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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3541-15T1

DONNA CANCGLIN,

Appellant,

v.

SCHOOL EMPLOYEES' HEALTH
BENEFITS COMMISSION,

Respondent.

Argued October 30, 2017 — Decided February 22, 2018

Before Judges Messano, O'Connor and Vernoia.

On appeal from the Division of Pensions and
Benefits, School Employees' Health Benefits
Commission, PERS No. 1006923.

Ashley E. Malandre argued the cause for
appellant (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys; Richard A.
Friedman, of counsel and on the brief;
Marissa A. McAleer, on the brief).

Danielle P. Schimmel, Deputy Attorney
General, argued the cause for respondent
(Christopher S. Porrino, Attorney General,
attorney; Melissa H. Raksa, Assistant
Attorney General, of counsel; Danielle P.
Schimmel, on the brief).

PER CURIAM

Petitioner Donna Cancglin appeals from the final administrative determination of the School Employees' Health Benefits Commission (Commission) concluding she is not eligible to enroll into the retired group of the School Employees' Health Benefits Program (SEHBP). We affirm.

I

Before her retirement in 2015, petitioner was a part-time employee of the Pitman Board of Education (Board). It is unclear from the record how long she worked for the Board, but it is not disputed she worked for it less than twenty-five years. Petitioner submitted an application to the Public Employees' Retirement System (PERS) seeking an ordinary disability retirement allowance due to a neurological disorder. The Board of Trustees of PERS approved her application; benefits were to commence on February 1, 2015.

Before benefits started, petitioner applied to the Division of Pensions and Benefits (Division) for enrollment into the "retired group" of the SEHBP. The SEHBP is a health benefits program that provides certain health insurance coverage for eligible individuals and their families. See generally N.J.S.A. 52:14-17.46.1 through -17.46.11 (setting forth the general and specific benefits to which eligible members are entitled).

On February 6, 2015, the Division approved her application and enrolled her into the retired group. However, on March 20, 2015, a Division pension benefits specialist notified petitioner she had been enrolled into the retired group in error. The specialist explained petitioner was ineligible for coverage in the retired group because she had not been a full-time employee of the Board and had not been receiving health care benefits from the Board before she retired.

Petitioner administratively appealed the Division's determination, arguing that, because she had retired on an ordinary disability retirement allowance, she was entitled to "State-paid health insurance coverage." She further contended that her eligibility for coverage was not dependent on her having been a full-time employee or having received health care benefits before retirement.

The Division rejected petitioner's arguments. It noted that to receive health care benefits from the State, one must have been an employee as defined by the applicable statute, N.J.S.A. 52:14-17.46.2(d)(2), which defines the term "employee" as one who was employed full-time, which means have worked twenty-five hours a week or more. Ibid.

The Division further determined that, pursuant to N.J.A.C. 17:9-6.1, a "retiree" must have been eligible for health

benefits before ending employment. The Division noted that, under N.J.A.C. 17:9-6.1(b)(3)(i) and (ii), a "retired employee" includes those who are eligible for health benefit coverage, were full-time employees as defined by N.J.A.C. 17:9-4.6, and were eligible for group health plan coverage before leaving employment. Thus, the Division concluded that because petitioner had neither been a full-time employee nor eligible for the employer's health benefits while actively employed, she was not eligible for health benefits coverage in the retired group.

Petitioner administratively appealed the Division's determination to the Commission, asserting essentially the same contentions. The Commission rejected her arguments for the reasons expressed by the Division. Petitioner's subsequent request for a fact-finding hearing before the Office of Administrative Law was denied because there were no material facts in dispute, but the Commission permitted petitioner to provide argument on the legal issues before it issued a final administrative determination.

Petitioner again urged that, pursuant to N.J.S.A. 52:14-17.32f and N.J.S.A. 52:14-17.32f1, a retiree receiving a disability retirement allowance is eligible to receive health benefits coverage in the retired group, without the condition a

retiree have been a full-time employee and eligible to receive health care benefits before retirement.

The Commission denied petitioner benefits for the same reasons previously espoused.

II

On appeal, petitioner contends the Commission erred when it determined she was not eligible for health benefits in the retired group because she had not been employed full-time by the Board and had not received employer-paid health insurance at the time of retirement. She maintains one who retires on an ordinary disability retirement allowance is entitled to State-paid health insurance without meeting these two conditions.

