

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
 J W. A) OAH No. 12-0022-PER
) Agency No. PRH2012-0109
 _____)

ORDER GRANTING SUMMARY ADJUDICATION

I. Introduction

Retired PERS member J W. A appealed the Public Employees Retirement System’s (PERS) denial of his request for a refund of \$1,080 in long-term care (LTC) premiums paid before cancelling coverage and changing to a private plan. Mr. A appealed the denial, arguing 1) that the PERS plan was subject to the same 30-day period applicable to commercial policies whereby an insured can review a policy and cancel for full refund of any premium paid and 2) that because he never received a policy from PERS, no contract exists.

The PERS requested summary adjudication, arguing 1) that PERS is not subject to the same oversight as a commercial insurer, and 2) that Mr. A accepted the PERS offer of LTC coverage when he signed the application and consideration was received when he paid his premium. Mr. A opposed the PERS request and an oral argument was heard on April 19, 2012. Because Mr. A requested LTC coverage, paid for LTC coverage, and admits during the time in question that he was covered under the PERS LTC plan, he received the benefit for which he paid and is not entitled to a refund. The PERS’s Motion for Summary Adjudication is granted and Mr. A’s argument that there was no contract because he did not receive a policy is rejected.

II. Facts

There are no material facts in dispute. PERS member J W. A retired March 1, 2011. He receives a monthly pension. As a PERS member, when applying for retirement, Mr. A had the choice to purchase optional coverage for items such as Dental-Vision-Audio, Long-Term Care, and Life Insurance. Premiums for the optional coverage offerings, if selected by the member, are automatically deducted from a member’s monthly benefit check.

Mr. A signed the application seeking optional Gold Level Long-Term Care coverage for his wife and himself. This coverage was effective March 1, 2011 when he was appointed to retirement and a premium was deducted from his retirement check.¹

¹ AR at 53, 56. Cancellation was effective July 31, 2011.

After selecting the PERS LTC plan, Mr. A began looking into private LTC insurance. It was while speaking with the private insurer that Mr. A learned of AS 21.53.050.² Under this statute, an individual has 30 days from the date he or she receives a policy to review the policy and if they so choose, to request a refund of premium.

While reviewing the private policy under the 30-day free look period, Mr. A provided a copy of the PERS LTC plan to the private insurer who compared it to the private policy. After comparing the benefits under the plans, the private insurer gave Mr. A a list of specific questions to ask PERS regarding specific benefits offered or not offered under the PERS plan.³ On March 18, 2011, Mr. A submitted the questions to PERS. Mr. A's unchallenged testimony established that never received a response to his questions from PERS.

On July 22, 2011, after securing private LTC insurance, Mr. A cancelled his PERS LTC plan. In his cancellation letter he wrote that he was cancelling his application for LTC insurance "due to both a feature comparison and lack of satisfaction with the overall handling of the State LTC insurance program."⁴ Citing AS 21.53.050, Mr. A requested refund of his premiums totaling \$1,080.⁵ When he was informed that AS 21.53.050 was not applicable to PERS's LTC and the premiums were not refundable, this appeal followed.

III. Discussion

When, as here, the parties do not dispute the underlying facts, but rather, the legal implication of those facts, then the matter can be resolved through summary adjudication. Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁶ It is a means of resolving disputes without an evidentiary hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that the moving party must prevail, the evidentiary hearing is not required.⁷ In evaluating a motion for summary adjudication, if there is room for differing interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom adjudication may be granted.⁸

² AR at 3.

³ A Exhibit 2.

⁴ AR at 38.

⁵ AR at 2 – 3, 9 – 16.

⁶ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁷ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁸ *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000).

The division moved for summary adjudication asserting that AS 21.53.050 is inapplicable to the PERS. Alaska Statute 21.53.050 requires commercial insurers who offer their products to the public to provide a copy of its policy to the potential insured for a 30-day review. If he or she chooses to cancel the policy within 30 days of receipt of the policy, then the insured is entitled to have the premium fully refunded.⁹ After receipt of the division's Motion for Summary Adjudication and hearing the division's oral argument, Mr. A agreed that AS 21.53.050 was not applicable to the PERS Long-Term Care offering.

Mr. A then offered an alternative reason his payments should be refunded. He characterized his monthly payments to PERS as a "forced stream of good faith automatic deductions pending a failed contract formation."¹⁰ He further argued that there could be no enforceable contract because he was "owed a subsequent 'acceptance' [from PERS] in the form of a policy/certificate" which he never received, therefore, he reasons there was no mutual assent and thus no contract. Therefore, PERS cannot retain his premiums.

PERS responded that as a matter of law, the contract for LTC coverage was in existence between the parties until cancelled by Mr. A, and his argument should be rejected.

To have an enforceable contract, there must be an offer, an acceptance, consideration and an intent to be bound.¹¹ An insurance policy or plan sets forth the terms and conditions of coverage. This is what the LTC plan book does. Mr. A is correct that the plan book contains references to both "plan" and "policy."¹² He is also correct that the plan document could be improved upon by consistency or by stating that these two terms are used interchangeably. Regardless, the plan book contains the terms of the offer and is the "policy".¹³

Under the surface of Mr. A's argument is the proposition that somehow, the lack of a document entitled "policy" as envisioned by Mr. A, interfered in his ability to compare LTC plans. His Exhibit 3 undermines this argument. He cancelled his coverage based on a comparison of plans. A private insurer prepared specific questions for purposes of comparison after reviewing the plan book. Therefore, the plan book was sufficient for comparison and did not interfere with Mr. A's ability to make an informed choice.

As stated above, the plan book is the PERS policy equivalent. Mr. A accepted the offer when he signed the application, and paid a monthly consideration which was automatically

⁹ AS 21.53.050(a).

¹⁰ A's Opposition to PERS Motion for Summary Adjudication at 1.

¹¹ *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997).

¹² See e.g., A Exhibits 1 and 3 (pages 1 and 32 respectively of the LTC plan book).

¹³ *In re D. M.*, OAH No. 08-0153 PER at 2 (September 3, 2008).

deducted from his retirement check. His characterization of the premium payments as a “forced stream of automatic deductions” equating to good faith payments pending a contract formation that would later be consummated with the delivery of a policy by PERS is disingenuous.

He agrees that had he or his wife required LTC he would have considered himself insured under the LTC. At the same time, Mr. A contends he is entitled to a return of premiums paid because he received coverage and not the piece of paper he expected. When he signed the application, he did so expecting the benefits described in the plan book and that was what PERS offered and provided. There was a meeting of the minds on the essential terms and when he paid the premium, he signaled an unconditional agreement to be bound by the terms of the plan, thereby completing the contract. PERS now owed Mr. A LTC coverage at the level selected and paid for until he notified them of his cancellation.¹⁴ Mr. A bargained for LTC coverage until cancelled. He agrees he received LTC coverage.¹⁵ If his premiums were returned, he would be unjustly enriched.

IV. Conclusion

The PERS’s Motion for Summary Adjudication is granted. A valid enforceable contract for LTC existed between Mr. A and PERS from March 2011 through July 2011. Mr. A’s arguments to the contrary are rejected and the PERS is not required to return the premiums paid for four months from March 2011 through July 2011.

DATED this 12th day of June, 2012.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁴ Mr. A writes in support of his appeal that he received his letter appointing him to retirements and outlining the benefits he would receive. AR at 3. A copy of the appointment letter is not contained in the record..

¹⁵ Mr. A agreed that during the period he paid premiums to PERS, he would expect to be covered by the LTC had he or his wife needed it. Therefore, he received the benefit of the bargain.

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 9th day of July, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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