



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION** represented by Mr. **EMMANUEL R. LEDESMA, JR.**, in his capacity as President and Chief Executive Officer, and the concerned and affected **OFFICERS and EMPLOYEES OF PSALM**,  
Petitioners,

G.R. No. 205490

-versus-

**COMMISSION ON AUDIT**,  
Respondent.

G.R. No. 218177

X-----X

Members:

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION** represented by Ms. **MARIA LOURDES S. ALZONA**, in her capacity as Officer-in-Charge, Office of the President and CEO, and the concerned and affected **OFFICERS and EMPLOYEES OF PSALM**,  
Petitioners,

**PERALTA, C.J.**,  
**PERLAS-BERNABE**,  
**LEONEN**,  
**CAGUIOA**,  
**GESMUNDO**,  
**HERNANDO**,  
**CARANDANG**,  
**LAZARO-JAVIER**,  
**INTING**,  
**ZALAMEDA**,\*  
**LOPEZ**,  
**DELOS SANTOS**,  
**GAERLAN**, and  
**BALTAZAR-PADILLA**,\*\* *JJ.*

-versus-

**COMMISSION ON AUDIT**,  
Respondent.

Promulgated:

September 22, 2020

X-----X

\* On official leave

\*\* On leave

**DECISION****LAZARO-JAVIER, J.:****The Cases**

In **G.R. No. 205490**,<sup>1</sup> petitioners Power Sector Assets and Liabilities Management Corporation (PSALM) represented by its President and Chief Executive Officer (CEO) Emmanuel R. Ledesma, Jr., and the concerned officers and employees of PSALM question the Commission on Audit – Commission Proper (COA-CP) Decision No. 2012-270<sup>2</sup> dated December 28, 2012, affirming the disallowance of the 2009 MAB granted to PSALM officers and employees in the amount of P5,586,999.60.

In **G.R. No. 218177**,<sup>3</sup> the same petitioners, albeit this time PSALM is represented by Officer-in-Charge Maria Lourdes S. Alzona, assail the following dispositions of the COA-CP:

(1) Decision No. 2014-036<sup>4</sup> dated March 5, 2014, affirming the disallowance of the 2008 Medical Assistance Benefit (MAB) granted to PSALM officers and employees in the amount of P5,702,517.42; and

(2) Resolution<sup>5</sup> dated January 26, 2015, denying petitioners' motion for reconsideration.

**Antecedents**

Civil Service Commission (CSC) Memorandum Circular No. 33, series of 1997 entitled Policy on Working Conditions at the Workplace, states:

x x x

x x x

x x x

Pursuant to Resolution No. 97-4684 dated December 18, 1997, the CSC promulgates and adopts the following policies:

1. All government offices shall provide the following:

a) Health Program for Government Employees

<sup>1</sup> *Rollo* (G.R. No. 205490), pp. 3-32.

<sup>2</sup> Rendered by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Heidi I. Mendoza, and Commissioner Juanito G. Espino, Jr., *id.* at 39-46.

<sup>3</sup> *Id.* (G.R. No. 218177) at 3-40.

<sup>4</sup> Rendered by Chairperson Ma. Gracia M. Pulido Tan and Commissioner Heidi I. Mendoza, *id.* at 52-57.

<sup>5</sup> *Id.* at 59.

Health program for employees shall include any or all the following:

1. hospitalization services
2. annual mental, medical-physical examinations

x x x

x x x

x x x

On the other hand, Administrative Order No. 402 (AO 402), series of 1998 entitled Establishment of a Medical Check-Up Program for Government Personnel provides:

**ESTABLISHMENT OF A MEDICAL CHECK-UP  
PROGRAM FOR GOVERNMENT PERSONNEL**

**WHEREAS**, pursuant to Section 5 of P.D. No. 1597, s. 1978 (Further Rationalizing the System of Compensation and Position Classification in the National Government), which continues to be applicable in accordance with R.A. No. 6758, s. 1989 (Prescribing a Revised Compensation and Position Classification System in the Government), all government employees may be granted allowances, honoraria and other fringe benefits;

**WHEREAS**, keeping a healthy workforce is among the primary concerns of the government considering that the physical well-being of its employees has a significant impact on the efficiency and effectiveness of public service delivery; and,

**WHEREAS**, the Civil Service Commission also issued Memorandum Circular No. 33 (s. 1997) which provides that all government agencies and Government-Owned and/or-Controlled Corporations (GOCCs) shall provide, among others, a health program for their employees which includes free annual mental and medical-physical examinations.

**NOW, THEREFORE, I, FIDEL V. RAMOS**, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

**SECTION 1. Establishment of the Annual Medical Check-up Program.** An annual medical check-up for government officials and employees is hereby authorized to be established starting this year, in the meantime that this benefit is not yet integrated under the National Health Insurance Program being administered by the Philippine Health Insurance Corporation (PHIC).

**SEC. 2. Coverage.** The medical check-up program shall be granted to all permanent and temporary personnel of national government agencies who have been in the service for at least one year as of the effectivity of this Order. Excluded from the coverage, however, are officials and employees who are already recipients of a similar benefit or

any supplementary medical allowance over and above the Medicare benefits.

GOCCs, which do not offer a free medical check-up or any supplementary medical allowance over and above the Medicare benefits shall also establish a similar program for their employees.

Local Government Units are also encouraged to establish a similar program for their personnel.

**SEC. 3. Benefit Package.** Initial benefits for employees who are below 40 years of age shall include the following: Physical examination, Chest X-ray, Complete Blood Count (CBC), Urinalysis and Stool Examination. Meanwhile, employees whose age is 40 years and above shall be entitled to the following: Physical examination, Chest X-ray, Complete Blood Count (CBC), Urinalysis, Stool Examination and ECG. Benefits may be increased upon the availability of funds.

x x x

x x x

x x x

In accordance with these directives, PSALM Board of Directors approved Board Resolution No. 06-46 dated August 2, 2006, viz.:

**WHEREAS**, PSALM Management presented to the Board, for approval and confirmation, its proposed Health Maintenance Program for PSALM officials and employees, including those employed under contracts of service.

**WHEREAS**, elaborating on the proposed health program, PSALM Management informed the Board that government regulations prohibit the acquisition of HMOs for government employees. However, Administrative Order No. 402 dated 02 June 1998 and DOH/DBM/PHRC Joint Circular No. 01 dated 09 September 1998 (IRR for AO No. 402) authorized the establishment of an annual physical checkup for all government employees. On the basis of these two government issuances, the proposed PSALM Health Program was designed to address health concerns of PSALM employees and prevent hospitalization.

