

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Michael A. Schall (Respondent) is a local miscellaneous member of CalPERS whose minor child Andrea is eligible for CalPERS health benefits under PEMHCA. Respondent and Andrea were enrolled in PERS Care, a preferred provider health care plan offered by CalPERS. Both Respondent and Andrea are residents of the United States.

On August 29, 2018, Respondent contacted Anthem to appeal the denial of benefit coverage for a hip resurfacing procedure for Andrea performed in England by Derek McMinn, M.D. Respondent believed Dr. McMinn needed to perform the surgery because he was an expert and the only provider who performs the surgery on children.

On September 27, 2018, Anthem denied coverage for Dr. McMinn to perform the procedure, explaining that the 2019 PERSCare Evidence of Coverage (EOC) did not cover elective procedures for US residents in foreign countries.

On May 8, 2019, Respondent requested that CalPERS review Anthem's denial. On July 9, 2019, CalPERS upheld Anthem's denial to provide benefit coverage for Dr. McMinn's services based on the contractual language in the EOC.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 4, 2022. Respondent represented himself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

The 2019 PERSCare EOC states that members traveling outside the United States may receive care at a hospital that participates in the BlueCross BlueShield Global Core Program. Reimbursement for international services is limited as follows:

Claims will be accepted for U.S. residents who are traveling in foreign countries for urgent or emergent care only. Claims for elective procedures will not be reimbursed.

"Emergency Care Services" are defined as:

Services required for the alleviation of sudden onset of severe pain, or Psychiatric Emergency Medical Condition, or the immediate diagnosis and treatment of an unforeseen illness or injury which could lead to further

significant disability or death, or which would so appear to a prudent layperson.

“Urgent Care” is defined as:

Services received for sudden and unexpected serious illness, injury of condition, other than one which is life threatening, which requires immediate care for the relief of severe pain or diagnosis and treatment of such condition.

At the hearing, CalPERS provided testimony regarding the language and exclusions in the EOC. Based on the international nature of the medical treatment, CalPERS reviewed the surgery and EOC to determine whether it qualified as urgent or emergency care. The surgery was considered elective because it was a planned surgery for a foreseen injury or illness. CalPERS determined that it cannot cover the procedure because it did not meet the definitions in the EOC, and CalPERS applies benefits equally to all its members according to the terms of the EOC. Based on its review of coverage, CalPERS upheld Anthem’s denial of benefit coverage.

Respondent testified regarding Andrea’s orthopedic (right hip) condition and request for benefit coverage. He testified that her condition was longstanding, beginning around September 2015. Based on his research into treatment for Andrea’s condition, Respondent concluded Dr. McMinn was the only surgeon that could provide her with the custom implant which would meet her needs. Respondent contacted several surgeons in the United States to see if they would perform the surgery, but they all declined based on the implant’s lack of FDA approval. Respondent then sought pre-approval from Anthem to cover the procedure as an in-network treatment. Anthem denied coverage.

While appealing Anthem’s denials, Respondent flew Andrea to England where the surgery was performed on June 1, 2019. Respondent decided not to wait for medical developments in the US because for years Andrea was bedridden, could not walk and was in constant pain. Respondent paid for her surgery out of pocket, and sought reimbursement for all costs associated with the surgery. He argued that CalPERS’ fiduciary duty and ethics policy compels reimbursement.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that in order for Respondent to obtain reimbursement, he must demonstrate either the surgery was an emergency or urgent service under the terms of the EOC. The surgery did not meet either definition. Andrea’s ailment arose in 2015, and worsened until surgery was performed in 2019. By 2019, it was neither an “unforeseen illness or injury” nor a “sudden and unexpected serious illness, injury or condition.”

The ALJ found that even with full knowledge the benefit coverage was denied, Respondent chose to continue with the surgery he believed was in Andrea’s best interest. He now seeks to revise the terms of the EOC to receive reimbursement. In

doing so, Respondent does not contend the EOC's limitation was unclear or the denial was unexpected. The ALJ found the terms of the EOC plainly, clearly and conspicuously limit coverage on international medical claims. The law allows an insurance company to limit coverage of a policy, so long as the limitation conforms to the law, is not contrary to public policy, and does so in conspicuous, plain and clear language.

The ALJ rejected Respondent's arguments regarding fiduciary duty because he cited no law or state policy that requires health insurers to pay for international elective surgeries when their contracts state the opposite. The ALJ also found Respondent's citation to CalPERS' fiduciary duty unavailing because it supports CalPERS' argument that it must follow the EOC and treat its members equally. To do otherwise, risks inequitable treatment of claims and could cause an increase in premium costs for all members.

In the Proposed Decision, the ALJ concludes that Respondent did not establish that CalPERS erroneously denied benefit coverage for Andrea's surgery performed in England by Dr. McMinn. The planned surgery was for a foreseen illness or injury, and thus did not qualify as urgent or emergent care under the terms of the EOC.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

January 17, 2023

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