

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. )  
\_\_\_\_\_ )

**RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**  
**AS TO ALL CLAIMS OF PETITIONER**

Pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, Respondent North Carolina State Health Plan for Teachers and State Employees (the “Plan”) hereby moves the tribunal to grant it summary judgment as to all claims in the above-captioned contested case. As shown by the pleadings, affidavits, depositions, discovery, all matters of record, and all matters of which the Administrative Law Judge may take official notice, there is no genuine issue of material fact and the Plan is entitled to judgment as a matter of law.

In support of this Motion, the Plan attaches a four-volume appendix which contains the documentary and other evidence discussed in the accompanying memorandum of law filed contemporaneously herewith. The Appendix volumes are organized by document type, as follows:

- **Volume 1** – Non-Confidential Documentary Exhibits
- **Volume 2 (Filed Under Seal)** – Documentary Exhibits Designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- **Volume 3 (Filed Under Seal)** – Deposition Transcripts
- **Volume 4** – Affidavits

The contents of the Appendix are set forth in **Attachment A** to this Motion.

In this contested case, Petitioner Blue Cross and Blue Shield of North Carolina (“Blue Cross”) challenges the decision by the Plan to deny Blue Cross’s bid protest arising from the Plan’s decision to award Respondent-Intervenor Aetna Life Insurance Company (“Aetna”) the Plan’s third-party administrator (TPA) services contract for 2025–2027 pursuant to the Plan’s Request for Proposals (RFP).

Blue Cross’s main premise in its case against the Plan is that the Plan should have designed and drafted the RFP differently and scored the proposals differently and, had the Plan done so in the manner Blue Cross desires, Blue Cross would have been awarded the contract.

The Plan is entitled to substantial deference regarding the decisions and actions at issue in this dispute—and this deference is fully applicable at summary judgment. Blue Cross has the burden of adducing sufficient evidence to support a finding that the Plan’s process and decisions were contrary to law, or were arbitrary or capricious, and that Blue Cross was substantially harmed as a result. Blue Cross cannot adduce such evidence and instead impermissibly attempts to substitute its judgment for that of the Plan, inconsistent with North Carolina law.

Given the clear and unambiguous provisions of the enabling statutes and the RFP, the proposals submitted in response to the RFP, the undisputed evidence regarding the thorough and reasonable process followed by the Plan, and the Plan’s reasonable, reasoned, and appropriate decisions and actions, there is no genuine issue of material fact for trial. The Plan is therefore entitled to judgment as a matter of law as to all of Blue Cross’s claims.

This the 15th day of December, 2023.

North Carolina State Health Plan for  
Teachers and State Employees

/s/ J. Benjamin Garner

J. Benjamin Garner  
N.C. State Bar No. 41257  
[Ben.Garner@nctreasurer.com](mailto:Ben.Garner@nctreasurer.com)

Aaron Vodicka  
N.C. State Bar No. 55199  
[Aaron.Vodicka@nctreasurer.com](mailto:Aaron.Vodicka@nctreasurer.com)  
3200 Atlantic Avenue  
Raleigh, NC 27607  
Telephone: 919.814.4430

FOX ROTHSCHILD LLP

/s/ Marcus C. Hewitt

Robert H. Edmunds, Jr.  
N.C. State Bar No. 6602  
[bedmunds@foxrothschild.com](mailto:bedmunds@foxrothschild.com)

Marcus C. Hewitt  
N.C. State Bar No. 23170  
[mhewitt@foxrothschild.com](mailto:mhewitt@foxrothschild.com)

Elizabeth Sims Hedrick  
N.C. State Bar No. 38513  
[ehedrick@foxrothschild.com](mailto:ehedrick@foxrothschild.com)  
434 Fayetteville Street, Suite 2800  
Raleigh, NC 27601  
Telephone: 919.755.8700  
Facsimile: 919.755.8800

*Counsel for Respondent*

## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was uploaded electronically with the Office of Administrative Hearings, causing electronic service, as defined in 26 N.C.A.C. 03 .0501(4), to be made upon the following:

ROBINSON, BRADSHAW & HINSON, P.A.