**WHEREAS**, the objectives of the PSALM Health Program are (a) to identify and address ailments at an early stage or prevent their occurrence, (b) to sustain a healthy workforce, and (c) to perform and deliver PSALM's time-bound mandates efficiently and effectively.

**WHEREAS**, the comprehensive annual physical examination shall consist of the following:

- Physical Examination
- Chest X-Ray
- Routine Urinalysis and Fecalalysis
- Complete Blood Count (CBC)
- Electrocardiogram (ECG)
- Pap Smear for female employees
- Blood Chemistry
- Dental Examination

**WHEREAS**, a healthcare measure aimed to prevent diseases before its onset in the organization is the addition of immunization for Influenza (flu) and Hepatitis B to the usual annual physical examination package.

**WHEREAS**, with a total of 226 Plantilla and Contractual employees, the estimated expense is PhP500,000.00 for the Physical Examination and Immunization components of the Program, This also includes the amount needed to purchase the medicines needed for emergency use and which will be kept by the Personnel Services Department.

PSALM shall source the necessary funds from Personnel Services.

**WHEREAS**, PSALM Management thus requested the Board's approval and confirmation of the Health Maintenance Program for PSALM officials and employees.

**WHEREAS**, after due deliberation, there being no objection, the Board found the recommendation of PSALM Management in order.

**NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED** that, the Board hereby approves and confirms the Health Maintenance Program for PSALM officials and employees as recommended by PSALM Management.

**APPROVED and CONFIRMED** this 2<sup>nd</sup> day of August 2006.<sup>6</sup>

One (1) year later, PSALM Board of Directors approved the grant of additional medical benefits per Board Resolution No. 07-67 dated October 31, 2007, authorizing the continuation of the aforesaid health program but with additional components, *i.e.*, purchase of emergency over-the-counter drugs and prescription drugs, dental and optometric medications, and reimbursement of expenses on emergency and special cases, thus:<sup>7</sup>

**WHEREAS**, the PSALM Board, through Resolution No. 06-46 dated 02 August 2006, approved and confirmed the establishment of PSALM's Health Maintenance Program pursuant to Administrative Order (A.O.) No. 402 dated 02 June 1998, and DOH-DBM-PHIC Joint Circular No. 1 dated 09 September 1998.

**WHEREAS**, A.O. No. 402 provides that all government agencies and GOCCs shall provide, among others, a health program for their employees. This includes free annual mental and medical-physical examinations. This is allowed for all permanent and temporary personnel who have been in the service for at least one year. Initial benefits shall include Physical Examination, Chest X-Ray, Complete Blood Count, Urinalysis, Stool Examination, and Electrocardiogram.

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<sup>6</sup> *Id.* at 69-70.

<sup>7</sup> *Id.* at 9.

The benefits may be increased upon availability of funds, and expenses for the medical check-up for GOCCs shall be chargeable against the corporate funds.

**WHEREAS**, PSALM's Health Maintenance Program aims to identify and address ailments at an early stage or prevent their occurrence with the end of sustaining a healthy workforce for the efficient and effective delivery of PSALM's time-bound mandates.

The program includes the following activities:

- Annual Physical Examination
- Administration of immunization vaccines
- Purchase of emergency over-the-counter drugs
- Medical assistance for permanent employees to be availed through purchase of prescription drugs, including dental and optometric medications, or reimbursement of expenses on emergency and special cases or situations
- Establishment of a mini-clinic and mini-gym
- Sports and exercise programs

**WHEREAS**, since the implementation of the original Health Maintenance Program in 2006, PSALM has successfully conducted Annual Physical Examination and Vaccination Activities for Influenza, Hepatitis "B", Pneumonia and Typhoid Fever.

PSALM now also maintains a well stored first-aid cabinet, complete with Over-the-Counter medicines for emergency use.

**WHEREAS**, in order to institutionalize PSALM's Health Maintenance Program, PSALM Management requested the Board's approval, upon the favorable endorsement of the Board Review Committee (BRC), for: (1) the continued implementation of the Program in year 2007 and onwards; and (2) the implementation of the other component of the Program – the medical assistance to employees through purchase of prescription drugs, including dental and optometric medications, or allow the employees to reimburse such expenses on emergency and special cases or situations, subject to the guidelines to be issued by PSALM.

**WHEREAS**, elaborating on the purchase of prescription drugs, it was explained that only Plantilla personnel and their qualified dependents shall be entitled. The maximum availment for each personnel covered shall not exceed Php25,000.00 for each year. This entitlement is non-cumulative and strictly non-convertible to cash.

With 226 approved Plantilla positions, an expense of Php5,650,000.00 per year is estimated. Funds intended for this Program shall be sourced from Other Maintenance and Operating Expenses (Account Code 969) of PSALM's Corporate Operating Budget.

**WHEREAS**, after due deliberation, there being no objection, the Board found the request of PSALM Management, as endorsed by the BRC, in order.

**NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED** to approve and confirm the continuous implementation of the wellness activities under PSALM's Health Maintenance Program, including the implementation of the purchase of prescription drugs, in accordance with the terms of this Resolution.

**APPROVED and CONFIRMED** this 31<sup>st</sup> day of October 2007.<sup>8</sup>

In yet another Board Resolution No. 2008-1124-004 dated November 24, 2008, PSALM Board of Directors further expanded the health program to include the Members of the Board of Directors and Board Review Committee themselves and their respective alternates, and to increase the allotted funds for the health program, *viz.*:<sup>9</sup>

**WHEREAS**, the PSALM Board, through Resolution No. 07-67 dated 31 October 2007, approved and confirmed the implementation of **medical assistance to plantilla employees through reimbursement of the purchase price of prescription drugs, including dental and optometric medications, or reimbursement of such expenses in emergency and special cases situations;**

**WHEREAS**, in 2007, 149 employees availed of the Php25,000.00 medical assistance, or a total of Php3,696,890.61, covering various medical claims on **prescribed, over-the-counter and maintenance drugs, optical and dental procedures;**

**WHEREAS**, as of 30 September 2008, the PSALM management has processed the medical claims of 141 employees amounting to Php2,898,206.38;

**WHEREAS**, upon the recommendation of PSALM Management the following were endorsed to the Board for approval:

1. Approval and confirmation of the amendment of the coverage of the medical program to include payment of consultation fees and diagnostic, laboratory and other medical examination services necessary in the detection and prevention of diseases;
2. Approval and confirmation of the increase of entitlement from Twenty Five Thousand Pesos (Php25,000.00) to Thirty Five Thousand Pesos (Php35,000.00) to cover payment of expenses for out-patient diagnostic procedures and consultation fees, as well as to supplement the significant price adjustments on medicines and other medical services;
3. Approval and confirmation of the Php10,000.00 supplemental coverage per employee, or a total of One Million Six Hundred Thousand Pesos (Php1,600,000.00), the Maintenance and Other Operating Expenses [Account Code 969] of PSALM's Corporate Operating Budget and will be subject to the usual accounting and auditing rules and regulations;

<sup>8</sup> *Id.* at 77-78.

