

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**In the Matter of the Denial of Long-Term Care Benefit  
Eligibility of:**

**MELINDA K. LEISER, Respondent.**

**Case No. 2020-0840**

**OAH No. 2020100814**

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on March 1, 2021, as a virtual hearing.

John Shipley, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Melinda K. Leiser (respondent) was present and represented herself.

The record closed and the matter was submitted for decision on March 1, 2021.

## **FACTUAL FINDINGS**

1. Respondent Melinda K. Leiser (respondent) obtained coverage under the CalPERS Long-Term Care Program (program). Her coverage was under the 1995 Comprehensive Life with Inflation Plan, effective July 1, 1995 (plan).

2. The Long-Term Care Act establishes a voluntary insurance program for long-term care for public employees and retirees. The Act requires that the CalPERS Board of Administration maintain the program. In establishing the program, the Board decided to provide self-funded plans. The Long-Term Care Group, Inc. (LTCG) administers the program for the Board. The Act authorized the Board to adopt underwriting standards and benefit criteria for the program, which were developed by its administrators.

3. At all time relevant, the program provided respondent with the 1995 evidence of coverage (EOC) comprehensive plan booklet. The EOC is a contract between parties. All terms and conditions for eligibility and receipt of benefits are set forth in the EOC.

4. On August 30, 2019, respondent contacted the program regarding a recent request for benefits. The program provided respondent with a claim intake package in response to her request.

5. On September 4, 2019, LTCG contacted Watermark (an assisted living facility where respondent was residing) regarding a claim for benefits submitted by respondent and requested that Watermark provide information to allow it to determine eligibility for benefits.

6. On September 6, 2019, respondent moved into the Watermark at the Bay, an assisted living facility (Watermark). On September 13, 2019, a representative from Watermark submitted a claim form and a Claimant Care Needs Assessment Form on behalf of respondent.

7. On January 20, 2020, LTCG initiated a Benefit Eligibility Assessment (BEA) for respondent to determine benefit eligibility. An in-person visit by an independent clinician was performed on this date.

8. On February 4, 2020, LTCG sent respondent a letter denying her claim for benefits. A Notice of Claim Reconsideration Form and Third-Party Authorization Form were also provided to respondent at the same time. LTCG determined that respondent did not meet the conditions for receiving benefits, as outlined in the EOC, because she did not have a deficiency in two or more activities of daily living (ADL), or did not have a cognitive impairment, or did not have a complex, yet stable, medical condition for which she incurred covered expenses. LTCG reviewed and based its determination on information received from respondent. The information received included a care needs assessment form from Watermark, a plan of care from Watermark, a physician's report, two telephone conversations between LTCG and Ms. Foos, Assisted Living Director at Watermark, medical records, and a benefit eligibility assessment completed on January 20, 2020.

9. On March 17, 2020, LTCG received respondent's Notice of Claim Reconsideration form dated March 17, 2020, requesting that LTCG reconsider its denial of benefit eligibility as provided in LTCG's February 4, 2020 letter.

10. On March 23, 2020, LTCG sent respondent a letter denying her request for reconsideration. LTCG upheld their decision made on February 4, 2020, however

LTCG approved her benefit eligibility beginning March 3, 2020. LTCG's denial of respondent's request for reconsideration was based on the determination that respondent did not meet the conditions for receiving benefits, as outlined in the EOC, because she did not receive substantial assistance in performing two or more activities of daily living, did not have a cognitive impairment, and did not have a complex, yet stable, medical condition. Each of these conditions are separated by "or" in the EOC. Each is a separate condition that allows respondent to receive benefits. LTCG reviewed and based its determination on a physician's report for residential care facilities dated August 13, 2019 and March 3, 2020, claimant care needs assessment dated September 13, 2019, and March 17, 2020, plan of care dated September 13, 2019, and March 17, 2020, telephone calls between LTCG staff and Ms. Foos, Assisted Living Director of the Watermark, on September 25, 2019, October 2, 2019, December 20, 2019, and March 20, 2020, medical records received December 8, 2019, benefit eligibility assessment completed on January 20, 2020, and notice of claim reconsideration received March 17, 2020.

11. On April 14, 2020, LTCG received respondent's request for appeal and notice of representative dated April 14, 2020. Respondent appealed LTCG's denial of benefit eligibility prior to March 3, 2020, contained in its March 23, 2020, letter.

