

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

THE RETIRED PUBLIC EMPLOYEES
OF ALASKA,

Plaintiff,

v.

KELLY TSHIBAKA, COMMISSIONER
OF THE ALASKA DEPARTMENT OF
ADMINISTRATION,

Defendant.

3AN-16-04537CI

Order Re:

I. Motion for Reconsideration and in the Alternative Motion for Clarification

Defendant Kelly Tshibaka, Commissioner of the Department of Administration (the State), requests that the Court reconsider its previous order and deny RPEA's motion to enforce in its entirety. In the alternative, the State requests that the Court suspend the portion of its order which changes the default plan being offered to retirees for 2020 and specify the period for which the State must perform the retroactive claims analysis and grant the State an extension until February 1, 2020 to begin such a review. The State also requests until February 1, 2020 to provide RPEA with discovery on the costs incurred by the State to implement the Court's April order.

Standard of Review

In Alaska, motions to reconsider are governed by Alaska Civil Rule 77(k), which provides in relevant part:

A motion to reconsider the ruling must be made within ten days after the date of notice of the ruling as defined in Civil Rule 58.1(c)¹ unless good cause is shown why a later filing should be accepted. In no event shall a motion to reconsider a ruling be made more than ten days after the date of notice of the final judgment in the case.

(1) A party may move the Court to reconsider a ruling previously decided if, in reaching its decision:

(i) The Court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or

(ii) The Court has overlooked or misconceived some material fact or proposition of law; or

(iii) The Court has overlooked or misconceived a material question in the case; or

(iv) The law applied in the ruling has been subsequently changed by court decision or statute.

The Court may request a response to the motion, and “a motion for reconsideration will ordinarily not be granted in the absence of such a request.”² The Court must rule upon the motion within 30 days from the filing of the motion or within 40 days of the filing of a response.³ Otherwise, “the motion shall be taken as denied.”⁴

Discussion

A. Timeliness

The State’s Motion for Reconsideration was timely per Alaska Civil Rule 77(k) because the Court ruled on a Revised Order Granting RPEA’s Motion to Enforce Court Order and for Related Relief on November 21, 2019, and the State filed the Motion for Reconsideration on November 27, 2019, which is within 10 days.

¹ Alaska Civil Rule 58.1(a) states: “Orders and judgments become effective the date they are entered.”

² Alaska Civil Rule 77(k)(3).

³ Alaska Civil Rule 77(k)(4).

⁴ Id.

B. Arguments for Reconsideration and Clarification

The Court must determine whether one of the requirements under Rule 77(k)(1)(i)-(iv) have been met. The State argues that the Court: (1) “[misunderstood] what occurred during the August status conference and since then;” (2) “[failed] to consider all of the consequences of a change in the 2020 default plan at this late date;” (3) overlooked State v. Alaska Civil Liberties Union (ACLU);⁵ and (4) “overlooked the fact that RPEA, as an association suing on behalf of its members, does not have standing to seek damages on behalf of those individual members.”⁶

(1) Occurrences during the August status conference and since then

The State argues that there was a miscommunication at the August 8 hearing. The State argues that the State would not be able to conduct the retroactive claims analysis until Delta Dental had coded the legacy plan into its system. Delta Dental is still working towards completing that process. Furthermore, the State argues that “the terms of what claims analysis is due (and to whom) has not been settled by Court order.”⁷

The Court has already addressed the delay of implementation until Delta Dental has coded the legacy plan into its system. The Court ordered: “the State shall inform members whose claims are denied . . . if the State claims it cannot immediately begin making [the determination that the claim would have been covered under the 2013 plan] for every claim denied, the State must instead inform all members whose claims are denied that ‘This claim might have been covered under the previous plan. The denial will

⁵ 159 P.3d 513, 514 (Alaska (2006).

⁶ Motion for Reconsideration 1-2.

⁷ Motion for Reconsideration 6.

be reviewed by the Division and further information will be provided as soon as feasible.”⁸ Therefore, this argument is not grounds for reconsideration pursuant to Rule 77(k), and the Court denies reconsideration of this matter. The Court invites RPEA to respond regarding “the terms of what claims analysis is due (and to whom)” before the Court decides whether to clarify this matter.