<sup>9</sup> *Id.* at 9-10.

4. Approval and confirmation of the ceiling imposed on the amount of entitlement of each personnel covered by the Program, not exceeding Php35,000.00 per year, which shall be non-cumulative and strictly non-convertible to cash;
5. Approval and confirmation of the policy that implementation of the Program shall be subject to the guidelines that will be issued by the President & CEO for the purpose.

**WHEREAS**, after review of pertinent documents and due consultation, the Board Review Committee found the recommendations of PSALM Management, in order, and resolved to endorse the same to the Board, subject to the following qualifications:

- a. That the one-year residency period currently required to qualify for the program shall be reduced to a 6-month period to be counted from the date of hiring;
- b. That Members of the Board, the Board Review Committee, and their respective alternates, shall be included in the program; and
- c. That all plantilla positions, whether filled or not, shall be included in the computation of the annual budget allocated for the Medical Assistance Program;

**NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED** that, as requested by PSALM Management and endorsed by the Board Review Committee, the Board hereby:

1. Amends the coverage of the medical program to include payment of consultation fees and diagnostics, laboratory and other medical examination services necessary in the detection and prevention of diseases;
2. Approves and confirms the inclusion of the Members of the Board, the Board Review Committee and their respective alternates in the Medical Assistance Program;
3. Directs that the one-year residency period currently required to qualify for the program shall be reduced to a 6-month period to be counted from the date of hiring;
4. Approves and confirms the increase of entitlement from Twenty Five Thousand Pesos (Php25,000.00) to Thirty Five Thousand Pesos (Php35,000.00) to cover payment of expenses for out-patient diagnostic procedures and consultation fees, as well as to supplement the significant price adjustments on medicines and other medical services;
5. Approves and confirms the Php10,000.00 supplemental coverage per employee, or a total of One Million Six Hundred Thousand Pesos (Php1,600,000.00), to be charged against the



Maintenance and Other Operating Expenses [Account Code 969] of PSALM's Corporate Operating Budget and will be subject to the usual accounting and auditing rules and regulations;

6. Approves and confirms the ceiling imposed on the amount of entitlement of each personnel covered by the Program, not exceeding Php35,000.00 per year, which shall be non-cumulative and strictly non-convertible to cash;
7. Directs that all plantilla positions, whether filled or not, shall be included in the computation of the annual budget allocated for the Medical Assistance Program;
8. Approves and confirms the policy that implementation of the Program shall be subject to the guidelines that will be issued by the President & CEO for the purpose; and
9. Authorizes PSALM's President and CEO to sign and execute any and all documents to effect the foregoing resolution.

**APPROVED and CONFIRMED** this 24<sup>th</sup> day of November 2008.<sup>10</sup>

On January 22, 2009, State Auditor IV Gina Maria P. Molina issued her Audit Observation Memorandum No. 2008-06 stating that the medical assistance benefits included in PSALM's expanded 2008 MAB lacked legal and factual bases. In response, PSALM explained that the 2008 MAB was actually based on AO 402 and CSC Memorandum Circular No. 33. State Auditor Molina nonetheless proceeded to issue Notice of Disallowance (ND) No. 2008-002 (2008) dated April 23, 2009 in the total amount of P5,702,517.42.<sup>11</sup> PSALM sought a reconsideration but the same was returned to PSALM without action.<sup>12</sup>

On November 5, 2009, PSALM appealed to the COA-Office of the Cluster Director, Corporate Government Sector (CGS) – Cluster B.

Meanwhile, PSALM allegedly requested authority from the Office of the President for the retroactive grant of the following benefits to its officers and employees: 1) corporate performance-based incentive; and 2) medical assistance through purchase of prescription drugs and reimbursement of expenses for emergency and special cases. According to PSALM, the Office of the President granted this request.<sup>13</sup>

On March 12, 2010, State Auditor Molina issued a similar notice of disallowance under ND No. 10-001-(2009) on the 2009 MAB.<sup>14</sup>

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<sup>10</sup> *Id.* at 85-87.

<sup>11</sup> *Id.* at 10 and 110.

<sup>12</sup> *Id.* at 10-11.

<sup>13</sup> *Id.* (G.R. No. 205490) at 9.

<sup>14</sup> *Id.* at 40.

On September 10, 2010, PSALM appeal anew to the COA-Office of the Cluster Director, CGS – Cluster B pertaining to the aforesaid ND No. 10-001-(2009).

**Ruling of the COA-Office of the Cluster Director  
Corporate Government Sector (CGS) – Cluster B**

By Decision No. 2011-003<sup>15</sup> dated April 1, 2011 and Decision No. 2011-005<sup>16</sup> dated June 2, 2011, COA-Cluster Director IV Divina M. Alagon affirmed the disallowance of the 2008 and 2009 expanded MABs in the amount of P5,702,517.42 and P5,586,999.60, respectively.

In both cases, COA-Cluster Director IV Alagon brought to fore that AO 402 only provided for the grant of annual medical check up for government employees. It specifically stated that the benefit was only for offices which had no existing program yet for free medical check up or supplementary medical allowance to its officers and employees over and above the Medicare benefits. The use of the disjunctive “or” meant the office may avail of one (1) benefit only, either a free medical check-up or supplementary medical allowance to its employees. An office may not avail of both benefits.

