

BERTRAM MILLER,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-30

OPINION

This appeal involves the denial of a request for reimbursement of the balance in a flexible benefits health care account. The denial was appealed and by unanimous decision the Baltimore County Board of Education dismissed Appellant's case for his failure to appear at a hearing before the local board. The local board has submitted a Motion for Summary Affirmance maintaining that the local board's dismissal was not arbitrary unreasonable or illegal. Appellant has filed an Opposition to the Motion and the local board has filed a Reply to the Opposition.¹

Although the parties have engaged in a lengthy debate over the legality of the dismissal of the appeal by the local board, we believe the issue is moot. By letter of May 14, 2003, the health benefits plan manager notified Appellant that his claim for reimbursement was reconsidered and denied, set forth the reasons for the denial, and described the procedures and timeline for appealing the denial of the claim in accordance with the Plan requirements.

FACTUAL BACKGROUND

Bertram Miller has been a mathematics teacher in the Baltimore County Public Schools ("BCPS") for 30 years. The BCPS offers its employees a flexible benefits health care plan ("the Plan"). The Plan is a medical reimbursement plan created under § 105 of the Internal Revenue Code and is often included as an option in a flexible benefits plan (also known as a cafeteria plan) governed by § 125 of the Code. Participants contribute pre-tax dollars through salary deductions to cover health care for the year. Participants then submit claims for medical expenses not otherwise reimbursable through insurance or other arrangements. The Plan allows participants to pay for these expenses with pre-tax dollars, and thus effectuate tax savings.

Once an employee elects to participate in the Plan, he/she designates the amount of money to be withheld for reimbursement for future medical expenses. IRS rules prohibit the deferral of compensation from one year to the next. Thus, at the employer's choice, money not claimed must either be retained by the Plan to underwrite the cost of the plan or returned to

¹Appellant did not file his Opposition with the State Board. It was only after receiving a Reply to the Opposition from BCPS that the State Board was able to obtain a copy of the Opposition from the BCPS.

participants as dividends or premium refunds. The funds cannot be allocated among the participants based upon their individual claims. BCPS chose to retain monies not claimed to underwrite the Plan.²

Appellant chose to participate in the flexible benefits health care plan for the plan year September 1, 1999 through August 31, 2000. He signed an Election Form authorizing a total deduction of \$2400 for the Plan Year. On that form he agreed to abide by the rules of the Plan, including the provision that “monies remaining in the account 90 days after the end of the plan year cannot be refunded.” (Flexible Spending Accounts Election Form, June 15, 1999).³

In the fall of 2000, Appellant timely submitted a claim in the amount of \$1400 to the firm of Hunt, Dupree & Rhine, (“Hunt”), BCPS’ third party administrator for the health care plan, which was paid to him in October, 2000. Appellant then submitted a claim postmarked December 4, 2000 for the balance of \$1,000. Hunt denied this claim as it was not received before the November 30, 2000 deadline, 90 days after the end of the plan year. Appellant wrote to Mr. Michael Runge, supervisor of Employee Benefits for BCPS, on December 28, 2000 concerning the denial. The letter was referred to Ms. Debra Lee, Benefits Manager, who denied the claim as untimely. (Letter of February 3, 2001). Appellant appealed this denial to Christine Johns, Deputy Superintendent. Ms. Johnson denied the appeal by letter dated May 25, 2001, noting that Mr. Miller could appeal the decision to the local board of education pursuant to Md. Code Ann., Educ. § 4-205.

Appellant filed a timely appeal to the local board. Pursuant to local policy, the appeal was referred to a hearing examiner for a hearing on the merits. After multiple postponements, for the most part at Appellant’s request, and after no response to two requests for available hearing dates from Appellant over a two month period, the hearing was finally held on August 30, 2002. The Superintendent filed a Motion to Dismiss, alleging that the local board was without jurisdiction to hear the appeal because the question of denial of a benefits claim does not involve the exercise of a power or duty conferred on a local superintendent under § 4-205 (c)(1) or (2) of the Education Article. The hearing examiner declined to rule on the motion. After receiving testimony and evidence, the hearing examiner issued a proposed decision to the local board recommending that the matter be remanded to the school system because Article IX of the Plan itself had explicit procedures for the handling claims, including the denial of claims and the appeal of any such denials. She also noted that either party could request oral argument before

²Section 6.3 of the Plan provides that the amounts credited to a Participant’s health care account shall not represent actual deposits to a separate fund made on his behalf but are bookkeeping accounts representing assets of the Board from which payments will be made. Section 6.9 of the Plan provides that a Participant will not be entitled to receive cash or any other credit with respect to any credit balance in the health care account at the end of the Plan Year.

³Mr. Miller also received a Benefits Enrollment Guide that outlines the rules of the flexible benefits program.

the local board on her recommendation.

Appellant requested oral argument before the local board and was advised by certified mail that oral argument was scheduled for January 14, 2003 at 3:30 p.m. (Letter of December 19, 2001). At 3:30 p.m., a quorum of the local board was present to convene the hearing. Appellant however failed to appear at the hearing. The local board waited until 4:01 to convene the hearing, as a courtesy to Appellant. Appellant had still not made any contact with the local board. Counsel for the Superintendent called Appellant and left a message that the hearing would proceed. The Superintendent then moved to dismiss the hearing on the basis that Appellant received notice of the hearing and had failed to appear. The local board voted unanimously to dismiss the appeal.

