

From: Sharon Hoffbeck <sharonhoffbeck@gmail.com>  
To: RPEA Members--All  
Date: 28 Sep 2016  
Subject: RPEA Annual Planning Meeting Report

Hi Everybody,

The RPEA Executive Board recently held its annual 2-day planning meeting in Anchorage. Below are the highlights of the meeting.

RPEA continues to pursue and monitor legal matters relevant to retirees. Below is a brief report on the DVA lawsuit, recent decisions by OAH (Office of Administrative Hearings), and the monitoring of denied claims and benefits.

**DVA Lawsuit:**

Both RPEA and the State completed submission of their written arguments to the Superior Court in July. Copies of those legal arguments are posted in the RPEA website if you wish to read them.

Although the Court set a hearing for oral arguments on September 26<sup>th</sup>, that hearing has been postponed due to a change of the judge. We are not sure when the oral argument will be rescheduled, but we remain hopeful to have a decision by the court by the end of the year. We will post more information on the RPEA website as it becomes available. <http://www.rpea.apea-aft.org/>

**Decisions by OAH:**

1. ITMO B.O., OAH No. 15-0283-PER.

This case involves the assessment of a separate annual deductible under the retiree medical Plan to a retiree who was eligible for and receiving benefits under Medicare. The retiree claimed the language of the Plan did not permit Aetna to assess an additional deductible once the retiree had been assessed a separate deductible by Medicare. The Judge concluded the language of the Plan, which stated the coverage under the Plan was supplemental to the Medicare deductible, was ambiguous. Since the provisions of the Plan constitute an insurance contract between the retiree and DRB, the interpretation of any ambiguity in the provisions concerning the deductible assessed by the Plan must be resolved in favor of the reasonable expectations of the retiree.

The Judge ordered DRB to reimburse the retiree his out-of-pocket expenses.

**Note: in May 2016, DRB issued Amendment 2016-2 that purports to change this provision in the Plan so that it expressly allows Aetna to assess an annual deductible under the Plan that is separate from and in addition to the deductible assessed by Medicare. RPEA believes that purported amendment constitutes an unlawful diminishment of benefits under the Plan in violation of the Constitutional protections.**

2. ITMO W. S-B., OAH No. 151143-PER:U

In this appeal, the retiree claimed that Aetna had denied her the full coverage of her medical expense—first, because she had double coverage, and second, that Aetna had miscalculated the recognized charge for the procedure at issue.

The retiree won on the second issue. The Judge ruled that Aetna failed to follow the procedure established in the Plan for properly determining the recognized charge for the procedure. DRB argued that Aetna had used the FAIR Health benchmark database to determine the recognized charge for the procedure, but the Judge rejected the FAIR Health data offered by DRB. The Judge found that Aetna and DRB had not followed the language of the Plan in properly calculating the recognized charge for the procedure. The Judge ordered DRB to reimburse the retiree \$2,263.00 for the cost of the surgical procedure.

3. ITMO S.S., OAH No. 15-1204-PER:

The retiree appealed Aetna's refusal to pay the full charge for a surgical procedure based on its determination that the charge by the provider exceeded the recognized charge for that procedure.

The Judge determined that Aetna had not used the correct geographic area when it computed the recognized charge, which violated the provisions of the Plan. As a consequence, the retiree was awarded the full payment for the billed services caused by this miscalculation. In particular, the Judge found the reliability of the FAIR Health benchmark data used by Aetna to determine the recognized charge was questionable, and the failure by DRB to offer evidence to demonstrate the reliability of the Aetna data required the Judge to rule against DRB. As a result, the Judge ruled the amount charged by the provider for the procedure was the proper recognized charge and awarded almost \$1,200.00 to the retiree for full payment for the procedure.

**Other Legal Matters:**

RPEA is continuing to monitor denials of coverage and reimbursement of retiree claims by Aetna in order to gather information to determine the extent

to which the 2014 Amendment to the Plan has resulted in an unlawful diminishment of benefits.