Generally, courts afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing. R & R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999) (quoting Smith v. Dir., Div. of Taxation, 108 N.J. 19, 25 (1987)). An appellate court, however, is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." In re Taylor, 158 N.J. 644, 658 (1999) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Petitioner cites various provisions of the New Jersey State Health Benefits Program Act (Act), N.J.S.A. 52:14-17.25 to -46a,

in support of her position. The Commission does not dispute the cited provisions govern the issues; however, its interpretation of such provisions differs from petitioner's.

Petitioner argues N.J.S.A. 52:14-17.32f and N.J.S.A. 52:14-17.32f1 define those eligible for State-paid health insurance benefits and that she meets such definition, entitling her to benefits.

N.J.S.A. 52:14-17.32f states, in relevant part,

A qualified retiree from the Teachers' Pension and Annuity Fund . . . [is] eligible to participate in the State Health Benefits Program until June 30, 2008, and beginning July 1, 2008, in the School Employees' Health Benefits Program, regardless of whether the retiree's employer participated in the program.

A qualified retiree is a retiree who:

- a. Retired on a benefit based on 25 or more years of service credit;
- b. Retired on a disability pension based on fewer years of service credit; or
- c. Elected deferred retirement based on 25 or more years of service credit and who receives a retirement allowance.

[N.J.S.A. 52:14-17.32f (Emphasis supplied).]

Petitioner contends she is a qualified retiree under subparagraph b. because she retired on a disability pension

before providing twenty-five years of service and, as a qualified retiree, is eligible to receive benefits. She points out this statute does not condition eligibility for benefits on whether an employee worked full-time or had been eligible to receive health care benefits before retirement; thus, she argues, the Commission's conclusion she was ineligible for benefits because she worked part-time or was not eligible for benefits before retirement was erroneous.

The difficulty with petitioner's analysis is, first, there is no evidence she is or had been a member of the Teachers' Pension and Annuity Fund. Second, N.J.S.A. 52:14-17.32f1 qualifies N.J.S.A. 52:14-17.32f by limiting the applicability of the latter statute to certain classes of employees, one of which is employees of boards of education. Petitioner was not an "employee" as that term is defined in the Act. N.J.S.A. 52:14-17.32f1 states in relevant part:

The provisions of section 3 of P.L.1987, c.384 (C.52:14-17.32f) shall apply to:

a. any employee of a board of education who . . . retires on a disability pension based upon fewer years of service credit in that system or systems;

[N.J.S.A. 52:14-17.32f1 (Emphasis supplied).]

In the general definitions section of this Act, the term "employee" is defined in pertinent part as follows:

(c)

. . . .

(2) After the effective date [May 21, 2010] of P.L.2010, c.2, the term "employee" means

(i) . . . a full-time employee of an employer other than the State who appears on a regular payroll and receives a salary or wages for an average of the number of hours per week as prescribed by the governing body of the participating employer which number of hours worked shall be considered full-time, determined by resolution, and not less than 25.

[N.J.S.A. 52:14-17.26(c).]

The Act unambiguously defines "employee" as one who worked full-time, which means one who has worked twenty-five hours per week or more. N.J.S.A. 52:14-17.26. There is no dispute petitioner worked less than twenty-five hours per week and, therefore, did not work full-time. Because she did not work full-time, she was not an employee as that term is defined by the Act.

When the language of a statute "is clear on its face, 'the sole function of the courts is to enforce it according to its terms.'" Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392


(2001) (quoting Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 556 (1979)). Resort to extrinsic evidence to interpret the statute is unnecessary. DiProspero v. Penn, 183 N.J. 477, 492 (2005). Here, the statutes under review are clear and we are bound to enforce them according to their terms.

Therefore, although N.J.S.A. 52:14-17.32f states those who worked less than twenty-five years and retired on a disability pension are eligible to participate in the School Employees' Health Benefits Program, N.J.S.A. 52:14-17.32f1 qualifies and limits such benefits for those who worked for Boards of Education to employees only. Petitioner was not an employee as defined by the Act. In addition, petitioner does not address the Commission's additional finding that, to be eligible for benefits after retirement, one has to have been eligible to receive benefits before retirement. Accordingly, petitioner is not entitled to the benefits she seeks.

If we have not explicitly addressed an argument advanced by petitioner, it is because it either is without sufficient merit to warrant discussion in a written opinion, see Rule 2:11-3 (e)(1)(E), or was not raised before the Commission. "Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION