

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
 F F. C) OAH No. 13-0162-PER
) Agency No. 2013-0128
_____)

DECISION ON SUMMARY ADJUDICATION

I. Introduction

F C is a retired state employee who is over 65 and therefore has reached the age of eligibility for Medicare benefits. He is also an incarcerated felon. As a retired employee, Mr. C participates in the State’s AlaskaCare Retiree Health Plan (Health Plan). In general, the Health Plan provides health care benefits to retired employees, but only supplemental health care benefits to retirees who are eligible for Medicare.

Mr. C attempted to enroll in Medicare, but was unable to do so because he is incarcerated. He then sought a ruling on the Health Plan’s coverage of his medical expenses while in prison, in light of the provision that makes the plan supplemental to Medicare. The plan administrator provided a statement of the plan’s approach to such claims. Mr. C took issue with the statement, and this appeal followed. No facts being in contest, the Administrator moved for summary adjudication.

As discussed below, the Administrator’s statement of the plan’s obligations to Mr. C was correct. Summary judgment is granted to the Administrator.

II. Facts

There are no facts in dispute in this case.

Mr. C began employment with the State of Alaska in 1969, and left state employment in September of 2000. He was appointed to retirement status on October 1, 2000.¹ Mr. C has been an incarcerated felon since at least 2007, before his 65th birthday.

In 2008, the Division of Retirement and Benefits (division) sent Mr. C a letter stating in part:

¹ Affidavit of Bernadette Blankenship, ¶ 6.

We see that you will soon turn 65 The AlaskaCare retiree health plan becomes supplemental to Medicare Parts A and B when you reach age 65 (AS 39.30.090) beginning on the first day of that month. If you do not qualify to receive premium free Part A, you should provide the health claims administrator with a copy of the Medicare letter that was sent to you stating this so it can be reflected in your file. Everyone is eligible for Part B coverage regardless of whether you qualify for premium free Part A, and it is strongly recommended that you purchase Part B coverage. If you don't enroll in Medicare Part B at age 65, AlaskaCare will estimate the amount Medicare would have paid toward your Part B expenses and deduct that amount before paying your claim.^[2]

In 2011, Mr. C wrote the division asserting that he had been told by the Social Security Administration that he was ineligible for Medicare benefits while incarcerated. He asked, "Since I am ineligible for Medicare, am I still eligible for state medical coverage . . . while incarcerated?"³

In February of 2012, Mr. C received a statement from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), telling him he was indeed eligible for Part A Medicare, but was not able to receive benefits while incarcerated. This letter states:

Medicare does not pay for services for a person who is incarcerated, in jail or prison. However, the different parts of Medicare are handled differently. Eligibility for Part A (Hospital Insurance), does not terminate during incarceration but no health benefits can be paid while incarcerated. Typically there is no premium liability for Part A, so entitlement is available upon release.^[4]

The letter does not discuss how Part B eligibility for an incarcerated individual is handled. However, in August of 2013, Mr. C received another letter from CMS. Referring to Part B, CMS said the "Medicare program doesn't pay for services if the beneficiary is incarcerated or on medical furlough."⁵

On November 28, 2012, Mr. C wrote the division again inquiring whether he had medical coverage under the State of Alaska retiree plan.⁶ The division responded on December 5, 2012:

The retiree health plan will provide coverage for you regardless of your incarceration for any covered service you are legally obligated to pay for. As you are over age 65, the retiree health plan becomes supplemental to Medicare Part A if you are provided with that coverage premium free and to Medicare Part B for which you pay a monthly premium.

² Agency Record, page 49.

³ Record at 42.

⁴ Record at 33.

⁵ Attachment to Motion to Supplement the Record dated August 27, 2013.

⁶ Record at 29.

You are eligible for both Medicare Part A (hospitalization) and Part B (physician and outpatient) and this eligibility is not changed by your incarceration.