12. On April 20, 2020, LTCG sent respondent a letter acknowledging her request for appeal of LTCG's denial of benefit eligibility for September 6, 2019 to March 3, 2020, and forwarded the appeal to the Program for processing.

13. On May 13, 2020, the Program sent a letter to respondent informing her that after the Program's administrative review process, it is upholding LTCG's initial denial of benefit eligibility from September 6, 2019 through March 2, 2020 and gave respondent further appeal rights. CalPERS LTC program based their decision on a

claim that they could not verify that respondent met the Condition for receiving benefits; that the initial physician's report indicated some memory loss, pending work up; the claimant care needs assessment indicated respondent did not need assistance with at least two ADLs; and that there was no provision or benefit in the EOC to allow benefit eligibility for participants that do not require substantial human physical assistance with two or more ADLs.

14. By letter dated May 28, 2020, Ms. Foos, Assisted Living Director at Watermark, submitted an appeal on behalf of respondent of the Program's determination and requested an administrative hearing. By letter dated June 29, 2020, the Program acknowledged receipt of respondent's appeal and request for an administrative hearing as timely.

15. The Program in applying the terms and provision of the EOC to the facts presented in respondent's case, made an incorrect determination that respondent was not eligible to be reimbursed for services provided to her at Watermark from September 6, 2019 through March 2, 2020.

16. Brigid Dwyer, respondent's goddaughter, and Jocelyn Herndon, respondent's niece, testified at the hearing. They have been involved in respondent's care since her ischemic stroke in 2016. They were responsible for convincing respondent to move to Watermark, an assisted living facility. Respondent had fallen at least twice while living alone, and at least once while trying to shower. She was unable to bathe and dress on her own. She was unable to shop for food and make meals for herself. She was unable to use simple household appliances to do basic cleaning. She was unable to make and keep medical appointments. She got lost when she left the house alone. Respondent had lost 20 pounds. Respondent has good days and worse

days. She needed help in more than two activities of daily living. This should have been sufficient to make respondent eligible.

17. In 2019, respondent saw Culmohor D. Roy, M.D., a neurologist. This evaluation was pending at the time of the first evaluation by LTCG. In a letter dated October 14, 2020, Dr. Roy confirmed that respondent was evaluated and that beginning September 9, 2019, respondent could not live independently. She had a cognitive impairment from her stroke with progressive worsening, left-side weakness, and recurrent falls. This was also confirmed by respondent's treating physician, Anita Krishnamurthy, M.D. In a letter dated April 28, 2020, Dr. Krishnamurthy confirmed that respondent's medical issues existed prior to September 2019 and that respondent had cognitive impairment in September 2019. Respondent was advised to move into assisted living because of her cognitive impairment and recurrent falls.

18. Respondent required substantial human physical assistance with more than two ADLs and had cognitive impairment that required significant supervision. The LTCG recognized this when they approved respondent's benefits for March 3, 2020 going forward. Nothing had really changed or gotten significantly worse since September 2019. When respondent's benefits were approved for March 3, 2020, her appeal of the denial of the period from September 6, 2019 through March 2, 2020, should have been granted. Respondent is entitled to benefits from September 6, 2019 through March 2, 2020.

## **LEGAL CONCLUSIONS**

1. Pursuant to Government Code sections 21660 to 21664 CalPERS is required to maintain and administer the Long-Term Care Act which established a

voluntary insurance program for long-term care. Pursuant to Government Code sections 21661, subdivisions (a) and (j), 21663, and 21664, the Board established self-funded plans. The Evidence of Coverage sets forth the terms and conditions of coverage including definitions, conditions for receiving benefits, how claims are evaluated and information needed from claimants to process their claim.

2. As set forth in Findings 1 through 18, respondent established by a preponderance of the evidence through competent medical evidence and testimony in support of her application that she is entitled to be reimbursed for services provided to her at Watermark from September 6, 2019 through March 2, 2020. Respondent was unable to perform at least two activities of daily living and had a cognitive impairment as a result of her stroke. Each one of these conditions made her eligible for benefits under her long-term care coverage.

## ORDER

The appeal of Melinda K. Leiser for benefits (reimbursement of services at Watermark) for the period from September 6, 2019 to March 2, 2020 is granted.

DATE: 03/24/2021

  
Ruth S. Astle (Mk 24, 2021 11:53 PDT)

Administrative Law Judge  
Office of Administrative Hearings