(2) The consequences of a change in the 2020 default plan

The State argues that “the Court’s decision to change the default plan creates overlooked consequences that not only impairs the State’s ability to comply with the Court’s April Order by January 1, 2020, but harms some retirees.”⁹ In the Affidavit of Emily Ricci, Paragraph 8 explains how the internal costs of the plans impacted the percentage premiums, which the Court may have overlooked in its decision. The Court did not factor in the cost, but the State was not authorized to require retirees to continue to remain in an constitutionally infirm plan. Only the retiree has the right to opt into the unconstitutional plan.

(3) State v. ACLU

The State argues that the Court overlooked State v. ACLU.¹⁰ The Supreme Court held that the Superior Court exceeded its authority when it “subject[ed] individual details of the state’s implementation plan to constitutional scrutiny” on remand.¹¹ The State argues, “[a]lthough the Court may retain jurisdiction to ensure that the State complies with its order by a certain deadline, it does not have the authority to subject the individual

⁸ Order of Enforcement 1-2.

⁹ Motion for Reconsideration 7.

¹⁰ 159 P.3d 513 (Alaska (2006)).

¹¹ State v. ACLU, 159 P.3d, 514.

details of the State's implementation plan to legal review."¹² For the reasons stated above, the State cannot legally require retirees to continue in an constitutionally infirm plan unless the retiree affirmatively and voluntarily makes that choice.

(4) RPEA's standing to seek damages on behalf of its members

The State argues that RPEA does not have standing to seek damages on behalf of its members because it has merely asserted associational standing. The State argues that the Court's order to retroactively change the retirees' dental plans requires the participation of the individual retiree because associational standing does not allow RPEA to seek relief apart from "declaration, injunction, or some other form of prospective relief."¹³ This argument appears to fit Rule 77(k)(1)(i), but the State did not clarify the authority for reconsideration.

RPEA does not seek monetary damages in its complaint. The relevant relief sought by the RPEA is "short-term relief from the unconstitutional diminishment of benefits" for members' claims that are denied under the unconstitutional 2014 plan where the claims would not have been denied under the constitutional 2013 plan.¹⁴ The State provides an example of how this relief may require different percentages of coverage for a particular service.¹⁵ However, the State provides no support to suggest that a potential consequential monetary gain by a member due to implementation of the constitutional plan equates to monetary damages. Therefore, the Court denies reconsideration of this

¹² Motion for Reconsideration 3.

¹³ *Id.*, at f11 (citing *Telecommunications Research & Action Center v. Allnet Communication Servs., Inc.*, 806 F.2d 1093, 1094-5 (C.A.D.C. 1986); *Warth v. Seldin*, 422 U.S. 490, 515 (1975)).

¹⁴ Order of Enforcement 1.

¹⁵ Motion for Reconsideration 4-5.

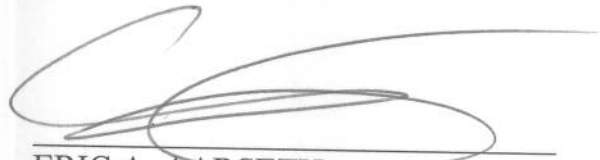
matter. Additionally, clarification would merely repeat that which the Court has outlined in the Order of Enforcement and is therefore unnecessary.

Conclusion

The Court DENIES reconsideration of the delay of implementation until Denta Dental has coded the legacy plan into its system, and relief sought by RPEA. The Court DENIES reconsideration of the possible harm to retirees as addressed in Emily Ricci's affidavit and the State's motion to stay and whether the Court exceeded its authority according to State v. ACLU. The Court invites RPEA to respond to reconsideration or clarification of the terms of what claims analysis is due, and to whom claims analysis is due.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 12th day of December, 2019.



ERIC A. AARSETH
Superior Court Judge

I certify that on 12 December, 2019, a copy was mailed to:

*S. Orlansky; J. Allaway;
M. Paton-Walsh*
Alison Shlom, Law Clerk