However, Medicare also only pays for care if you are legally responsible to pay the charges and the penal system pursues payment on the same basis for all inmates, regardless of their insurance coverage and resources. In many cases, the penal system is responsible for the cost of care, thus Medicare would not pay.

In reviewing the statute you referenced, AS 33.30.028, and its related regulations, it appears that you are legally responsible for the cost of care. As such, Medicare would pay those costs as primary and the retiree would pay as supplemental. For services Medicare covers, if you do not have Medicare coverage, the retire plan will calculate what Medicare would have paid and pay as supplemental, leaving the Medicare portion for you to pay.^[7]

Mr. C disagreed with this conclusion and asked for a final appealable decision from the Plan Administrator. On January 3, 2013, the Administrator wrote back.

As stated in my December letter, the retiree plan is not denying coverage for you. You remain covered by the plan regardless of your incarceration. In accordance with statute and plan provisions, the retiree plan will pay for any covered service you are legally responsible for but, per the above referenced statute [AS 39.35.535(b)], the plan is supplemental to Medicare as you are over age 65. The choice of enrolling in Medicare is yours to make. If you are not enrolled in Medicare, the retiree medical plan will not pay any portion of the expense which should have been covered by Medicare. Any covered expenses for which you are legally responsible and that are not covered by Medicare will be paid as normal.^[8]

It is this statement of position, which has been reprinted above in bold for easy reference later in this decision, that is at issue in this case. Mr. C appealed the Plan Administrator's statement.⁹ His appeal letter contains the subject line "Extent of eligibility for health benefits" and also asserts that, pursuant to Article XII, Section 7 of the Alaska Constitution, his accrued retirement benefits may not be diminished.

After the case was referred to the Office of Administrative Hearings, the Plan Administrator filed a motion for summary adjudication. This motion framed the issue as whether the Plan Administrator was correct to deny Mr. C's "request to waive the Medicare supplemental provision in the retiree health plan from the Public Employees' Retirement System (PERS)."¹⁰ There is, however, nothing in the record to suggest that Mr. C had requested a waiver of the Medicare supplemental provision; instead, he had simply asked for confirmation

⁷ Record at 25.

⁸ Record at 11.

⁹ Record at 6.

¹⁰ Motion dated April 16, 2013, at 1.

that he was covered, and had appealed the statement, reprinted in bold above, which he had received in response.

After reviewing the motion, and prior to receipt of any opposition, the administrative law judge asked the parties to address additional issues not addressed in the original motion. The Plan Administrator did file a supplemental brief. After several continuances, Mr. C filed his opposition.

III. Discussion

A. The Medicare Program

Medicare is a federally funded program that provides payment for different types of medical care. Parts A and B of the Medicare program are relevant to this decision. Part A covers hospital stays, and is generally funded through payroll taxes. Part B covers other types of medical services, including physicians' services, outpatient procedures, and preventative care. Part B is funded through monthly premiums paid by the beneficiary.¹¹

Although neither party provided citations to the relevant statutes or regulations, it appears from Mr. C's exhibits that he is eligible to be enrolled in Medicare Part A while in prison but may not be able to receive Part A benefits. The record does not clearly establish whether Mr. C is allowed to enroll in Part B while he is incarcerated. However, the present dispute can be decided without fully resolving whether Mr. C can enroll, pay premiums, or receive benefits under either Part A or Part B of the Medicare program.

B. The Nature of Mr. C's Appeal

Mr. C is self-represented. Accordingly, he will not be held to the same standards of pleading that a party represented by an attorney would be held to. Instead, his pleadings will be construed broadly, and any issue that can be gleaned from his pleadings will be ruled on here, provided it is relevant to the matter he has appealed. Three issues have been identified. First, he clearly raises the issue of whether his benefits have been reduced in violation of Article XII, Section 7 of the Alaska Constitution. Second, he asserts that because he has not been allowed to enroll in Medicare, he should not have his Alaska benefits reduced by the amount Medicare would have paid if he had been permitted to enroll. Finally, he argues that even if he had

¹¹ See *White v. Jubitz Corp.*, 219 P.3d 566, 574 (Oregon 2009).

enrolled, he could not actually receive benefits from Medicare, so the full amount of any eligible medical claim should be paid by the retiree plan.

