

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DST 02664

<p>Carey H Snelling III Petitioner,</p> <p>v.</p> <p>Retirement Systems Division State of North Carolina Department of State Treasurer Respondent.</p>	<p>FINAL DECISION SUMMARY JUDGMENT FOR RESPONDENT</p>
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THIS MATTER comes before the undersigned Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings on September 20, 2021.

On September 21, 2021, the Undersigned served Petitioner with a Request for Response to Motion, in which the Undersigned advised Petitioner that Respondent had filed a Motion for Summary Judgment on September 20, 2021, and ordered that Petitioner respond to that motion on or before October 4, 2021, if Petitioner desired objections to be considered before a ruling was made. Petitioner has not responded to Respondent's Motion for Summary Judgment, nor has Petitioner raised any objection to the same. Having considered Respondent's Motion, Memorandum of Law, and the Affidavit of Patrick Kinlaw, and all matters of record appropriate for consideration, the Undersigned finds as fact and concludes as a matter of law that there is no genuine issue of material fact and therefore summary judgment is appropriate.

At issue in this contested case is the Respondent's April 13, 2021, determination that Petitioner is ineligible for long-term disability benefits and that the long-term disability benefits erroneously paid to Petitioner between March 2020 and January 2021 constituted an overpayment that must be repaid by Petitioner to Respondent, and Respondent's determination that premiums paid by Respondent to the State Health Plan on Petitioner's behalf also constituted an overpayment that must be repaid by Petitioner to Respondent. In making these determinations, Respondent was not arbitrary or capricious, did not exceed its authority or jurisdiction, did not fail to act as required by law or rule, did not act erroneously, and did use proper procedure.

It is therefore ORDERED that summary judgment for Respondent is ALLOWED, and the Respondent's determination that Petitioner is ineligible to receive long-term disability benefits and that Petitioner has received an overpayment in the total amount of \$31,011.27, is AFFIRMED.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 19th day of October, 2021.



David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 19th day of October, 2021.



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