

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE RETIRED PUBLIC EMPLOYEES)
OF ALASKA, INC.,)

Plaintiff,)

v.)

SHELDON FISHER, COMMISSIONER)
OF THE ALASKA DEPARTMENT OF)
ADMINISTRATION,)

Defendant.)
_____)

Case No. 3AN-16-_____ CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Jurisdiction and Parties

1. This is a complaint for declaratory and injunctive relief brought pursuant to AS 09.40.230, AS 22.10.020(g), and Alaska Civil Procedure Rules 57 and 65.

2. The court has jurisdiction over the parties and the subject matter of this dispute pursuant to AS 09.05.015 and AS 22.10.020(g).

3. Plaintiff, The Retired Public Employees of Alaska, Inc. (“RPEA”), is a nonprofit corporation in good standing, organized and operating under the laws of the State of Alaska. The primary purpose of RPEA is to educate retired persons who were employed by the State of Alaska about their retirement benefits and to assist them in obtaining the benefits to which they are legally entitled.

4. RPEA has standing to sue on behalf of its constituents, and has done so in the past.

5. Defendant, Sheldon Fisher, is the current Commissioner of the Alaska Department of Administration (“DOA”). He is sued in his official capacity. Alaska statutes designate the Commissioner as the Administrator of the public employee retirement systems established under AS 39.35, AS 15.25, and AS 22.25.

6. Venue in Anchorage is appropriate because RPEA is headquartered in Anchorage and many retired state employees reside in Anchorage and are affected by the actions of the defendant at issue in this suit.

Legal Framework

7. Alaska statutes have long provided for retirement benefits to state employees. The stated purpose of the retirement benefit system is to encourage qualified personnel to enter and remain in service to the state.

8. For many years, the Alaska statutes have provided that retirees who are eligible for monthly retirement benefits are also eligible for health insurance coverage. The health insurance coverage established by state law has several components, including major medical insurance, dental-vision-audio (“DVA”) insurance, and long-term care (“LTC”) insurance.

9. State employees eligible for retirement benefits are entitled to receive major medical insurance coverage at no cost, if they complete the required forms and do not choose to waive this coverage.

10. Those who select major medical insurance coverage have an option also to select other health insurance, including DVA and/or LTC insurance coverage. The employee may select this coverage just for himself or herself or may choose to have dependents covered as well. Premiums for DVA and LTC insurance, if selected, are deducted from the monthly benefit payable to the retiree or the retiree's survivor.

11. Major medical insurance coverage and DVA insurance coverage, if selected, both begin on the same date as the monthly retirement benefits begin.

12. The Alaska Constitution, Article XII, § 7 provides that membership in a state employee retirement system constitutes a contractual relationship and that the accrued benefits of these systems "shall not be diminished or impaired."

13. The Alaska Supreme Court has interpreted Article XII, § 7 to mean that a retiree's rights to benefits accrue at the time the employee is hired, and that the state may not thereafter reduce or diminish the retirement benefits available to the employee.

14. The Alaska Supreme Court has held specifically that medical benefits available to retirees are part of the benefits protected by the Alaska Constitution, and that health insurance coverage therefore may not be diminished or impaired. Changes are permitted, but only to the extent that any disadvantages are offset by comparable advantages.

Statement of Facts

15. Since 1975, the state has provided health insurance benefits to retirees under a plan now known as the AlaskaCare Retiree Health Plan. The benefits available to retirees are described in the Retiree Insurance Information Booklet, published in 2003

and amended periodically thereafter. This Booklet contains the terms of the AlaskaCare Retiree Health Plan, including major medical insurance coverage, DVA coverage, and LTC coverage.

16. Effective January 1, 2014, DOA repealed substantially all of the provisions of the retiree dental insurance plan in effect through 2013, and replaced that plan with a different plan provided by Moda Health/Delta Dental of Alaska (“the Moda plan”).

17. The adoption of the Moda plan significantly reduced the dental benefits and coverage available to retirees who had selected DVA insurance coverage. For example:

(a) The previous plan covered annual full-mouth x-rays. The Moda plan covers full-mouth x-rays only once in five years.