All of these are fundamentally legal issues. The parties do not disagree about the facts of this case, and to the extent that some of the facts are uncertain, the legal issues can be resolved regardless of what those facts ultimately prove to be. This makes the case appropriate for summary adjudication.¹² Each of Mr. C's legal contentions will be addressed in turn below.

C. *Treating the Health Plan as Supplemental to Medicare Does Not Impermissibly Reduce Mr. C's Benefits*

Mr. C's first issue relies on the following provision of Alaska's Constitution:

Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.^{13]}

Under this provision, Mr. C's retirement rights are controlled by the rights afforded to him while he was employed by the state.¹⁴ The anti-diminution provision also means that "an employee can elect any structure available to that employee during the course of the employee's career if that structure is superior, for him, to the one in effect at retirement."¹⁵

The division asserts that the provision related to Medicare which is in dispute here was enacted in 1975.¹⁶ The record does not disclose whether Mr. C had vested in any retiree health care benefits prior to that date, but Mr. C does not base his claim on any specific language prior to 1975.

In 1975, the legislature added a new section to AS 39.35, which stated:

Each person who is entitled to receive a monthly benefit from the retirement system shall be provided with major medical insurance coverage. The coverage shall become effective on the same date as retirement benefits commence and cease when the retired employee or survivor is no longer eligible to receive a monthly benefit. The level of coverage for persons over age 65 shall be the same as that available prior to reaching age 65 except that the benefits payable shall be

¹² See, e.g., *APOC v. Renewable Resources Coalition*, OAH No. 09-0231-APO, Commission's Ruling on Motion of RRC and Richard Jameson for Partial Summary Judgment, at 2 (Alaska Public Offices Comm'n 2009) (<http://aws.state.ak.us/officeofadminhearings/Documents/APO/APO090231%20Ruling%20on%20RRC%20&%20Jameson%20PSJ.pdf>).

¹³ Alaska Constitution Art. XII, Section 7.

¹⁴ *McMullen v. Bell*, 128 P.3d 186, 191 (Alaska 2006)

¹⁵ *In re F.N.*, OAH No. 07-0012-PER, Final Decision at 6 (Alaska Office of Administrative Hearings 2007) (<http://aws.state.ak.us/officeofadminhearings/Documents/PER/PER070012.pdf>). In his Opposition, Mr. C asserts a right to the benefits described in the May 2003 Plan Benefit Booklet. No determination is made here as to whether Mr. C may claim any additional benefits added after his termination from state employment.

¹⁶ Motion for Summary Adjudication at 3.

supplemental to those afforded under the federal Old Age Survivor and Disability Insurance Program, if any.^[17]

Medicare is part of the Old Age Survivor and Disability Insurance Program. In its first publication describing the retiree health care program, the division explained:

Any Medicare Benefits which a member of this Retired Employee Medical Program is eligible to receive will be subtracted from the total of Covered Medical Expense before benefits under this program are calculated.^[18]

The 1975 plan description also provided

The term “person Eligible under Medicare” means a retired employee who is enrolled and covered under the voluntary portion of Medicare or has been eligible to enroll and be covered under such voluntary portion.

For purposes of this Retired Medical Program, each person eligible for Medicare will be assumed to have at least Part B (physicians care) coverage. Except for certain retired teachers who are not provided with Part A of Medicare, all participants will be assumed to have coverage under both Part A and Part B of Medicare.^[19]

In 1982, the statutory provision was amended to read:

The coverage for persons age 65 or older is the same coverage available for a person under 65. The benefits payable to those persons age 65 or older supplement benefits provided under the federal old age, survivors and disability insurance program.^[20]

This statute remained substantially the same from 1975 through 2000, when Mr. C retired.²¹

Throughout Mr. C’s employment, the Health Plan has treated Medicare benefits the same. The amounts paid by the Health Plan supplement the amount that the retiree is eligible to receive from Medicare Parts A and B. The coverage remains the same, but Medicare pays first, and the Health Plan is only obligated to pay any remaining portion (subject to other plan provisions such as deductibles, medical necessity, customary cost, and legal obligation to pay).