RPEA is focused principally on the impacts of the Amendment on medical and dental benefits. RPEA requests any retiree who has had benefit claims that were previously reimbursed, but have been denied by Aetna since January 2014, to send the EOBs and appeal information to RPEA at [sharonhoffbeck@gmail.com](mailto:sharonhoffbeck@gmail.com).

### **Dependent Audit:**

The Division of Retirement & Benefits will soon be conducting a retiree AlaskaCare dependent audit. The purpose of the audit is to ensure that anyone listed as a dependent is eligible to receive benefits. The last dependent audit was done in 2006. It found that approximately 10% of the dependents reported were not eligible to receive benefits, with an estimated savings to the trust of \$10.7 M.

RPEA supports this audit 100%, and has encouraged the state to conduct such an audit for the past several years. The last one was done 10 years ago, and this should be done every couple of years. Failure to comply with the request for records will result in benefits being suspended until dependent documentation has been submitted, at which time benefits will resume.

You will be asked to submit documents to support all dependents you have listed, such as marriage license, birth certificate, tax records and utility bills, just to name a few. These documents do not have to be originals, and can be Xerox copies. You can redact any personal information not relevant to the audit such as social security numbers, financial information, or bank account information.

Some of the documents sounded like overreach on DRB's part, so I asked why things like utility bills and tax records were on the list. The explanation was, for example, if your spouse was listed as a dependent, simply submitting a marriage certificate would not prove that you were still married, only that you'd been married at some point. A current utility bill or tax record showing both you and your listed dependent would provide the necessary documentation.

### **Legislative Priority:**

One of the top RPEA legislative priorities this year is to continue to support and encourage the state to give those in Defined Contribution tiers (PERS—Tier IV, TRS—Tier III and any upcoming tiers) the option to either stay in the Defined Contribution plan or opt into the Defined Benefit plan.

The purported savings to the state when the Defined Contribution plan was established in 2005 has proved not to be a savings at all. Instead it has weakened the Defined Benefit plan by eliminating employee contributions for those hired after June 30, 2006, who were put into the Defined Contribution plan. It created a situation where the state often cannot find and retain qualified employees for critical positions such as police officers and teachers, just to name two, and who can become vested in the Defined Contribution plan and take their and the employer's contributions, and move to another state where they can get a pension and retiree health care. **Newly proposed Defined Benefit plans show they would save employers millions of dollars while still providing a pension and retiree health care benefit, and RPEA will continue to advocate for this option for current and future public employees.**

**Membership Recruitment:**

On September 15<sup>th</sup>, RPEA mailed an all-retiree recruitment letter to those retirees nationwide who were not already members. The result if this was that in 13 days, we had more than 1000 new membership applications submitted, and expect that number to go up substantially. As you all know, numbers matter when working with DRB on issues concerning retiree benefits. RPEA is also 100% funded by memberships, and in order to continue to work on the behalf of all retirees, membership is critical. RPEA has only 1 paid position, which is the administrative assistant. The Executive Board and standing committee members are all volunteers donating hundreds of hours every year to work on all of the issues discussed above, and much more. If you know a retiree who is not a member, please ask them to join.

One of the questions I often get from prospective members is what happens to their personal information that they submit to RPEA such as email addresses and telephone numbers—do we sell it---do we give it to other organizations---do we give it to DRB?

The answer is none of the above. All information given to RPEA is used exclusively by RPEA, and is never sold, given to DRB or any third party. It is critical that RPEA be able to communicate with you, and that is the only way the information that is supplied to us is used.

If anyone has any questions or comments, please feel free to contact me at [sharonhoffbek@gmail.com](mailto:sharonhoffbek@gmail.com).

***Sharon Hoffbeck***

President

Retired Public Employees of Alaska

[sharonhoffbeck@gmail.com](mailto:sharonhoffbeck@gmail.com)