



State of New Jersey

DEPARTMENT OF THE TREASURY
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Acting Director

May 22, 2023

FINAL ADMINISTRATIVE DETERMINATION

[Redacted]

Dear Ms. [Redacted]:

I am writing in reference to your letter addressing the action of the School Employees' Health Benefits Commission (Commission) in denying [Redacted] appeal for enrollment of her [Redacted], in the School Employees' Health Benefits Program (SEHBP). The appeal was denied based on the regulations that govern dependent enrollment in the SEHBP. The Commission herein expands its findings of fact and conclusions of law and issues this final administrative determination.

Findings of Fact

[Redacted] became a member of the SEHBP effective July 1, 2022 when her employer, the Wayne Board of Education (Wayne), became an SEHBP participating local employer. [Redacted] is enrolled in the NJ Direct10 plan with family coverage. [Redacted] husband, [Redacted], and their children, [Redacted], are enrolled in the SEHBP as her dependents.

On July 11, 2022, the Division of Pensions and Benefits denied [Redacted] request to enroll [Redacted] in the SEHBP as her dependent because [Redacted] does not live with her. [Redacted] birthday is July 7, 1991. [Redacted] is autistic.

[Redacted] lives with his mother, [Redacted], in Alabama. [Redacted] does not claim [Redacted] as a dependent on her taxes. [Redacted] does not regularly provide more than one-half the financial support for [Redacted]

Pursuant to a court order entered March 1, 2012, in the Circuit Court of Etowah County, Alabama under Case No. DR-2011-000423.00 (Order), [Redacted] is [Redacted] main source of financial support. The Order also requires [Redacted] to pay [Redacted] child support in the amount of \$350 per month for

1 To avoid confusion, the parties are referenced by their first names. No disrespect is meant by this informality.

██████████ care and to provide health insurance for ██████████ “for as long as permissible.” ██████████ also receives Supplemental Security Income through the Social Security Administration.

On September 4, 2022, ██████████ requested a Commission appeal. The Commission heard ██████████’s appeal at its meeting on November 21, 2022, where the appeal was denied. The appeal was denied based on the regulations that govern dependent enrollment in the SEHBP.

On January 3, 2023, you requested a hearing in the Office of Administrative Law. On March 27, 2023, the Commission reviewed the relevant facts presented, including your presentation, and determined that no issue of material fact exists. Therefore, the Commission denied your request for an OAL hearing.

Conclusions of Law

“The goal of the [SEHBP] is to provide comprehensive health benefits for eligible public employees and their families at tolerable cost.” ██████████, 264 N.J. Super. 141, 151 (App. Div. 1993). The Commission has the authority to “establish the rules and regulations governing the enrollment and effective dates of coverage of dependents of employees it deems necessary or desirable.” N.J.S.A. 52:14-17.31. The Commission also has the “exclusive jurisdiction to determine disputed matters under the plan.” ██████████ Comm’n, 389 N.J. Super. 510, 513 (App. Div. 2007) (citing N.J.S.A. 52:14-17.27 to -17.28); see also N.J.S.A. 52:14-17.46.3 and N.J.S.A. 52:14-17.46.5 (analogous SEHBP statutes). “The Commission must balance its obligations of meeting the health care needs of its members with a fiduciary obligation to make the program cost effective.” ██████████ Comm’n, 337 N.J. Super. 435, 440 (App. Div. 2001).

The Federal Patient Protection and Affordable Care Act (ACA) requires any health plan that “provides dependent coverage of children . . . to make such coverage available for an adult child until the child turns 26 years of age.” 42 U.S.C. § 300gg-14. The coverage may terminate on the date of the adult child’s 26th birthday. 45 C.F.R. § 147.120(b)(2). The SEHBP exceeds the ACA’s mandate for the provision of availability of coverage only until the adult child’s 26th birthday by providing coverage for an “employee’s . . . children through the end of the calendar year in which they reach the age of 26 years.” N.J.A.C. 17:9-3.1.

The ACA allows plans to “limit[] dependent child coverage to children under age 26 who are described in [26 U.S.C. § 152(f)(1)].” 45 C.F.R. § 147.120(b)(2). The definition of child set forth in 26 U.S.C. § 152(f)(1) includes: (a) biological children, (b) stepchildren, (c) legally adopted children and (d) eligible foster children. Under the ACA, adult children are entitled to dependent coverage until the age of 26 regardless of financial dependency, place of residence, or marital status, etc. 45 C.F.R. § 147.120(b)(1).