Records revealed, however, that PSALM already entered into a Memorandum of Agreement with Hi-Precision Diagnostic Center Inc. for an annual physical examination for its employees, including eighteen (18) physical and laboratory examinations. Thus, the additional grant for the purchase of prescription drugs and reimbursement expenses on emergency and special cases was in excess of what the law allowed.<sup>17</sup>

True, *the last paragraph of Section 3, AO 402 authorizes the increase of benefits upon availability of funds, but the same must be construed to mean additional benefits parallel to the medical services already enumerated therein* pursuant to the principle of *ejusdem generis*, i.e., medical services pertaining only to physical examination and laboratory or diagnostic examinations. As it was, the bulk of the amounts paid to the officers and employees here referred not to these kinds of medical services but to items not parallel thereto such as the purchase of vitamins, dermatological services like acne surgery and facial treatments, and dental services like braces and retainers.<sup>18</sup>

<sup>15</sup> *Id.* (G.R. No. 218177) at 153-160.

<sup>16</sup> *Id.* (G.R. No. 205490) at 117-124.

<sup>17</sup> *Id.* (G.R. No. 218177) at 156; *id.* (G.R. No. 205490) at 121-122.

<sup>18</sup> *Id.* (G.R. No. 218177) at 156; *id.* (G.R. No. 205490) at 122.

More, AO 402 provided for medical services to government employees only. As shown by the receipts on record, these medical services were also given *ultra vires* to the employees' dependents.<sup>19</sup>

Further, Section 3, AO 402 allowed an increase of benefits only upon availability of funds. Records showed that PSALM's 2008 Corporate Operating Budget (COB) had an approved budget of P3,350,000.00 only. But the 2008 MAB which was sourced from this budget amounted to P5,702,517.42.<sup>20</sup> Too, the CSC did not even approve the 2008 MAB as a negotiated item in the Collective Negotiation Agreement (CNA). Notably, the CSC approved only the inclusion of annual medical/physical examination in the CNA affecting PSALM and its officers and employees.<sup>21</sup> In any case, most of the medical expenses granted in the PSALM's expanded Health Program were already covered by the Philippine Insurance Health Corporation (Philhealth).<sup>22</sup>

Lastly, the supposed confidential document containing PSALM's authority to grant retroactive medical benefits to its officers and employees did not bear the President's signature. More important, Director Marianito M. Dimaandal from the Malacañan Records Office (MRO) certified that the so-called "confidential document" was "*not among the records available on file or in the possession of*" the MRO.<sup>23</sup>

### **The Ruling of the COA-Commission Proper (COA-CP)**

On petitioners' further appeal, the COA-CP, too, affirmed the disallowance of the 2008 MAB under its assailed Decision No. 2014-036<sup>24</sup> dated March 5, 2014. By Resolution<sup>25</sup> dated January 26, 2015, it denied PSALM's subsequent motion for reconsideration.

As for the 2009 MAB, the COA-CP affirmed its disallowance per Decision No. 2012-270<sup>26</sup> dated December 28, 2012. PSALM no longer sought its reconsideration.

In both cases, the COA-CP emphasized that the notices of disallowance only pertained to the additional aspects of the Health Program, *i.e.*, purchase of prescription drugs, reimbursement of expenses for emergency or special cases, and the expenses for the employees' dependents.<sup>27</sup>

<sup>19</sup> *Id.* (G.R. No. 205490) at 122.

<sup>20</sup> *Id.* (G.R. No. 218177) at 157.

<sup>21</sup> *Id.* (G.R. No. 218177) at 157; *id.* (G.R. No. 205490) at 123.

<sup>22</sup> *Id.* (G.R. No. 218177) at 157.

<sup>23</sup> *Id.* (G.R. No. 218177) at 160; *id.* (G.R. No. 205490) at 123.

<sup>24</sup> *Id.* (G.R. No. 218177) at 52-57.

<sup>25</sup> *Id.* at 59.

<sup>26</sup> *Id.* (G.R. No. 205490) at 39-46.

<sup>27</sup> *Id.* at 42.

Also, whether the President of the Philippines approved PSALM's grant of additional benefits did not alter the fact that the expanded benefits had no basis in law.<sup>28</sup>

### The Present Petition

#### *Petitioners' Arguments*

Petitioners now urge the Court to nullify the dispositions of the COA-CP affirming the disallowance of medical assistance paid to PSALM officers and employees under the 2008 and 2009 MABs. Petitioners essentially assert:

(a) The expanded MAB was authorized by both AO 402 and CSC Memorandum Circular No. 33.<sup>29</sup>

(b) Section 3 of AO 402 speaks of "*initial benefits*" for government employees,<sup>30</sup> which benefits "*may be increased upon availability of funds.*"<sup>31</sup> Hence, the expanded MABs are well within this proviso.

(c) The COA-CP's strict interpretation of AO 402 is a retrogressive appreciation of government issuances intended to protect and promote the rights and welfare of workers. It is contrary to the spirit, intent, and purpose of AO 402. Where the provision of the general welfare laws may be reasonably interpreted in two (2) different ways, one prejudicial and the other favorable to labor, the balance must be tilted in favor of labor. When liberally construed, the grant of supplementary medical allowance or medical benefits is left to the sound discretion of the agency's governing Board of Directors, which is in a better position to determine the benefits that would best address the health concerns of its employees, the allowable medical procedure and treatment, and the persons entitled thereto – all with the end purpose of maintaining the employees' work efficiency and effectiveness. In short, PSALM or any other government owned or controlled corporation is not strictly limited to the benefits enumerated under Section 3 of AO 402.<sup>32</sup>

(d) On December 30, 2009, no less than the President of the Philippines approved its request for the retroactive grant of the expanded MAB to its employees. This approval carries the force and effect of law, hence, must be accorded respect and recognition by other government agencies and instrumentalities. In any event, Board Resolution Nos. 07-67

<sup>28</sup> *Id.* at 45.

<sup>29</sup> *Id.* (G.R. No. 218177) at 16; *id.* (G.R. No. 205490) at 14.

<sup>30</sup> *Id.* (G.R. No. 218177) at 19.

<sup>31</sup> *Id.* (G.R. No. 205490) at 14.