Mr. C asserts, however, that there has been a change in federal law that has diminished or impaired his retiree benefits. He asserts that in 1975, Medicare paid benefits for individuals who were incarcerated but that at some time since that date, Medicare has stopped this practice. He asserts that prisoners cannot receive Medicare benefits.²²

¹⁷ § 2 Ch. 200 SLA 1975, Exhibit 2, page 1 to Motion for Summary Adjudication.

¹⁸ Exhibit 4, page 2 to Motion for Summary Adjudication.

¹⁹ *Id.*

²⁰ AS 39.35.535(b) (1982 version), Exhibit 3, page 1 to Motion for Summary Adjudication.

²¹ *See* § 49 ch 68 SLA 2000, Exhibit 3, page 5 to Motion for Summary Adjudication

²² The parties do not cite to the statute or regulation containing this prohibition, but some of the exhibits submitted by Mr. C suggest that payments cannot be made under either Part A or Part B to prisoners, though they

Assuming Mr. C is correct as to the change in federal law, there has still been no diminution of Mr. C's benefits. His coverage under the Health Plan remains the same. He is entitled to the payment of a valid claim. Prior to the purported change in the Medicare law, a prisoner such as Mr. C would have a portion of a valid claim first paid by Medicare, and the remainder of the claim paid by the Health Plan. That still occurs, although the portion paid by Medicare may have been reduced to zero. Referring back to the bold language printed earlier in this decision, the Administrator's decision under appeal specifically states:

In accordance with statute and plan provisions, the retiree plan will pay for any covered service you are legally responsible for . . . Any covered expenses for which you are legally responsible and that are not covered by Medicare will be paid as normal, so the full amount of the claim is paid by the Health Plan.

While the non-Medicare portion that would have to be covered by the Health Plan may have increased, this shift would not diminish or impair Mr. C's benefits. Accordingly, Mr. C is not entitled to any relief under the Article XII, Section 7 of the Alaska Constitution.

D. The Plan is Not Responsible for any Error Made by a Different Entity in Not Allowing Mr. C to Enroll in Medicare Part A or Part B

Mr. C has also asserted that he attempted several times to enroll in Medicare, but was unable to do so until recently. He does not believe his Health Plan benefits should be reduced by the amount Medicare would have paid if he had been enrolled. However, his Health Plan benefit is only reduced if (1) he should have been permitted to enroll and (2) Medicare would have paid a portion of his claims had he been enrolled. If either one of these is not true, there would be no amount deducted before calculating his Health Plan benefits and no impact to him from any federal confusion about Medicare enrollment.

On the other hand, if Mr. C could have received some Medicare benefit but for an incorrect decision by the Federal Government to deny him enrollment, Mr. C could be adversely affected when the amount he should have received from Medicare is deducted before calculating his Health Plan benefit. If there was an adverse effect of this kind, it was caused by the Federal Government, and not by the Health Plan. Mr. C's remedy would be to seek relief from the entity that caused the harm.²³

are allowed to continue as enrolled in Part A, and possibly may be allowed to make premium payments under Part B.

²³ Mr. C states he was never told he had an appeal right in response to the information he received from Medicare. However, it was not the Health Plan that failed to inform him of any appeal rights he may have had.

E. The Health Plan is Only Obligated to Pay for the Cost of Services that Exceed the Amount Medicare Would Pay for Services Received by an Incarcerated Individual.

Mr. C's final argument is that his benefits from the Health Plan should not be reduced by the amount payable by Medicare because he cannot receive any Medicare benefits while incarcerated.

