fact and therefore the State Health Plan is entitled to judgment as a matter of law.

In denying Petitioner's exception request to terminate her 2021 health benefit coverage, Respondent was not arbitrary or capricious, did not exceed its authority or jurisdiction, did not fail to act as required by law or rule, did not act erroneously, and did use proper procedure.

It is therefore ORDERED that summary judgment for Respondent is ALLOWED, and Respondent's denial of Petitioner's exception request to terminate her 2021 health benefit coverage is AFFIRMED.

**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 21st day of July, 2021.



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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