

**STATE OF WASHINGTON
HEALTH CARE AUTHORITY
BOARD OF APPEALS**

In the matter of:

[APPELLANT],

Appellant.

Docket No. 2019-11-0498S

FINAL ORDER

Program: School Employees Benefits Board

1. ISSUE

Whether the School Employees Benefits Board (SEBB) Organization properly denied the Appellant's eligibility for SEBB benefits.

2. ORDER SUMMARY

The SEBB Organization had the discretion to not provide the Appellant benefit coverage based on the Appellant's anticipated work hours during the 2019-20 school year.

3. HEARING

- | | |
|-------------------------------|---|
| 3.1. Hearing Officer: | Kerry J. Breen |
| 3.2. Hearing Date: | [DATE] |
| 3.3. Appellant: | [APPELLANT] |
| 3.4. Agency: | Health Care Authority (SEBB) |
| 3.4.1. Agency Representative: | Zachariah Robinson, Staff Attorney |
| 3.4.2. Agency Witness: | [SEBB ORGANIZATION]
[SCHOOL] School District |
| 3.5. Admitted Exhibits: | HCA Exhibits 1 – 11
Appellant Exhibit A ¹ |

¹ The Appellant submitted documentation in support of his appeal. The documentation consists of copies of a number of paystubs. Although not marked when submitted, the batch of additional documentation is admitted into the hearing record as Appellant Exhibit A.

4. FINDINGS OF FACT

The following facts are based on the hearing record and are more probable than not under the preponderance of evidence standard:²

- 4.1. The Appellant, [APPELLANT], is a long term leave replacement school bus driver working for the [SCHOOL] School District. Exhibit 1, p. 10.
- 4.2. During the 2017-18 school year, the Appellant worked 550 hours for the District and in the 2018-19 school year he worked 695 hours. Exhibit 7, p. 1
- 4.3. On [DATE], the [SEBB ORGANIZATION] for the [SCHOOL] School District sent [APPELLANT] a letter stating that [APPELLANT] was "not eligible for the employer contribution toward School Employee's Benefits Board (SEBB) Program benefits for the 2019-2020 school year. This decision is based upon the anticipation you will work for less than 630 hours in the 2019-2020 school year." Exhibit 6, page 1.
- 4.4. The Appellant contends that the [SCHOOL] School District erred in denying his benefits because [APPELLANT] should be anticipated to work more than 630 hours for the 2019-2020 school year. Appellant states in [APPELLANT] appeal, "I am currently working as a long-term leave replacement on a route averaging more than 20 hours per week. As of October 31, I have worked in excess of 180 hours during the school year, an average of 4.4 hours per day. Based on such, it is reasonable to anticipate that I would work more than the required 630 hours during the 2019-2020 school year and am therefore eligible for benefits under the SEBB Program." Exhibit 4, page 1.
- 4.5. On [DATE], the SEBB Organization confirmed for the SEBB Appeals Unit, the Appellant's hours the last two school years, and stated: "[APPELLANT] has been asked if [APPELLANT] would consider bidding/applying for a contracted route and has stated [APPELLANT] would not like to because [APPELLANT] enjoys the flexibility throughout the year³.... Seeing [APPELLANT] is subbing in a position that will be going out for employees to bid on/apply for, I cannot anticipate [APPELLANT] will work 630 hours for the 2019-20 year. I will continue to monitor [APPELLANT] hours worked for the 2019-20 year and if I anticipate [APPELLANT] working 630+ hours, [APPELLANT] will become eligible for SEBB benefits." Exhibit 7, page 1.

² The standard of proof that applies to a SEBB benefits formal administrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not. WAC 182-32-066.

³ Exhibit 7 alludes to the Appellant wanting flexibility for the purpose of "taking extended vacations." During the hearing, the Appellant objected to this characterization and maintains that his reasons for not wanting to enter into a contract for a set route are not relevant. While agreeing with the Appellant that the underlying reasons are not relevant, it is clear that not having a contracted route does provide the Appellant with much greater scheduling "flexibility."

- 4.6. If an employee of a public school district, such as the Appellant, disagrees with a decision made by that district on the issue of eligibility for SEBB benefits, the employee may request a brief adjudicative proceeding (BAP) by submitting a written request to the SEBB Appeals Unit. WAC 182-32-2020(2); see also WAC 182-32-2000. The Appellant's timely appeal was received on [DATE]. Exhibit 3. On [DATE], a presiding officer with the SEBB Appeals Unit converted the BAP to a formal administrative hearing. Exhibit 1.
- 4.7. The Appellant's requested remedy is that based on [APPELLANT] past and current work history, it is reasonable to anticipate that [APPELLANT] would work more than the required 630 hours over the 2019-20 school year thereby supporting a decision that he should have been deemed immediately eligible for SEBB benefits. Exhibit 4.