As a preliminary matter, one should note that Mr. C's premise may not be entirely correct. One of the exhibits he submitted is a May 8, 2013 letter from CMS.²⁴ That letter refers to 42 CFR § 411.4(b), which provides an exception to the general rule applicable to individuals who are incarcerated, and states that payment may be made for services provided to inmates if state or local law requires the individual to repay the cost of the medical services and that requirement is enforced equally regardless of whether the individual is covered by Medicare or other insurance. This regulation would not be necessary if there were no situations in which a prisoner could receive Medicare.

On the other hand, Mr. C also received a letter from CMS stating eligibility for Medicare Part A does not terminate while he is in prison, but that no health benefits can be paid.²⁵ CMS also told him he could not receive any Part B benefits.²⁶

While the letters Mr. C has received from CMS are somewhat equivocal, the uncertainty has no impact on the current dispute between Mr. C and the Health Plan. The Administrator has simply stated that "any covered expenses for which you are legally responsible and that are not covered by Medicare will be paid as normal." If it turns out that there is an expense for which Mr. C is legally responsible and Medicare does, in fact, not cover that expense for prisoners, Mr. C has the plan's assurance that it will pay "as normal." He has not explained how he could be entitled to anything more.

Nothing in the record suggests that Mr. C has yet submitted a medical claim for payment. When Mr. C submits a claim, the Health Plan will need to determine the amount that Medicare would pay for the service, and pay the remaining portion of his claim accordingly (subject to any ordinary limitations in the Plan, such as the requirement of medical necessity). If, because he is incarcerated, Medicare would pay nothing, the remaining portion of the claim would be equal to

²⁴ Exhibit D, page 2 to Opposition memorandum.

²⁵ Exhibit B, page 2.

²⁶ August 5, 2013 letter from CMS.

the entire claim.²⁷ If, despite being incarcerated, Medicare would pay a portion, then the remaining amount is reduced accordingly. In addition, if the only reason Medicare would not pay a portion is because Mr. C has not enrolled in or paid Part B premiums, then the claim is reduced by the amount that Medicare would have paid if he had enrolled and paid his Part B premiums.

The important caveat here is that the deduction for what Medicare pays or would pay is a deduction for payments that are or would be paid to incarcerated individuals. Neither the Administrator's decision, nor any authorities that have been cited, suggest that the Health Plan could deduct the amount that would have been paid to an unincarcerated individual. The Health Plan is supplemental to what *the member* is eligible to receive under Medicare, not supplemental to what a different member is eligible to receive.²⁸

IV. Conclusion

For all relevant times, the Health Plan has provided the same coverage to members who are 65 or older, but benefits payable have been supplemental to what the members are eligible to receive through Medicare. That provision remains applicable to Mr. C, according to the terms explained in the Administrator's letter of January 3, 2013. If and when Mr. C submits a claim, the Health Plan will need to determine the amount Medicare will pay towards an incarcerated individual, and subtract that amount before calculating any benefits. If Mr. C disagrees with the calculation of his benefits for a particular claim, he would have the usual appeal rights as to that benefit determination.

DATED this 22nd day of February, 2014.

Signed

Christopher Kennedy
Administrative Law Judge

²⁷ Of course, since many medical services for prisoners are presumably furnished with little or no charge to the prisoner, the amount of the claim may be small.

²⁸ This can be seen by observing how the Health Plan also treats services rendered outside of the United States:

In most cases, if you receive care outside of the United States, Medicare does not cover your expenses and AlaskaCare will take this into account. Your claims will be paid under AlaskaCare just as they were before you had Medicare.

Agency Record at 54. When outside of the United States, people enrolled in Medicare are not *eligible to receive* Medicare benefits even though they remain enrolled in the program. When people are incarcerated, they may not be *eligible to receive* Medicare benefits, even though enrolled. In both cases, the amount deducted before paying a claim is the amount Medicare would actually pay based on the individual's circumstances.

Adoption

This Decision and 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 24th day of March, 2014.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

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