

BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
B. W. J.) OAH No. 07-0713-PER
_____) Div. R&B No. 2007-034

DECISION ON SUMMARY ADJUDICATION

I. Introduction

This is B. J.’s second appeal arising from the Public Employee Retirement System (PERS) administrator’s suspension of payments for pension benefits and medical insurance premiums pending repayment of overpayments resulting from Mr. J. securing appointment to early retirement under an incentive program using a birth certificate that misrepresented his age and hence his is eligibility for the program. The administrator’s first decision was to suspend payments because Mr. J. was indebted to PERS for an amount in excess of what could be recouped through a reduction in his monthly pension payments. That decision was affirmed on appeal.¹

Subsequently, Mr. J. asked the administrator to reinstate medical coverage while he made payments to reduce his indebtedness. The administrator denied the request and Mr. J. appealed. The administrator filed a motion for summary adjudication, asserting that Mr. J. is not entitled to medical coverage unless he is receiving a monthly retirement benefit. Mr. J. did not file an opposition to the motion. The administrator’s motion is granted.

II. Facts

B. J. applied for early retirement in 1990, under a retirement incentive program allowing individuals who were not yet eligible for retirement but were within a specified number of years of eligibility to qualify for retirement in advance of their retirement date.² He represented in his application and with what purported to be a certified copy of his birth certificate that he was born in 1943.³ He was appointed to retirement effective November 1, 1990, and began receiving benefit payments that month.⁴

The PERS administrator learned from a 2006 certified copy of Mr. J.’s birth certificate that he had been born in 1945, not 1943, and thus had not been eligible for the retirement incentive program.⁵ After Mr. J. had collected sixteen years worth of retirement benefits, the

¹ *In re B. W. J.*, OAH No. 07-0069-PER (September 10, 2007) (Hemenway, J.) (granting summary adjudication in favor of the PERS administrator).

² *Id.* at 1.

³ *Id.*

⁴ *Id.*

⁵ *See id.*

administrator notified him that he had not been eligible for the incentive program and would have been eligible for retirement, at the earliest, on August 1, 1995.⁶ The Division of Retirement and Benefits recalculated Mr. J.'s pension benefits from that date, concluded that he had been overpaid pension benefits and medical insurance premiums in excess of \$100,000, and found that with interest he was indebted to PERS for more than \$200,000.⁷

Because the amount of Mr. J.'s total indebtedness was greater than his monthly pension payment, the administrator suspended Mr. J.'s retirement benefits, including both the monthly pension benefit and medical insurance premium payments.⁸ Mr. J. appealed the suspension decision, the division moved for summary adjudication, and the motion was granted, affirming the administrator's decision.⁹

In an informal conference with the PERS administrator, Mr. J. asked that his medical coverage be reinstated in exchange for monthly payments of \$448.75 to be applied to his indebtedness.¹⁰ The administrator denied the request, explaining that a PERS member's entitlement to medical insurance "stops when the member is no longer eligible to receive a monthly benefit" and citing AS 39.35.535(b) as the basis for the decision.¹¹ Mr. J. appealed.

During a telephonic case planning conference, the parties agreed to a briefing schedule for the matter to be considered on summary adjudication.¹² The division timely filed a motion for summary adjudication on behalf of the PERS administrator.¹³ Mr. J. filed nothing in response.

III. Discussion

In administrative adjudications, the right to a hearing does not require development of facts through an evidentiary hearing when no factual dispute exists.¹⁴ Summary adjudication of an administrative appeal uses the same standard as summary judgment in court: if the material facts are undisputed, they are applied to the relevant law and the resulting legal conclusions determine the outcome. Only if the parties genuinely dispute a material fact (not legal

⁶ *Id.*

⁷ *Id.* at 2. The indebtedness was projected to be almost \$250,000 by March 2008. February 29, 2008 Affidavit of Paul Carlson at ¶ 2.

⁸ *Id.* at 1-2.

⁹ *See generally id.*

¹⁰ October 15, 2007 Letter from Shier to J. (Agency Rec. 10).

¹¹ *Id.*

¹² February 7, 2008 Order Scheduling Briefing at 1.

¹³ March 3, 2008 Motion for Summary Adjudication

¹⁴ *See Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

conclusion) is it necessary to hold an evidentiary hearing. A fact is not “material” unless it would make a difference to the outcome.¹⁵

Mr. J.’s appeal does not show that he disputes the facts concerning overpayment of benefits, but rather shows that he questions the administrator’s legal determination.¹⁶ Because he did not file an opposition to the division’s motion, Mr. J. has not disputed the facts on which the division’s motion is based.¹⁷ Accordingly, Mr. J.’s appeal can be decided on summary adjudication. The issue is simply whether the administrator is correct that AS 39.35.535(b) precludes Mr. J. from receiving PERS-provided medical coverage while he is not receiving monthly pension benefit payments.

In most pertinent part, AS 39.35.535(b) states that “major medical insurance coverage takes effect on the same date that benefits begin, and stops when the member ... is no longer eligible to receive a monthly benefit.” The subsection also goes on to say that “[t]he medical premium ... owed by a member ... shall be deducted from the benefit owed to the member...before payment of the benefit.” This reinforces the notion that medical coverage for retirees (including those required to pay premiums) is linked to receipt of benefit payments.

Under the statutory language of AS 39.35.535, Mr. J. is not entitled to medical coverage because he is not “receiving” a monthly benefit. Mr. J.’s request was that medical coverage be reinstated upon monthly payment of \$448.75 by him toward the \$200,000-plus indebtedness was properly denied. Even if he were making much larger monthly payments into the system, he would not be entitled to medical coverage until such time as his monthly payments had reduced his indebtedness to the point at which he could receive monthly benefit payments again.

In light of the undisputed facts about the amount of his indebtedness, as a matter of law, Mr. J. is not entitled to medical coverage and will not be until such time as he once again becomes eligible to receive monthly pension benefit payments. The administrator’s decision, therefore, was correct.

¹⁵ *Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968).

¹⁶ November 24, 2007 Notice of Appeal (Agency Rec. 1) (stating, as Mr. J.’s reason for appealing, that “I believe that repayment can be made by monthly short fall payments and accounted for in the same month as a Reduction in Benefit payment[; I] ask that this decision be revisited”).

¹⁷ 2 AAC 64.250(b) (requiring a party opposing a motion for summary adjudication on grounds of a fact dispute to do more than deny the moving party’s facts but instead to show a genuine dispute by affidavit or other evidence).

IV. Conclusion

Mr. J. has not identified any error in the PERS administrator’s decision. The administrator’s decision, therefore, is AFFIRMED and summary adjudication is granted to the administrator.

DATED this 19th day of May, 2009.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

Adoption

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 12th day of June, 2009.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

[This document has been modified to conform to technical standards for publication.]