5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions of law:

- 5.1. **Jurisdiction:** This matter is governed by chapter 34.05 RCW, the Administrative Procedure Act, and the regulations in the Washington Administrative Code (WAC), cited below.
- 5.2 Pursuant to RCW 34.05.482 and chapter 182-32 WAC, the Health Care Authority (HCA) will generally use brief adjudicative proceedings for issues identified in the SEBB program's administration of SEBB benefits and insurance coverage. WAC 182-32-2000.
- 5.3 The presiding officer or the review officer or officers, in their sole discretion may convert a brief adjudicative proceeding to a formal administrative hearing at any time on motion by the SEBB subscriber or enrollee or their representative, the HCA, or on the presiding officer or review officer or officers' own motion. WAC 182-32-2160(1).
- 5.4 The presiding officer or review officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the HCA to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures outlined in RCW 34.05.413 through 34.05.479 that govern formal administrative hearings. WAC 182-32-2160(2).
- 5.5 When a brief adjudicative proceeding is converted to a formal administrative hearing, the director designates a hearing officer to conduct the formal

administrative hearing consistent with the Administrative Procedure Act, RCW 34.05.413 through 34.05.479. WAC 182-32-3000.

- 5.6 The director of HCA may delegate any power or duty vested in her or him by law, including the authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. RCW 41.05.021(1); see also RCW 34.05.425(1)(b). In matters involving SEBB program formal administrative hearings, the HCA director has delegated the authority to enter final orders to the HCA Board of Appeals. WAC 182-32-2160 and -3000.
- 5.7 **Authority of the Hearing Officer:** The hearing officer must first apply the applicable SEBB program rules adopted in the Washington Administrative Code (WAC). If no SEBB program rule applies, the hearing officer must decide the issue according to the best legal authority and reasoning available. WAC 182-32-064.
- 5.8 A hearing officer must hear and decide the issues de novo (anew) based on the evidence and oral or written arguments presented during a formal administrative hearing and admitted into the record. A hearing officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules. A hearing officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a formal administrative hearing, the hearing officer may only allow argument to preserve the record for judicial review. WAC 182-32-3030.
- 5.9 **Rulings:** The record in a formal administrative hearing consists of the official documentation of the hearing process. The record includes, but is not limited to, recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents. WAC 182-32-3005. All rulings during the hearing made on motions, objections, and evidentiary matters are adopted hereby and incorporated herein by reference. The undersigned considered all exhibits, testimony, and argument presented on the record, regardless of whether fully set forth herein. Any arguments not specifically addressed in this decision are found to lack relevance or found not to substantially affect a party's rights.
- 5.10 **Evidence:** Evidence-including hearsay-is admissible in administrative hearings if, in the judgment of the hearing officer, the evidence is the kind on which reasonably prudent persons are accustomed to rely upon in the conduct of their affairs. RCW 34.05.452(1).
- 5.11 The standard of proof that applies to SEBB benefits formal administrative hearings is a preponderance of the evidence, meaning that something is more likely to be true than not. WAC 182-32-066(2). Public officers and agencies are presumed to have properly performed their duties and acted as described in the law, unless substantial evidence to the contrary is presented.

A party challenging this presumption bears the burden of proof.
WAC 182-32-066(3).