Matthew W. Sawchak

[msawchak@robinsonbradshaw.com](mailto:msawchak@robinsonbradshaw.com)

Stephen D. Feldman

[sfeldman@robinsonbradshaw.com](mailto:sfeldman@robinsonbradshaw.com)

Nathan C. Chase, Jr.

[nchase@robinsonbradshaw.com](mailto:nchase@robinsonbradshaw.com)

Erik R. Zimmerman

[EZimmerman@robinsonbradshaw.com](mailto:EZimmerman@robinsonbradshaw.com)

Emily Schultz

[ESchultz@robinsonbradshaw.com](mailto:ESchultz@robinsonbradshaw.com)

Doug Jarrell

[DJarrell@robinsonbradshaw.com](mailto:DJarrell@robinsonbradshaw.com)

Ben DeCelle

[BDecelle@robinsonbradshaw.com](mailto:BDecelle@robinsonbradshaw.com)

MORNINGSTAR LAW GROUP

Shannon Joseph

[sjoseph@morningstarlawgroup.com](mailto:sjoseph@morningstarlawgroup.com)

*Counsel for Petitioner Blue Cross and Blue Shield of North Carolina, Inc.*

WYRICK ROBBINS YATES & PONTON LLP

Lee M. Whitman

[lwhitman@wyrick.com](mailto:lwhitman@wyrick.com)

Benjamin N. Thompson

[bthompson@wyrick.com](mailto:bthompson@wyrick.com)

Sophia V. Blair

[sblair@wyrick.com](mailto:sblair@wyrick.com)

*Counsel for Respondent-Intervenor Aetna Life Insurance Company*

This the 15th day of December, 2023.

/s/ Marcus C. Hewitt

Marcus C. Hewitt

**ATTACHMENT A*****Appendix Volume 1 – Non-Confidential Documentary Exhibits***

<b>Deposition Ex. No.</b>	<b>Bates Numbers</b>	<b>Description</b>	<b>Appendix Page Nos.</b>
4	SHP 0092221-0092231	Contract Procurement Policy and Procedure, SHP-POL-2001-SHP, 9.12.2022	APPX V1.0001-0011
14	SHP 0024050-0024063	Presentation to 12.14.2022 Meeting of State Health Plan Board of Trustees Meeting	APPX V1.0012-0025
15	SHP 0025420-0025425	Evaluation Committee Recommendation Memo 12.14.2022	APPX V1.0026-0031
37	Blue Cross NC_0000670 - 0000716	Blue Cross Technical Proposal (RFP Attachment L)	APPX V1.0032-0078
43	N/A	RFP Addendum 1, Responses to Questions, 9.16.2022	APPX V1.0079-0090
64	SHP 0070486-0070489	Email exchange with M. Rish, Segal Representatives, and Charles Sceiford, 10.24.2022-10.28.2022	APPX V1.0091-0095
87	SHP 0092243-0092245	Email between D. Jones and C. Smart 08.22.2022 re: Segal TPA Cost Scoring	APPX V1.0096-0098
94	SHP 0093927-0093943	Healthcare Horizons 2021 Annual Audit Summary Report, NC State Health Plan - Blue Cross Blue Shield of North Carolina, 6.9.2022	APPX V1.0099-0115
294	SHP 0075511-0075512	Minutes - State Health Plan Board of Trustees Meeting, Executive Session, 12.14.2022	APPX V1.0116-0117
298	SHP 0094284-0094298	PowerPoint Presentation from Blue Cross Debrief Meeting, 12.16.2022	APPX V1.0118-0132
N/A	SHP 0004447-0004450	Request for BAFO #1, 11.18.2022	APPX V1.0133-0136
N/A	SHP 0004568-0004573	Summary of the Evaluation Process Memo, 12.7.2022	APPX V1.0137-0142
N/A	SHP 0025822-0025832	Denial of Blue Cross Request for Protest Meeting, 1.20.2023	APPX V1.0143-0153
N/A	N/A	2020-0909 Final Decision Granting Judgment as a Matter of Law for DHHS, 9.09.2020	APPX V1.0154-0219
N/A	N/A	Blue Cross's Request for Protest Meeting on RFP # 270-20220830TPAS, 1.12.2023	APPX V1.0220-0235