At 5:00 p.m, in response to the message left by the counsel to the Superintendent, Appellant called the local board's law office. He stated that he had encountered car trouble and requested that his appeal be reinstated. He was told to put his request in writing. He did so, but offered no affidavit or other proof of his car trouble. The local board issued an order denying his request and granting the Superintendent's Motion to Dismiss. (Opinion and Order, March 11, 2003). This appeal followed.

After this appeal to the State Board was filed, the current Benefits Manager for BCPS, Ms. Kathleen Harmon, wrote Appellant to inform him that pursuant to the Plan procedures, his claim was denied and that he had 60 days from the date of that letter to appeal the denial to the Plan Administrator. He was also informed that any decision on that appeal would be binding upon both him and the local board. (Letter of May 14, 2003).

ANALYSIS

1. Jurisdiction

In his appeal to the State Board, Appellant notes that his appeal was filed pursuant to § 4-205 of the Education Article. Section 4-205 sets forth the powers and duties of the county superintendent. Section 4-205 (c)(1) provides that each county superintendent shall explain the intent and meaning of the school law and the applicable bylaws of the State. Section 4-205(c)(2) provides that each county superintendent shall decide "all controversies and disputes" that involve "the rules and regulations of the county board" and "the proper administration of the county public school system." However, not *all* decisions made on a day to day basis by a county superintendent are appealable to the local board.

In *Board of Education of Garrett County v. Lendo*, 295 Md. 55 (1982), the Court of Appeals held that the appeals process did extend to those matters set forth in section 4-205(c). It also stated, however, that "[I]t does not follow insofar as decision of county superintendents are concerned that all such decisions are appealable." *Lendo*, 295 Md. at 65. Rather, certain decisions fall outside the scope of § 4-205(c) and are therefore not subject to appeal under that

section. *See also Regan v. Montgomery County Board of Education*, MSBE Op. No. 02-029, and *Astrove v. Montgomery County Board of Education*, MSBE Op. No. 02-014 (attempt to change existing policy is quasi-legislative matter not subject to § 4-205 appeal process).

At issue in this case is the denial of a claim for benefits under a health care plan. This case does not involve an explanation of the intent and meaning of school law or regulation. Nor does it concern a “rule or regulation” of a county board or the “proper administration of a county public school system”. Therefore, the decision made by the Deputy Superintendent should not have been appealed to the local board.⁴ Rather, under the terms of the Plan itself, the appeal of the denial of the claim should have been made to the Plan Administrator in accordance with Article IX of the Plan:

9.3 Claims Procedure - In the event that any Participant, beneficiary, or dependent (hereinafter referred to as the “Claimant”) believes that he is entitled to a benefit under the Program, and such benefit has not been paid or commenced, or if such benefit has been paid or commenced under terms or in an amount with which the Claimant is not in agreement, said Claimant shall have the right to file a written claim with the Board setting forth the reason he believes he is entitled to the benefit, or setting forth the nature of his dispute with the terms or amount of the benefit, as the case may be. Such claim shall be delivered or mailed to the Board (to the attention of the Administrator or such other person as shall have been delegated to receive such claim).

(Plan, p. IX-1.) Section 9.3 of the Plan also sets forth the mechanism and time lines for appealing a decision concerning a claim:

...For a period of 60 days following the date on which a Claimant has been provided with a notice of denial as aforesaid, the Claimant may appeal the denial by submitting to the Administrator a written request for a review by the Administrator of the denial....A decision by the Administrator shall be made promptly, and not later than 60 days after the Administrator’s receipt of the request for review...The Administrator’s decision shall be final and binding on the Board, the Claimant, and all other parties claiming any interest under the Program, and their heirs and assigns.

(Plan, p. IX-1.) Because the Plan itself provides the exclusive procedure for the determination of claims under the Plan, the local board did not have jurisdiction to hear the matter. Accordingly, we find that the State Board does not have jurisdiction to hear this matter as well and we dismiss the appeal for lack of jurisdiction.

⁴In Appellant’s defense, he was told that the denial by the Superintendent could be appealed to the State Board under § 4-205. However, the Superintendent did argue in its Motion to Dismiss before the hearing examiner that the local board had no jurisdiction over this matter.

2. Mootness

Even if the State Board were not to dismiss the appeal on the basis of lack of jurisdiction, we believe that the issue is now moot. It is well established that a question is moot when “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts (or agency) can provide.” *In Re Michael B*, 345 Md. 232, 23 (1997); *See also Bonita Mallardi v. Carroll County Board of Education*, MSBE Opinion No. 00-07, (February 3, 2000); *Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). Before the local board dismissed the appeal, the hearing examiner recommended that the matter be remanded to BCPS to follow the claims appeal procedures set forth in the Plan. By letter dated May 14, 2003, the BCPS initiated the proper procedures in accordance with the Plan. Appellant is now able to pursue his appeal through those procedures. Since those procedures are now in process, we also dismiss the appeal as moot.⁵

CONCLUSION

For these reasons, we dismiss this appeal for lack of jurisdiction. *See* COMAR 13A.01.01.03J2(c).

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

⁵Because we find that the State Board has no jurisdiction over this appeal, we do not need to decide whether the local board properly dismissed the matter due to Appellant’s failure to appear at the hearing. However, it should be noted that in other arenas, failure to appear is just cause for the dismissal of an action. *See* COMAR 28.02.01.20, (default order proper for failure to appear at a hearing before the Office of Administrative Hearings).

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

August 27, 2003