Eligibility for SEBB Benefits

- 5.12. The SEBB was created within the Health Care Authority “to design and approve insurance benefit plans for school employees and to establish eligibility criteria for participation in insurance benefit plans.” RCW 41.05.740(1). The SEBB must “[d]etermine the terms and conditions of school employee and dependent eligibility criteria”... which... “shall be no more restrictive than requiring that a school employee be anticipated to work at least six hundred thirty hours per school year to be benefits eligible” RCW 41.05.740(6)(d)(ii).
- 5.13. The [SCHOOL] School District is a public school district organized under chapter 28A.315 RCW and is defined as an “employer” for purposes of the SEBB program. RCW 41.05.011(8)(b). Effective January 1, 2020, a "school employee" for purposes of the SEBB program includes “[a]ll employees of school districts” unless otherwise excluded by statute. RCW 41.05.011(6)(b).
- 5.14. Each individual public school district that is required to participate in benefit plans provided by the SEBB is defined as a “school employees benefits board organization” (SEBB organization). RCW 41.05.011(22); WAC 182-32-020. The statutes and controlling regulations contemplate that each separate school district is a separate and distinct SEBB organization. Id.
- 5.15. A SEBB organization must use the methods provided by the SEBB program to determine benefits eligibility. WAC 182-31-030(1)(a). Specifically, a SEBB organization must apply the criteria in WAC 182-31-040 and WAC 182-31-050 in determining employee eligibility for benefits and the employer contribution. WAC 182-31-030(2).
- 5.16. Eligibility is determined by the criteria that most closely describes the school employee's work circumstance. WAC 182-31-040(1). A school employee is eligible for the employer contribution towards benefits if they are anticipated to work at least six hundred thirty hours per school year. WAC 182-31-040(2)(a).
- 5.17. A school employee is presumed eligible for the employer contribution if they worked at least six hundred thirty hours in each of the previous two school years, and are returning to the same type of position. WAC 182-31-040(5)(a)-(b). “A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.” WAC 182-31-040(5)(b).

- 5.18. A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking hours from multiple positions within **one** SEBB organization. WAC 182-31-040(4). However, a school employee may not gain eligibility by the stacking of hours from **multiple** different SEBB organizations. Id.
- 5.19. In the present case, the [SCHOOL] School District did not anticipate that the Appellant would work six hundred thirty or more hours for its organization during the 2019-20 school year. The Appellant is not entitled to the presumption of eligibility since he did not work six hundred thirty or more hours in each of the previous two school years for that SEBB organization.⁴ Thus, the Appellant is not eligible for SEBB benefits under the WAC 182-31-040 two year look-back presumption.
- 5.20. The Appellant argues that the SEBB Organization misapplied the controlling regulations. He maintains that regardless of the two year look back presumption in WAC 182-31-040(5), [APPELLANT] still should be anticipated to work over 630 hours in the 2019-20 school year because [APPELLANT] has “worked substantial and increasing hours in the last two school years” and based on his time worked thus far in this current (2019-20) school year, [APPELLANT] sees that [APPELLANT] will easily pass the 630 hour threshold. Exhibit 4; Appellant testimony. Documentation admitted into the hearing record supports this proposition. Appellant Exhibit A.
- 5.21. The Appellant is correct in noting that regardless of the presumption, a school employee may still be deemed eligible for the employer contribution towards SEBB benefits if the SEBB organization anticipates that the employee will work at least six hundred thirty hours over the upcoming school year. WAC 182-31-040(2). Here, the [SCHOOL] School District determined that they did not anticipate this need for the 2019-20 school year.
- 5.22. The Appellants' hours in prior school years and the anticipated hours in the current school year were presumably used by the district in reaching the non-eligibility conclusion (Exhibit 6; Exhibit 7). Notwithstanding, it is not determinative under what exact basis the district used in making its forecast of anticipated need. Within the parameters of the statutory and regulatory required criteria, the SEBB organization has the unfettered discretion to make its own determination of anticipated need in this matter. It is the SEBB organization’s budgeted funds that support the employer contribution portion of the provided SEBB benefits and, thus, the anticipation decision lies entirely with that organization’s discretion as only limited by the applicable criteria.

⁴ During the 2017-18 school year, the Appellant worked 550 hours and in the 2018-19 school year [APPELLANT] worked 695 hours.

5.23. The Appellant will be eligible to receive benefits if [APPELLANT] does, in fact, work six hundred thirty or more hours during this 2019-20 school year. WAC 182-31-040(2)(c) provides that a school employee who was not anticipated to work six hundred thirty hours will become eligible on the date the employee actually worked six hundred thirty hours. Per the controlling regulations, the Appellant will be notified if [APPELLANT] does become eligible for benefits. Exhibit 7, page 1.

6. ORDER

IT IS HEREBY ORDERED THAT:

The SEBB Program's action is **AFFIRMED**. It was wholly within the SEBB organization's discretion to make a determination of the Appellant's anticipated work hours over the upcoming school year. There is nothing in the controlling SEBB regulations that would have required a different determination or that would allow this tribunal to mandate a different outcome.

ISSUED at Olympia, Washington on the date of mailing.

Kerry J. Breen
Chief Review Judge
Health Care Authority

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

SEBB PROGRAM

Zachariah Robinson, Agency Representative
P.O. Box 45504
Olympia, WA 98504

APPELLANT

I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

ISSUED this 24 day of February, 2020, at Olympia, Washington.

Jamie Silva, Legal Assistant
Board of Appeals