***Appendix Volume 2 (Filed Under Seal) – Documentary Exhibits Designated  
CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY***

<b>Deposition Ex. No.</b>	<b>Bates Numbers</b>	<b>Description</b>	<b>Appendix Page Nos.</b>
17	SHP 0025014-0025027	Segal Preliminary Cost Proposal Analysis, 11.17.2022	APPX V2.0236-0249
30	SHP 0074489-0074490	Blue Cross Clarification #2, 11.10.2022	APPX V2.0250-0251
31	SHP 0074493	Blue Cross Clarification #3, 11.15.2022	APPX V2.0252-0252
32	SHP 0074494-0074496	Blue Cross Clarification #4, 11.18.2022	APPX V2.0253-0255
33	SHP 0074501-0074503	Blue Cross Clarification #5, 11.22.2022	APPX V2.0256-0258
34	SHP 0074504-0074505	Blue Cross Clarification #6, 11.23.2022	APPX V2.0259-0260
35	SHP 0074506-0074507	Blue Cross Clarification #7, 11.28.2022	APPX V2.0261-0262
44	Blue Cross NC_0000633 - 0000644	RFP Addendum 2, Responses to Questions, 10.14.2022	APPX V2.0263-0274
413	SHP 0085912-0085925	Segal Cost Proposal Analysis, Reflects Clarifications and BAFO #1, 11.29.2022	APPX V2.0290-0303
68	SHP 0093117-0093119	Email exchange with Charles Sceiford and Segal Representatives, 11.14.2022- 11.15.2022	APPX V2.0275-0277
225	SHP 0069727-0069727	Attachment A-8: Network Pricing Guarantees - VAFO #1	APPX V2.0278-0285
256	AETNA0000170- 0000173	Aetna Clarification #5	APPX V2.0286-0289
NA	SHP 0087964-0087965	Aetna Clarification #4, 11.10.2022	APPX V2.0304-0305
17	SHP 0025014-0025027	Segal Preliminary Cost Proposal Analysis, 11.17.2022	APPX V2.0236-0249

***Appendix Volume 3 (Filed Under Seal) – Deposition Transcripts***

<b>Description</b>	<b>Appendix Page Nos.</b>
Excerpts of Transcript of 30(b)(6) Deposition of Aetna Life Insurance (Sept. 21, 2023)	APPX V3.0306-0313
Deposition Transcript of Kendall Bourdon (Sept. 26, 2023)	APPX V3.0314-0374
Excerpt of Deposition Transcript of Andrew Coccia (Dec. 1, 2023)	APPX V3.0375-0376
Deposition Transcript of Dorothy Jones (Aug. 30, 2023)	APPX V3.0377-0456
Transcript of 30(b)(6) Deposition of Segal Company, Inc. (Sept. 19, 2023)	APPX V3.0457-0540
Deposition Transcript of Matthew Rish (Sept. 11, 2023)	APPX V3.0541-0614
Excerpts of Deposition Transcript of Gregory Russo (Nov. 28, 2023)	APPX V3.0615-0630
Deposition Transcript of Charles Sceiford (Sept. 12, 2023)	APPX V3.0631-0671
Deposition Transcript of Caroline Smart (Sept. 13, 2023)	APPX V3.0672-0673
Deposition Transcript Kenneth Vieira (Nov. 30, 2023)	APPX V3.0731-0862

***Appendix Volume 4 - Affidavits***

<b>Description</b>	<b>Appendix Page Nos.</b>
Affidavit of Bourdon, Kendall (Dec. 14, 2023)	APPX V4.0863-0874
Affidavit of Jones, Dorothy (June 16, 2023)	APPX V4.0875-0882
Affidavit of Jones, Dorothy (Dec. 14, 2023)	APPX V4.0883-0897
Affidavit of Kuhn, Stephen (Dec. 14, 2023)	APPX V4.0898-0913
Affidavit of Rish, Matthew (Dec. 14, 2023)	APPX V4.0914-0923
Affidavit of Sceiford, Charles (Dec. 14, 2023)	APPX V4.0924-0928
Affidavit of Smart, Caroline (Dec. 14, 2023)	APPX V4.0929-0940