<sup>32</sup> *Id.* (G.R. No. 218177) at 24; *id.* (G.R. No. 205490) at 15-19.

and 2008-1124-004 were approved by PSALM's Board of Directors which included members of the President's Cabinet, *i.e.*, Secretary of Finance and Secretary of the Department of Budget and Management, who are the President's *alter egos*.<sup>33</sup>

(e) PSALM officials and employees who, respectively, authorized the grant of, and received, the expanded MABs all acted in the honest belief that the same were due them in accordance with AO 402. Hence, they should not be made to return the amounts in question.<sup>34</sup>

(f) The doctrine of operative fact applies here. The board resolutions granting the MABs were valid prior to their being adjudged as illegal.<sup>35</sup>

#### *The COA-CP's Counter-arguments*

The COA-CP, through former Solicitor General Florin T. Hilbay, Assistant Solicitor General Herman R. Cimafranca, Assistant Solicitor General Rex Bernardo L. Pascual, State Solicitor Shiela Marie S. Sulit-Andaya, and Associate Solicitor Johvie M. Valenton, ripostes:

(1) AO 402 is a limited benefit confined to a medical check-up program and does not include an expanded health services plan. Section 2 refers to the institutionalization of a medical check-up program while Section 3 limits the medical care benefits to strictly diagnostic procedures. Following the principle of *ejusdem generis*, the additional benefits to be given to the beneficiaries should be parallel to those enumerated by the law itself.<sup>36</sup>

(2) AO 402 provides for "*medical check-up program for government personnel*." The title itself limits its scope to: (a) medical check-up; and (b) government personnel. The disallowed 2008 and 2009 expanded MABs refer to purchases of prescription drugs and reimbursement of expenses for emergency and special cases such as optical treatment, facial treatment and acne surgery, and dental treatment like braces and retainers. These benefits were even extended to the dependents of PSALM employees, *i.e.*, spouses, ascendants, and descendants. These persons are clearly outside the scope of AO 402.<sup>37</sup>

(3) AO 402 is clear and unambiguous, hence, there is no need for its interpretation, only application. A more liberal interpretation would lead to an anomalous situation where unauthorized benefits would be paid out of

<sup>33</sup> *Id.* (G.R. No. 218177) at 19-28; *id.* (G.R. No. 205490) at 23-25.

<sup>34</sup> *Id.* (G.R. No. 218177) at 28-32; *id.* (G.R. No. 205490) at 25-27.

<sup>35</sup> *Id.* (G.R. No. 218177) at 32-34.

<sup>36</sup> *Id.* (G.R. No. 218177) at 261-261 and 264-265; *id.* (G.R. No. 205490) at 197-202.

<sup>37</sup> *Id.* (G.R. No. 218177) at 262-265; *id.* (G.R. No. 205490) at 203-204.

public funds. As stated, AO 402 only contemplates a limited health care benefit and nothing more.<sup>38</sup>

(4) The 2008 and 2009 MABs had no legal basis as they were not authorized under AO 402. Even assuming the President of the Philippines had approved PSALM's request to grant the expanded MABs to its employees and officers, the grant was still illegal. Besides, the alleged approval did not even bear the President's signature.<sup>39</sup>

(5) Good faith cannot excuse, nay, justify the payment of medical benefits in violation of AO 402 itself.<sup>40</sup>

### Issues

1. Did the COA-CP act with grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the disallowance of the 2008 and 2009 expanded Medical Assistance Benefits (MABs) paid to PSALM officers, employees, and their dependents?

2. Are the PSALM officers who authorized the MABs and the employees who received them liable to return the disallowed amount?

### Ruling

At the threshold, the Court notes that PSALM did not move for reconsideration of the assailed COA-CP Decision No. 2012-270 dated December 28, 2012 pertaining to the disallowance of the 2009 expanded MAB. PSALM asserts that there is a need for urgent resolution of the case considering that the aforesaid COA-CP decision is immediately executory. Too, the issues raised and resolved by the COA-CP on appeal were exactly the same as those raised and resolved by COA-Cluster Director Alagon on the first level appeal.

*Sps. Davis v. Sps Davis*<sup>41</sup> enunciated:

While it is true that a motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*, the purpose of which is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case, it is not, however, an ironclad rule as it admits well-defined exceptions. One of these exceptions is **where the questions raised in the *certiorari* proceeding have been duly raised and passed**

<sup>38</sup> *Id.* (G.R. No. 218177) at 265.

<sup>39</sup> *Id.* (G.R. No. 218177) at 266-267; *id.* (G.R. No. 205490) at 205-207.

<sup>40</sup> *Id.* (G.R. No. 218177) at 267-269; *id.* (G.R. No. 205490) at 207-208.

<sup>41</sup> 827 Phil. 502, 508 (2018).

**upon by the lower court, or are the same as those raised and passed upon in the lower court.**

Thus, while a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the same may be dispensed with where the questions raised in the *certiorari* proceeding have been duly raised and amply passed upon by the lower tribunals, as in this case.

We now resolve on the merits.

### **First Issue**

***The 2008 and 2009 expanded MABs per Board Resolution Nos. 07-67 and 2008-1124-004 are devoid of legal basis***

Subject ND Nos. 2008-002-(2008) and 10-001-(2009) refer to the 2008 and 2009 MABs granted by the PSALM Board of Directors under Board Resolution Nos. 07-67<sup>42</sup> dated October 31, 2007 and 2008-1124-004<sup>43</sup> dated November 24, 2008, respectively.

These board resolutions expanded the original medical assistance benefits provided under Board Resolution No. 06-46 which granted purely diagnostic procedures, *i.e.*, physical examination, chest x-ray, routine urinalysis and fecalysis, complete blood count, electrocardiogram, pap smear, blood chemistry, and dental examination. As it was, the expanded medical assistance benefits under Board Resolution Nos. 07-67 and 2008-1124-004 now include the *purchase of emergency over the counter drugs, purchase of prescription drugs, dental and optometric medications, reimbursement of expenses on emergency and special cases,*<sup>44</sup> and *reimbursement of diagnostic and consultation payment.* They also include as beneficiaries the employees' *dependents* (spouses, descendants, and ascendants) and members of the Board of Directors, Board Review Committee, and their respective alternates in the Health Program's coverage.<sup>45</sup>

In the implementation of the 2008 and 2009 MABs, PSALM, among others, approved the reimbursements for *dermatological services like acne surgery and facial treatments, and dental services like braces and retainers.*<sup>46</sup>

<sup>42</sup> *Id.* (G.R. No. 218177) at 77-78; *id.* (G.R. No. 205490) at 51-52.

<sup>43</sup> *Id.* (G.R. No. 218177) at 85-87; *id.* (G.R. No. 205490) at 54-56.

<sup>44</sup> *Id.* (G.R. No. 218177) at 9.