(b) The previous plan contained no limit on coverage for dental cleanings that a dentist determined were medically necessary. The Moda plan covers no more than two cleanings per year for most people, and no more than four cleanings per year for patients with diabetes or periodontal disease.

(c) The previous plan covered topical fluoride treatments. The Moda plan does not cover fluoride treatments for adults unless the patient has a recent history of periodontal surgery or high risk of decay due to medical disease or chemotherapy or similar type of treatment; risk of decay due to poor diet or poor oral hygiene is specifically excluded as a basis for covering fluoride treatment.

(d) The previous plan covered tooth sealants that a dentist determined were medically necessary. The Moda plan covers sealants only on specified teeth and only once per tooth in any five-year period.

(e) The previous plan covered new dentures every five years. The Moda plan covers new dentures only every seven years.

(f) The previous plan covered general anesthesia during dental procedures when deemed necessary by the dentist. The Moda plan covers general anesthesia only for dental surgical procedures or when necessary due to another medical condition.

(g) The previous plan covered pulp capping. The Moda plan covers pulp capping only when there is exposure of the pulp.

(h) The Moda plan penalizes patients who use services from a provider who is not part of the Moda network. The previous plan imposed no such penalty.

18. The Moda plan does not contain comparable advantages to offset these and other disadvantages.

19. Representatives of RPEA made multiple requests to DOA in 2014 and in 2015, asking to have the Moda plan repealed and to have the previous retiree dental insurance plan reinstated.

20. Commissioner Fisher and his predecessor both refused to reinstate the benefits and coverage provided to retirees under the previous dental insurance plan.

21. Commissioner Fisher and his predecessor have not provided RPEA with an analysis that even purports to show that the disadvantages of the Moda plan are offset by comparable advantages.

22. Instead, Commissioner Fisher and his predecessor have taken the position that DVA insurance is optional for retirees and therefore it is not part of the vested

retirement benefits package protected against diminishment or impairment by the Alaska Constitution.

First Cause of Action
Violation of Alaska Constitution Article XII, § 7

23. State employees hired before January 1, 2014, have the right, as part of their retirement benefits, to obtain dental insurance coverage that provides the scope of coverage available at the time they were hired.

24. The defendant's adoption of the Moda plan, and repeal of the previous dental insurance plan, diminished and impaired the accrued benefits of state employees who were hired before January 1, 2014. This diminishment violates the Alaska Constitution Article XII, § 7.

25. The fact that dental insurance benefits are optional, such that a retiree may choose not to pay premiums for dental insurance, does not mean this category of benefits is not an accrued and vested benefit protected against diminishment under Alaska case law and the Alaska Constitution.

26. The defendant's position that the state without restriction may change the coverage or benefits of the retirees' dental insurance plan means that there is an active controversy between RPEA and the defendant.

27. Under AS 22.10.020(g), RPEA is entitled to a determination by this court declaring the rights and legal relations of retired state employees with respect to the state's ability to diminish the dental insurance benefits available to current and future retired state employees.

Request for Relief

Based upon the legal framework and facts set forth above, RPEA requests judgment in its favor and against the defendant as follows:

A. For declaratory judgment that the retiree health plans for DVA and LTC insurance are part of the accrued and vested medical benefits protected by Alaska Constitution Article XII, § 7, and that adoption of the Moda plan violated the Alaska Constitution by diminishing the accrued benefits of state employees who were hired by the state before January 1, 2014;

B. For permanent injunctive relief prohibiting the defendant from continuing to use the Moda plan for employees who were hired by the state before January 1, 2014, and requiring that the defendant either reinstate the dental insurance plan in effect as of December 31, 2013, or adopt a plan that offers comparable advantages to covered employees;

C. For an award of RPEA's costs and attorney fees incurred in connection with obtaining relief in this proceeding; and

D. For such other relief as the court deems just and equitable.

DATED this ____ day of January, 2016.

REEVES AMODIO LLC

Susan Orlansky [ABA 8106042]