

From: Sharon Hoffbeck

To: RPEA Members

Date: May 10, 2018

Subject: RPEA Files Retirement Health Plans Diminishment Lawsuit

Dear RPEA Members,

We'd like to update you with information about the new lawsuit that RPEA has filed in an effort to protect your retirement benefits.

On May 9, 2018, RPEA filed a lawsuit against the State of Alaska Department of Administration, Division of Retirement & Benefits (DRB), alleging that it has illegally diminished major medical insurance benefits as well as benefits available under the optional Dental/Vision/Audio (DVA) insurance that is available at the time of retirement. This lawsuit asserts that DRB has diminished and impaired those benefits in violation of the express promise made in Article XII, Section 7 of the Alaska Constitution that retirement benefits "shall not be diminished or impaired".

This lawsuit primarily concerns the changes that DRB imposed in recent years to our medical benefits. RPEA contends in part that DRB improperly delegated its duties as Plan Administrator to Aetna and Moda Health, the companies that the state hired in 2014 to be the third party administrators (TPAs) to manage the retiree health plans.

In making those changes, DRB has allowed Aetna and Moda Health to impose their own internal clinical and payment policies in place of the policies and plan coverage that had been regularly applied under the retiree health plans prior to 2014. As many of you know, the result has been that benefits have been significantly diminished and impaired in violation of the Alaska Constitution.

Fifteen years ago the Alaska Supreme Court ruled in a case that RPEA brought—*RPEA v. Duncan*—that before DRB can impose any changes to our retirement medical plan that might diminish or

impair constitutionally protected benefits, it is required to take certain steps which include and require:

1. An equivalency analysis to establish the value between the changes which disadvantage retirees as a group and those that provide comparable offsetting advantages. This analysis must be based on reliable evidence, such as solid, statistical data drawn from actual experience, including accepted actuarial sources—rather than by unsupported hypothetical projections; and
2. Equivalent value must be proven by a comparison of the actual benefits provided to those that are proposed in the changes.

RPEA contends that DRB has failed to perform any of these constitutionally required steps before imposing changes to our health plan benefits since the end of 2013. Instead, DRB has hired a consultant to perform an after-the-fact analysis using what RPEA believes are questionable assumptions to try to support the changes it made without first doing what the Alaska Supreme Court ruled it was required to do before making any changes.

This is a new lawsuit that is in addition to the one we filed two years ago to establish that Dental/Vision/Audio (DVA) benefits are constitutionally protected against being diminished or impaired. On December 8, 2016, Superior Court Judge Eric Aarseth awarded RPEA a partial summary judgment, ruling DVA benefits are constitutionally protected against diminishment and impairment. The trial to determine if the changes made to the DVA plan in 2014 diminished or impaired the plan, and if so what the remedy will be, is in progress and is expected to be completed on June 22nd. The court then has up to 6 months to issue a ruling.

Finally, I want to alert you to the fact that DRB is now proposing yet additional substantial changes to medical plan benefits. It broadly described those changes at the May 8th meeting of the Retiree Health Plan Advisory Board. RPEA representatives were present at that meeting and provided oral and written statements to the Board concerning those proposed changes. You can read

RPEA's position concerning the Department of Administration's proposal at the RPEA website: <http://www.rpea.apea-aft.org/>. You can also read information about the proposed changes at the Retiree Health Plans Advisory Board website: <http://doa.alaska.gov/drb/alaskacare/retiree/advisory.html>.

We will post information and filed court documents on the RPEA website as these cases proceed. We will also follow up with additional information within the next couple of weeks.

If anyone has questions, please contact me at sharonhoffbeck@gmail.com.

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President

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