<sup>45</sup> *Id.* (G.R. No. 218177) at 9-10.

<sup>46</sup> *Id.* (G.R. No. 218177) at 158; *id.* (G.R. No. 205490) at 123.

PSALM claims that although these additional benefits are not diagnostic in nature, they are authorized under Section 3 of AO 402 which allows “*not only the grant of “initial” benefits but also an increase thereof upon availability of funds.*”

The argument does not persuade.

Section 1 of AO 402 ordains the establishment of an *annual medical check-up program* only. “Medical check-up” contemplates a procedure which a person goes through to find out his or her state of health, whether he or she is inflicted or is at risk of being inflicted with ailment or ailments as the case may be. This is precisely why AO 402 ordains a health program specifically including the following diagnostic procedures, *i.e.*, physical examination, chest x-ray, routine urinalysis and fecalysis, complete blood count, and electrocardiogram. The COA-CP correctly held that this standard ought to be strictly followed by every GOCC not only in the initial grant of medical benefits but also in any subsequent increase thereof upon availability of funds, thus:

It is very clear that the medical benefit extended under A.O. 402 is **a limited benefit confined to a medical check-up program** consisting of procedures that are **strictly diagnostic**. **Nothing** in A.O. 402 refers to a **prescription drug benefit, a right to reimbursement for hospitalization, or indeed for any procedure or regimen that treats rather than diagnoses** an illness. Thus, when Section 2 of A.O. No. 402 says that a GOCC “shall also establish a similar program for their employees,” it is clear that the “similar program” refers strictly to a “medical check-up” program, since the A.O. unequivocally establishes nothing more.<sup>47</sup> (Emphasis supplied)

While it is true that Section 3 allows the GOCCs to increase the initial grant of medical benefits to these employees, the increase depends on *availability of funds*. As for the 2008 MAB, however, petitioners have not refuted the finding of the COA-CP that PSALM’s 2008 Corporate Operating Budget from which the 2008 MAB was sourced had an approved allocation of P3,350,000.00 only, way below the total P5,702,517.00 disbursement for the expanded benefits under Board Resolution No. 07-67.<sup>48</sup>

In any event, we refer back to the expanded medical assistance benefits granted to PSALM employees in 2008 and 2009 which went beyond the diagnostic procedures specified by AO 402 and PSALM Board Resolution No. 06-46. They even include the purchase of over the counter drugs, prescription drugs, payment of consultation fees, reimbursement of expenses in emergency and special cases and situations, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments. Notably, petitioners themselves cannot point to any specific

<sup>47</sup> *Id.* (G.R. No. 205490) at 42.

<sup>48</sup> *Id.* (G.R. No. 218177) at 157.



provisions of AO 402 or even Resolution Nos. 07-67 and 2008-1124-004 which supposedly grant these benefits. As in fact, there is none. On this score, we quote with concurrence the COA-CP's relevant disquisition:

x x x But considering that A.O. 402 strictly refers to a "medical check up program" and not a more expanded health services plan, any increased benefits allowed upon the availability of funds must also pertain to diagnostic procedures similar to those enumerated in Section 3. If the interpretation of Petitioners were to be sustained, a cash-flushed GOCC would be free at will to expand benefits x x x<sup>49</sup>

While the COA-CP concedes that the initial medical assistance benefits extended to the employees of the GOCCs may be augmented under Section 3 of AO 402, these augmented benefits must conform with the principle of *ejusdem generis*: "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."<sup>50</sup>

The purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. For if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.<sup>51</sup>

In this light, the COA-CP argues that the purchase of over the counter drugs, prescription drugs, payment of consultation fees, reimbursement of expenses on emergency and special cases and situations, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments under the 2008 and 2009 MABs **sharply depart** from the principle of *ejusdem generis* pertaining to the category of diagnostic procedures granted under Board Resolution Nos. 07-67 and 2008-1124-004.

Surely, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments are **non-diagnostic but more of aesthetic or enhancement procedures**.

The COA-CP, therefore, correctly affirmed the disallowance of these benefits for lack of legal basis.

<sup>49</sup> *Id.* (G.R. No. 205490) at 43.

<sup>50</sup> *Alta Vista Golf and Country Club v. The City of Cebu, et al.*, 778 Phil. 685, 704 (2016).

<sup>51</sup> *Id.* at 705, citing *National Power Corporation v. Judge Angas*, 284-A Phil. 39, 46.

***The persons covered by  
Medical Check-Up Program  
under AO 402***

The health program which AO 402 espouses is **intended exclusively for government employees**. The Whereas Clause of AO 402 bears this intent:

**WHEREAS**, pursuant to Section 5 of P.D. No. 1597, s. 1978 (Further Rationalizing the System of Compensation and Position Classification in the National Government), which continues to be applicable in accordance with R.A. No. 6758, s. 1989 (Prescribing a Revised Compensation and Position Classification System in the Government), **all government employees may be granted allowances, honoraria and other fringe benefits;**

**WHEREAS**, keeping a healthy workforce is among the primary concerns of the government **considering that the physical well-being of its employees** has a significant impact on the efficiency and effectiveness of public service delivery; (Emphasis supplied)

The families or dependents of qualified government employees concerned are not included. What is not included is deemed excluded. *Exclusio unius est exclusio alterius*.

But as worded, Board Resolution No. 07-67 extended the medical assistance benefits not only to PSALM's plantilla officers but to their so called qualified dependents as well, thus:

**WHEREAS**, elaborating on the purchase of prescription drugs, it was explained that only Plantilla personnel **and their qualified dependents** shall be entitled. The maximum availment for each personnel covered shall not exceed PhP25,000.00 for each year. This entitlement is non-cumulative and strictly non-convertible to cash. (Emphasis supplied)

Verily, therefore, the grant here of the expanded medical assistance benefits did not only exceed the benefits authorized under AO 402, but also the intended beneficiaries. The inclusion of these beneficiaries, too, is devoid of legal basis.

***Petitioners' other arguments***

Petitioners next argue that former President Gloria Macapagal Arroyo approved their request for the retroactive grant of the additional benefits borne in the expanded MABs. For this purpose, it submitted to the COA-CP an alleged confidential document from the Malacañan Palace purportedly bearing former President Arroyo's approval. According to petitioners, with

the President's approval, no less, PSALM's authority to grant the expanded benefits in question may no longer be assailed. Other government agencies must allegedly respect the President's approval.

