

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 INS 00738

BLUE CROSS AND BLUE SHIELD OF)
NORTH CAROLINA,)
)
Petitioner,)
)
v.)
)
NORTH CAROLINA STATE HEALTH)
PLAN FOR TEACHERS AND STATE)
EMPLOYEES,)
)
Respondent,)
)
and)
)
AETNA LIFE INSURANCE COMPANY)
)
Respondent-Intervenor.)

AETNA LIFE INSURANCE COMPANY’S PREHEARING STATEMENT

Pursuant to 26 N.C. Admin. Code 3.0104, and the February 16, 2023 Order for Prehearing Statements entered in Case No. 23 INS 00738, Respondent-Intervenor Aetna Life Insurance Company (“Aetna”) hereby files its Prehearing Statement and serves copies upon all parties to the above-captioned contested case.

I. ISSUE TO BE RESOLVED.

Whether Petitioner Blue Cross and Blue Shield of North Carolina (“BCBSNC”) has been deprived of property or substantially prejudiced because Respondent North Carolina State Health Plan for Teachers and State Employees (“Plan”) exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and/or failed to act as required by law or rule by awarding a contract for third-party administrative services to Aetna.

II. A BRIEF STATEMENT OF THE FACTS AND REASONS SUPPORTING THE ISSUE(S) IN DISPUTE.

On August 30, 2022, the Plan issued Request for Proposal No. 270-20220830TPAS (“RFP”) for a contract to provide third-party administrative services for the Plan (“TPA Contract”), which provides healthcare coverage to nearly 750,000 teachers, state employees, retirees, and their dependents. Three vendors submitted responses to the RFP, including Aetna and BCBSNC.

On December 14, 2022, consistent with the written recommendation of the Plan’s Evaluation Committee and pursuant to the unanimous vote of the Plan’s Board of Trustees, the Plan awarded the TPA Contract to Aetna, displacing BCBSNC as the incumbent vendor for third-party administrative services. The implementation period for the TPA Contract began on January 1, 2023, and Aetna will start providing services to the Plan’s members on January 1, 2025.

On January 12, 2023, BCBSNC submitted a bid protest letter to the Plan, arguing that the Plan’s evaluation metrics and process were unsound, challenging the Award to Aetna, and requesting a bid protest meeting. On January 20, 2023, The Plan’s Interim Executive Administrator, Samuel Watts, sent BCBSNC written notice denying its request for a protest meeting and explaining why a protest meeting would serve no purpose.

On February 16, 2023, BCBSNC filed a Petition for Contested Case Hearing in the Office of Administrative Hearings in Durham County, North Carolina, restating the arguments in its bid protest letter, and asking this Tribunal: (1) to order that the TPA Contract be awarded to BCBSNC; and (2) in the alternative, vacate the Award to Aetna and order the Plan to conduct a new RFP process.

In its Petition, BCBSNC alleges that the Plan: (1) failed to score each vendor’s network despite its importance to the Plan’s members; (2) did not validate the vendors’ self-reported network pricing; (3) irrationally assigned equal points to all technical requirements, and equal points to administrative fees and network-pricing guarantees, despite their varying significance;

(4) included technical requirements that were impossible or not in the best interest of the Plan's members; (5) failed to fully explain how points would be awarded for administrative fees and network-pricing guarantees; (6) failed to validate whether vendors could meet all technical requirements; and (7) failed to allow vendors to provide explanations if they could not meet a technical requirement. BCBSNC's arguments, which constitute mere disagreement with the Plan's proper exercise of its discretion, should be rejected, and the award to Aetna should be upheld.

III. THE STATUTES, RULES AND LEGAL PRECEDENT, IF KNOWN.

- a. N.C. Gen. Stat. § 150B-1;
- b. N.C. Gen. Stat. § 150B-2;
- c. N.C. Gen. Stat. § 150B-22, *et seq.*;
- d. N.C. Gen. Stat. § 143-318.11(a)(1);
- e. N.C. Gen. Stat. § 135-48.1(3), (14);
- f. N.C. Gen. Stat. § 135-48.2(a);
- g. N.C. Gen. Stat. § 135-48.20;
- h. N.C. Gen. Stat. § 135-48.21;
- i. N.C. Gen. Stat. § 135-48.22;
- j. N.C. Gen. Stat. § 135-48.32;
- k. N.C. Gen. Stat. § 135-48.33;
- l. N.C. Gen. Stat. § 135-48.34;

IV. LIST OF PROPOSED WITNESSES AETNA MAY CALL AT THE HEARING.

- a. The Plan:
 - i. Samuel Watts, Interim Executive Administrator for the Plan;
 - ii. Kendall Bourdon, Director of Contracting and Compliance;
 - iii. Matthew Rish, Senior Director of Customer Experience & Communications; and

- iv. Other representative of the Plan and/or the Plan's Board of Trustees, to be determined.

b. BCBSNC:

- i. Dr. Tunde Sotunde, President and Chief Executive Officer;
- ii. Roy Watson, Jr., Vice President, Group Segment and State Health Plan at Blue Cross NC; and
- iii. Gerald Petkau, Senior Vice President, Commercial Sales.

c. Aetna:

- i. Jim Bostian, President of Mid-South and Capitol Markets;
 - ii. Catherine Aguirre, Executive Director;
 - iii. Erich Twachtman, VP, Public and Labor; and
 - iv. Jason Keibler, VP, Network Management.
- d. Representatives of the Segal Group, Inc., to be determined;
 - e. Any individual identified during the course of discovery; and
 - f. Any witness identified or called by Petitioner or Respondent.

V. AETNA'S PURSUIT OF DISCOVERY AND LENGTH OF TIME REQUIRED.

Counsel for all Parties are engaged in discussions on a proposed discovery schedule and will submit a proposed schedule to the Tribunal on or before March 24, 2023, for the Tribunal's consideration as it prepares the Scheduling Order. If the Parties do not reach agreement on any part of the schedule, the Parties will describe the disagreements and provide competing proposals.

VI. DATE AND LOCATION OF THE HEARING.

A scheduling order has not yet been entered in this contested case. The parties will confer with each other and submit proposed hearing dates by March 24, 2023, as instructed by this Tribunal. Aetna prefers and requests that the hearing be conducted in Raleigh, North Carolina.

VII. ATTORNEYS REPRESENTING RESPONDENT-INTERVENOR IN THIS CONTESTED CASE.

Aetna is represented by the undersigned counsel.

VIII. ESTIMATED LENGTH OF HEARING.

Aetna estimates the hearing will take approximately five (5) to seven (7) days but defers to BCBSNC as the Petitioner.

IX. OTHER SPECIAL CONSIDERATIONS.

This Prehearing Statement is based upon information available at the time of the filing. Aetna expressly reserves the right to amend its Prehearing Statement to include additional contentions, arguments, legal authorities and/or witnesses as additional information is obtained or learned through discovery or otherwise as the case develops.

Respectfully submitted this the 20th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **AETNA LIFE INSURANCE COMPANY'S PREHEARING STATEMENT** on the following via electronic transmission:

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This, the 20th day of March, 2023.

By: /s/ Lee M. Whitman
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