

N.D.A.G. Letter to Person (June 23, 1989)

June 23, 1989

Mr. Alan Person
Executive Director
Public Employees Retirement System
1930 Burnt Boat Drive
Box 1214
Bismarck, ND 58502-1214

Dear Mr. Person:

Thank you for your June 13, 1989, letter requesting my opinion as to whether N.D.C.C. § 54-52.1-06 provides that each state employee is entitled to a health insurance contract. It is my understanding that the real issue is whether a husband and wife, who are both state employees, are each entitled to be a contract holder under the state's uniform group insurance program. It is my further understanding that the Public Employees Retirement System (PERS) has adopted a rule that allows only one family contract per family unit, even if both spouses work for the state.

There are a number of statutory provisions that are relevant in resolving this issue.

N.D.C.C. § 54-52.1-03(1) provides that "[a]ny eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department." "Eligible employee" is defined as follows:

"Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. . . . As used in this subsection, "permanent employee" means one whose services are not limited in duration and who is filling an approved and regularly funded position in a governmental unit, and is employed at least twenty hours per week and at least five months each year.

N.D.C.C. § 54-52.1-01(4).

N.D.C.C. § 54-52.1-06 provides in relevant part as follows:

Each department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium, in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical

benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program pursuant to section 54-52.1-07

N.D.C.C. § 54-52.1-07 provides that "[e]ach eligible employee enrolled in the uniform group insurance program may elect to include his spouse and all qualified dependents (as provided for in the plan) within the hospital benefits coverage and medical benefits coverage, the state to pay the cost of such coverage as provided in section 54-52.1-06 "

Nowhere in N.D.C.C. ch. 54-52.1 is there a provision that each "eligible employee" is entitled to be a "contract holder." Rather, the law states that each "eligible employee" is entitled to be "enrolled" in the uniform group insurance program. Thus, the issue is whether PERS' policy of permitting only one contract per family unit (where both spouses work for the state) violates this requirement that each eligible employee have the option of being "enrolled" in the insurance program.

The term "enrolled" is not defined in statute. However, in a March 29, 1972, letter opinion to Mr. Tor Hegland, Attorney General Johanneson addressed the issue of what the term "enrolled" means as used in N.D.C.C. ch. 54-52.1. The question presented in that letter was as follows:

Where a husband and wife are both 'eligible employees' under N.D.C.C. § 54-52.1-01(1) and one has directly requested enrollment with his employing department and has elected to include his spouse within the optional family coverage under the Uniform Group Insurance Program, does the statute provide that the state shall contribute \$7.50 monthly towards the uniform group insurance cost for each of the two employees, that is a total of \$15.00?

The statute in question, N.D.C.C. § 54-52.1-06, provided that the state must contribute \$7.50 per month "for each of its eligible employees enrolled in the uniform group insurance program." (Emphasis supplied.) If both spouses were considered "enrolled" in the uniform group insurance program, then possibly each spouse was entitled to a \$7.50 monthly contribution toward the cost of a family policy.

The Attorney General determined that "the term 'enroll' or 'enrolled' [as used in N.D.C.C. ch. 54-52.1] means to have coverage under the Uniform Group Insurance Program." Accordingly, the Attorney General concluded that the term "enroll" applies not only to the full-time employee but also to the employee's spouse and dependents.

Under the rationale expressed in the Attorney General's opinion cited above, each spouse and any dependents included in the PERS family policy are considered to be "enrolled" in the plan. Thus, the legal requirement that each "eligible employee" is entitled to be "enrolled" in the plan is not violated by PERS' policy of permitting only one family contract per family unit.

Although I have answered the question presented in your letter, a related issue is whether N.D.C.C. § 54-52.1-06 requires that the employer agency pay the monthly state contribution to the board for each eligible employee even if the eligible employee is enrolled in the uniform group insurance program under the contract of his/her spouse. A literal reading of N.D.C.C. § 54-52.0-06 arguably supports an interpretation that a contribution must be made for each spouse.

As mentioned above, a similar issue was addressed in the March 29, 1972, letter from Attorney General Johanneson to Tor Hegland. At that time, the state contributed \$7.50 toward the payment of the insurance costs for each eligible employee of the state. However, the \$7.50 did not cover the cost of the premium for either a single policy or a family policy. Accordingly, an out-of-pocket employee contribution was required. The issue, therefore, was whether each spouse was entitled to the \$7.50 monthly contribution toward the cost of the family contract premium.

The Attorney General concluded as follows:

[I]t is our opinion that where a husband and wife are both eligible employees and same are covered by a uniform insurance program whether it be under an individual coverage program or under an optional family coverage type, that the state may contribute \$7.50 toward the payment of the insurance costs for each employee. This is on the assumption that the cost for the uniform group insurance policy costs \$15.00 or more a month. If, however, such policy does not cost \$15.00, the state could contribute only up to the extent of such costs.

In other words, the Attorney General determined that the state is not responsible for contributing more than the premium amount for one family contract.

Under current law, the state pays the entire premium for family coverage. Accordingly, it would be absurd to interpret N.D.C.C. § 54-52.1-06 as requiring two premium payments to the board for one family contract when, in fact, the coverage would not be enhanced by such additional premium payment because there is no internal coordination of benefits between contract holders in the uniform group insurance program. Because statutes must be construed so as to avoid absurd and ludicrous results, Stutsman County v. State Historical Society, 371 N.W. 2d 321, 325 (N.D. 1984), I do not interpret N.D.C.C. § 54-52.1-06 as requiring the state to make two premium payments for one family contract.

In addition, the Legislature's primary objective underlying N.D.C.C. § 54-52.1-06 is to insure that each state agency complies with a consistent policy regarding the state's contribution for health insurance. Read in its entirety, it does not reflect a legislative policy that a husband and wife (who are both "eligible employees") are each entitled to a family contract or that the state should make two premium payments for one family contract.

I trust that this discussion has been of assistance to you.

Sincerely,

Nicholas J. Spaeth

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