The argument must fail.

For one, both COA-Cluster Director Alagon and the COA-CP noted that the so-called confidential document *did not bear* President Arroyo's signature. It only reflected the word "*approved*" without the President's signature affixed thereto. In fine, the so-called confidential document is a mere scrap of paper.

For another, per COA-CP's verification, the so-called confidential document is *not on file* with the Malacañan Records Office (MRO).<sup>52</sup> Petitioners have not spoken a word about this finding. In any case, we agree with the COA-CP that it is not the President's signature, but AO 402 which dictates whether the 2008 and 2009 expanded MABs were legally authorized.

Petitioners further invoke the doctrine of operative fact *vis-à-vis* Board Resolution Nos. 07-67 and 2008-1124-004 when they authorized the expanded medical assistance benefits.

The doctrine of operative fact nullifies the effects of an unconstitutional law, executive act, or similar issuances by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies as a matter of equity and fair play when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law, act, or the like.<sup>53</sup>

The doctrine of operative fact, however, *does not apply* to Board Resolution Nos. 07-67 and 2008-1124-004. They are not laws, executive acts or like issuances which have the effect of law. The COA-CP did not pass upon the validity of these board resolutions for it is devoid of such authority in the first place. What COA-CP did was affirm the disallowance on audit of the disbursements and payments in question for being devoid of legal basis.

## Second Issue

### *Persons liable to return subject amounts*

The following statutory provisions identify the persons liable to return the disallowed amounts, *viz.*:

<sup>52</sup> *Id.* (G.R. No. 218177) at 56; *id.* (G.R. No. 205490) at 123.

<sup>53</sup> *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

1. Section 43, Chapter V, Book VI of the 1987 Administrative Code:

**Section 43. *Liability for Illegal Expenditures.*** - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

X X X

X X X

X X X

2. Sections 38 and 39, Chapter 9, Book I, of the 1987 Administrative Code:

**Section 38. *Liability of Superior Officers.*** -

(1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

**Section 39. *Liability of Subordinate Officers.*** - No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

3. Section 52, Chapter 9, Title I-B, Book V of the 1987 Administrative Code:

**Section 52. *General Liability for Unlawful Expenditures.*** - Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. Sections 102 and 103, Ordaining and Instituting a Government Auditing Code of the Philippines:

**Section 102. Primary and secondary responsibility.**

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.
2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

**Section 103. General liability for unlawful expenditures.** Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

5. Section 49 of Presidential Decree 1177 (PD 1177) or the Budget Reform Decree of 1977:

Section 49. *Liability for Illegal Expenditure.* Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

x x x

x x x

x x x

6. Section 19 of the Manual of Certificate of Settlement and Balances:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

In the very recent case of *Madera, et al. v. COA*,<sup>54</sup> the Court *En Banc*, speaking with one voice through the brilliant *ponencia* of Justice Alfredo Benjamin S. Caguioa, discussed in detail the respective liabilities of certifying and approving officers and the recipient employees in case of expenditure disallowance, *viz.*:

x x x the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, x x x This treatment contrasts with that of individual payees who x x x can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

x x x                      x x x                      x x x

x x x the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

x x x                      x x x                      x x x

<sup>54</sup> G.R. No. 244128, September 15, 2020.

x x x the evolution of the “good faith rule” that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits – the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*.

The history of the rule as shown evinces that the original formulation of the “good faith rule” excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

x x x                      x x x                      x x x

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. x x x

x x x                      x x x                      x x x

x x x Notably, in situations where officers are covered by Section 38 of the Administrative Code either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term “net disallowed amount” to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that employees are not considered passive recipients on account of their participation in the negotiated

incentives x x x payees are generally held in good faith for lack of participation, with participation limited to "accep[ting] the same with gratitude, confident that they richly deserve such benefits."

x x x                      x x x                      x x x

To recount, x x x, retention by passive payees of disallowed amounts received in good faith has been justified on payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

x x x                      x x x                      x x x

x x x To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payee's favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

x x x                      x x x                      x x x

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates.**

In the same case, the Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

*E. The Rules on Return*

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
  - (a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code.



- (b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.
- (c) Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
- (d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.

Applying the law and *Madera* here, we hold that the members and officers of the PSALM Board of Directors who authorized the payment of the disallowed amounts and the employees who received the same are liable to return them.

*i. Liability of certifying and approving officers*

Section 38, Chapter 9, Book I, of the Administrative Code expressly states that the civil liability of a public officer for acts done in the performance of his or her official duty arises only upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. This is because of the presumption that official duty is regularly performed.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.<sup>55</sup> Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>56</sup>

Here, it cannot be said that petitioning members and officers of the Board acted with malice and bad faith in approving the grant of the benefits

<sup>55</sup> *California Clothing Inc., et al. v. Quiñones*, 720 Phil. 373, 381 (2013).

<sup>56</sup> *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013); also see *GSIS v. Manalo*, 795 Phil. 832, 857-858 (2016).

later disallowed. As they claimed, they all acted in the honest belief that the same were due them and the PSALM employees under AO 402. There is also nothing on record to lead us to conclude that they, indeed, granted the excess benefits with a dishonest purpose.

Nevertheless, we hold that the approving and certifying officers are guilty of gross negligence.

To reiterate, the provisions of AO 402 are clear and unequivocal. Its singular intention is to grant free annual medical check-up program to government employees. It does not imply in any way the grant of other health benefits outside the free annual medical check-up. It also clearly limited its scope to the government employees themselves. Nowhere in the provisions of the law were the benefits extended to the dependents of the government employees. The members and officers of the Board of Directors, however, carelessly expanded the coverage of the benefits without thought about and without harmonizing the same with the provisions of AO 402. Worse, they expanded the benefits not only once, but twice – in 2008 and in 2009.

More, in *Madera*, the Court adopted Justice Leonen's proposed badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family, to wit:

x x x (1) **Certificates of Availability of Funds** pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and **no prior disallowance has been issued**, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality. (Emphasis supplied)

Here, COA-Cluster Director IV Alagon aptly observed that PSALM's 2008 Corporate Operating Budget for 2008 from which the MAB was sourced was only P3,350,000.00. As it was, however, the 2008 MAB amounted to P5,702,517.42,<sup>57</sup> clearly in excess of the available funds. But it did not deter the members and officers of the Board of Directors from continuing to grant the expanded benefits.