Prior the ACA, the SEHBP limited coverage to the employee’s unmarried children under the age of 23 years who lived with the employee in a traditional parent-child relationship or, in the case of divorce, relied on the employee-parent for support and maintenance. N.J.S.A. 52:14-17.46.2(e); N.J.A.C. 17:9-3.1 (2015). “Because coverage for dependents require[d] the dependent to be substantially dependent upon the employee for support and maintenance,” unlike biological or

adopted children, stepchildren were specifically required to “reside with the employee” to be covered under the SEHBP. 35 N.J.R. 2587(a) (June 16, 2003).

In 2016, the SEHBP’s regulations were amended because “the requirements for coverage for dependent children” were preempted by the ACA, which requires coverage for adult children until age 26 and “allows children who are married and/or no longer live with the subscriber to continue to be covered as dependents.” 48 N.J.R. 784(a) (May 16, 2016). Notwithstanding the ACA’s mandate, the requirement “stepchildren liv[e] with the subscriber” was explicitly retained. 48 N.J.R. 2387(a) (Nov. 7, 2016).

The regulations governing the SEHBP also provide coverage for certain “children” with disabilities past their 26th birthday. N.J.A.C. 17:9-3.1 and -3.4. The “children” must be: (1) unmarried; (2) covered by the SEHBP prior to their 26th birthday²; (3) incapable of self-sustaining employment by reason of mental or physical disabilities prior to their 26th birthday; and (4) “substantially dependent” upon the covered employee for “support and maintenance.” N.J.A.C. 17:9-3.1 and -3.4. “Children’ includes stepchildren living with the subscriber.” N.J.A.C. 17:9-3.1 (emphasis added). Thus, under the SEHBP’s regulations, a stepchild is not a dependent “child” eligible for SEHBP enrollment as an over age child with disability if the stepchild does not live with the subscriber-employee.

The ACA’s definition of “child” only applies until age 26. Therefore, the ACA’s coverage rules for stepchildren do not preempt the SEHBP’s regulations for over age children with disabilities. A stepchild is not a dependent “child” eligible for SEHBP coverage if he does not live with the covered employee. Therefore, ██████ is not permitted to enroll in the SEHBP as ██████ dependent because he is 31 and he does not live with her.

Notwithstanding ██████ failure to satisfy the threshold definition of a “child” under the SEHBP, for the sake of completeness, the Commission briefly addresses your argument ██████ satisfies the criteria for enrollment in the SEHBP because he is “dependent on ██████ for support and maintenance” pursuant to the Order, which you assert is the “most important” factor.³ The issue is not whether ██████ is dependent on ██████ for support. The issue is whether ██████ is substantially dependent upon ██████ for support and maintenance as required by N.J.A.C. 17:9-3.1.

The Order does not raise a question of fact whether ██████ is substantially dependent upon ██████ for support and maintenance because it does not impose a legal duty on ██████. Further, according

² Children with disabilities who are age 26 or older at the time their parents obtain coverage under the SEHBP are also eligible for enrollment if the child was covered by another public employer’s group plan immediately preceding the employer’s entrance into the SEHBP. N.J.A.C. 17:9-3.4(b). ██████ satisfies this requirement for SEHBP enrollment because he was covered by ██████ private health insurance plan as ██████ dependent at the time ██████ joined the SEHBP.

³ The Commission notes the Order also states ██████ is only required to provide health insurance for ██████ “for as long as permissible.” Since it is not “permissible” for ██████ to enroll in the SEHBP as ██████ dependent, it is unclear whether a court will find ██████ is still required to provide ██████ health insurance coverage under the Order. Assuming ██████ has a continuing obligation to provide ██████ with health insurance under the Order, such an obligation is an independent obligation on ██████ alone and has no bearing on the SEHBP.

to the other documents [REDACTED] submitted for the Commission's review, [REDACTED] does not claim [REDACTED] as a dependent on her taxes or regularly provide more than one-half the financial support for [REDACTED]. Since the Order does not impose a financial obligation on [REDACTED] does not live in her home, which means he does not rely on her for shelter, there is no question of fact of whether [REDACTED] is substantially dependent upon [REDACTED] for support and maintenance.

The appeal is denied. You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,

Kelly Fields

Kelly Fields
Acting Secretary
State Health Benefits Commission