

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

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

Plaintiff, )

v. )

LESLIE RIDLE, COMMISSIONER )  
OF THE ALASKA DEPARTMENT OF )  
ADMINISTRATION, )

Defendant. )

Case No. 3AN-16-04537 CI

**TRIAL BRIEF OF RPEA**

The single factual question for trial is whether changes to the retiree dental plan that took effect in January 2014 diminished or impaired retirees' dental benefits. This court already resolved the key legal question in this case – holding, in response to cross-motions for partial summary judgment, that retirees' dental benefits constitutionally are protected against diminishment. To conclude the case, the court also will need to determine how to evaluate diminishment.

RPEA's witnesses will focus on the coverages that have been reduced or eliminated and the numbers of people affected; they will show that, as a result of the changes, many participants in the retiree dental plan are being denied coverage for dental care that previously was covered. RPEA's expert witnesses will show that some of the changes deny plan members dentally necessary care. RPEA's witnesses also will address the small number of new benefits added by the 2014 plan; they will show that relatively

few people benefit from those changes. Further, RPEA will show how plan participants are harmed because the 2014 plan instituted a financial penalty for using an out-of-network provider, even when no network provider is available. Approximately 25% of claims under the retiree dental plan are for services from out-of-network providers.

At the end of the trial, RPEA will ask the court to find that the changes implemented in 2014 overall diminish the coverage available to participants in the retiree dental plan, and that those disadvantages are not offset by the few added benefits.

The court will be able to review the plans in effect before and after 2014, and, for the most part, there should be few factual disputes for the court to resolve regarding how the plan changed. However, the plan language is not always a model of clarity, so there will be small disputes over what was and was not covered before 2014 and what is and is not covered now.

RPEA expects the State to argue that the new benefits offset the new detriments in three ways: (1) the changes ostensibly protect members against unnecessary and harmful dental treatments; (2) the changes help keep down the costs incurred by the participants as a group, so that premiums stay low and members of the plan receive more services for lower out-of-pocket costs; and (3) an actuarial analysis shows that the newly-added benefits have an actuarial value greater than the actuarial value lost through the new limitations on coverage.

RPEA will respond to each of these expected positions:

(1) RPEA's witnesses will dispute factually that the new limitations overall protect

members against harmful care. They will testify that, to the contrary, the limitations deny care that would benefit members.

(2) RPEA will argue that, under *Duncan v. Retired Public Employees of Alaska*,<sup>1</sup> the State's focus on costs is mistaken. Under *Duncan*, the essential question is whether coverage for dental needs was broadened or restricted. RPEA has maintained throughout this case that the constitution protects coverage, not premiums.

(3) RPEA will challenge the methodology and assumptions in the State's actuarial analysis. The list of supposed new benefits and new detriments is not entirely accurate, and the report fails to address the penalty for using a non-network provider. Moreover, although termed an "actuarial report," much of the expert analysis is simply a year-by-year comparison of the percentage of the "allowed cost" paid by the plan rather than by members. That analysis is flawed because, again, the State has focused on costs rather than coverage; further, the analysis of costs disregards both the effects of inflation and the penalties for seeing an out-of-network provider. Finally, RPEA will note that an actuarial analysis does not take into account non-monetary changes, such as the loss of the freedom to choose one's provider without incurring a financial penalty.

A few points will not be disputed. RPEA expects the State's witnesses to stress that the Moda plan is a standard plan, typical of dental insurance plans marketed today. RPEA will not contest that. But RPEA will question the legal significance of this fact:

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<sup>1</sup> 71 P.3d 882 (Alaska 2003).

To the extent that the pre-2014 retiree dental plan was unusually generous in its coverage, a change to a typical plan with more limitations and restrictions is a diminishment of coverage.

RPEA also will not question the motivation of State officials who were responsible for the 2014 changes. The evidence will show that they did not believe the dental plan is constitutionally protected, and they believed the changes would be reasonable and responsible. If they now maintain that the 2014 changes are more beneficial than harmful, this is more luck than planning. Whatever their beliefs, motive is not an issue. The constitution protects retirees' benefits against diminishment regardless of the justification the State has for diminishing the benefits.

Finally, RPEA acknowledges that the dollar amounts in issue are modest from the perspective of each retiree. The maximum dental benefit per member per year is only \$2000. This makes even small losses of coverage disproportionately significant to members who rely on their dental plan to help pay the cost of their dental needs.

RPEA expects to call six witnesses:

Pat Nault is a former board member of the Alaska State Employees Association Health Benefits Trust and an educated layperson who has extensively studied the changes in the retiree dental plan and the extent of the Moda network in Alaska. She will describe the differences between the coverage available in 2013 and 2014.

Freda Miller is a former employee of the Division of Retirement and Benefits. She will provide background on how the State managed the retiree dental plan before 2014.

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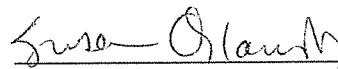
Dr. Mark McLean and Dr. Jeffrey Roberts are local dentists with different specialties. They will testify as experts about the dental necessity of some of the services for which coverage has been reduced or eliminated.

Kelly Farmer is a former employee of HealthSmart, which served as the third-party administrator of the retiree dental plan before 2014. She will testify as a lay witness about the way HealthSmart managed the dental plan and as an expert who has reviewed the databases for coverages granted and denied, for purposes of considering the impact of the changes in coverage.

Todd Allen is an expert witness with experience as an insurance broker and human resources specialist. He will offer his expert opinion about how various changes individually constitute either benefits or detriments to retirees as a class, and about how he assesses the package of changes and concludes that overall they diminished the dental coverage benefits available to participants in the retiree dental plan.

Respectfully submitted, this 26 day of March 2018.

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**Certificate of service:**

I certify that on March 27, I caused a copy of the above document to be served by first class mail and email on the following:

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