More, on January 22, 2009, prior to the full implementation of the 2009 expanded MAB, State Auditor Molina already served PSALM her Audit Observation Memorandum No. 2008-06 stating that the expanded benefits included in the 2008 MAB lacked legal and factual bases.

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<sup>57</sup> *Id.* (G.R. No. 218177) at 157.

Thereafter, State Auditor Molina issued ND No. 2008-002 (2008) dated April 23, 2009.<sup>58</sup> From that point onward, the concerned members and officers of the Board of Directors should have already desisted from granting the expanded benefits under the 2009 MAB. Standing alone, the prior disallowance of the grant under the 2008 MAB may not suffice to negate the presumption of regularity in favor of petitioners, but taken with the other badges, indubitably conveys the presence of gross negligence.

Indeed, the factors, as heretofore discussed, clearly support the finding that the members and officers of the Board of Directors who approved and authorized the grant of the expanded benefits are liable to return the disallowed amounts. Pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and *Madera*, their liability is joint and several for the disallowed amounts received by the individual employees.

## *ii. Liability of the recipient employees*

As clarified in *Madera*, the general rule is that recipient employees must be held liable to return disallowed payments on ground of *solutio indebiti* or unjust enrichment as a result of the mistake in payment. Under the principle of *solutio indebiti*, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

*Madera*, however, decrees as well that restitution may be excused in the following instances:

x x x the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely **given in consideration of services rendered** (or to be rendered)” negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of **performance incentives, productivity pay, or merit increases** that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when **undue prejudice** will result from requiring payees to return or where **social justice or humanitarian considerations** are attendant. (Emphasis supplied)

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<sup>58</sup> *Id.* (G.R. No. 218177) at 10 and 110.

Unfortunately for PSALM's employees, none of the exceptions are present in this case. Foremost, the expanded benefits under the 2008 and 2009 MABs were not given in relation to the employees' functions, nor were they given as part of performance incentives, productivity pay, or merit increases. Also, it cannot be said that undue prejudice will result in requiring the recipient employees to return the disallowed amount. On the contrary, it is the Government that would be prejudiced if the recipients will not return what they unduly received. Social justice or any humanitarian considerations also do not call for the grant to the employees of expanded benefits in the form of dermatological and dental treatments to their dependents. In short, there was total lack of basis and justification for the grant of the expanded benefits included in the 2008 and 2009 MABs.

Verily, therefore, the employees must be held liable to return the amounts that they and their dependents, if any, respectively received. As earlier discussed, the approving and certifying members and officers of the Board of Directors are jointly and severally liable for the disallowed amounts received by the individual employees.

**ACCORDINGLY**, the assailed Decision No. 2014-036 dated March 5, 2014, Resolution dated January 26, 2015, and Decision No. 2012-270 dated December 28, 2012 of the Commission on Audit – Commission Proper are **AFFIRMED** with **MODIFICATION**, viz.:

1. The PSALM employees are individually liable to return the amounts which they and their dependents, if any, respectively received pursuant to the 2008 and 2009 expanded MABs;

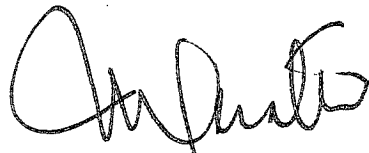
2. The PSALM officers and members of the Board of Directors who took part in the approval of the unauthorized benefits under Board Resolution Nos. 07-67 and 2008-1224-004 are jointly and solidarily liable for the return of the disallowed amounts in connection with the 2008 and 2009 expanded MABs.

**SO ORDERED.**

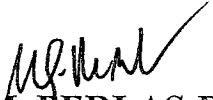


AMY C. LAZARO-JAVIER  
Associate Justice

**WE CONCUR:**



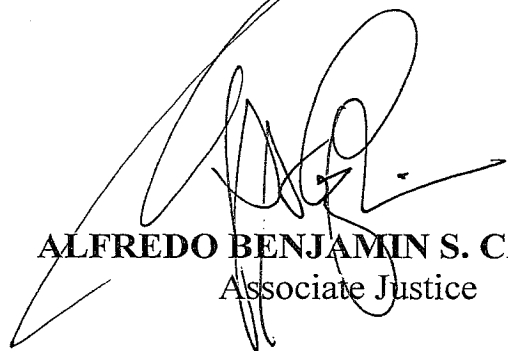
**DIOSDADO M. PERALTA**  
Chief Justice



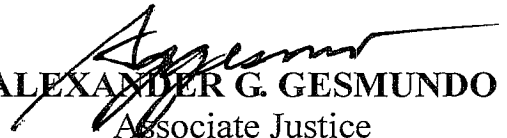
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



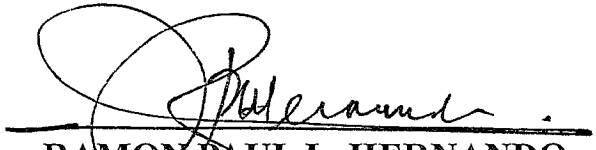
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
Associate Justice

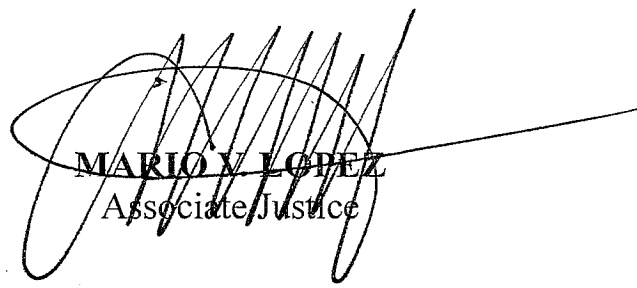


**ROSMARI D. CARANDANG**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice

**RODIL V. ZALAMEDA**  
Associate Justice  
(On official leave)

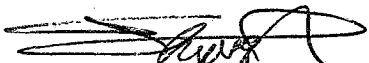


**MARIO V. LOPEZ**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice

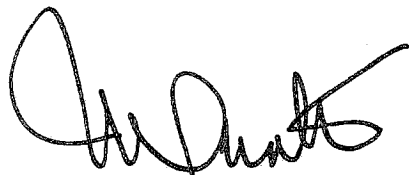


  
**SAMUEL H. GAERLAN**  
Associate Justice


(On leave)  
**PRISCILLA J. BALTAZAR-PADILLA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice

**CERTIFIED TRUE COPY**

  
**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court

