

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Jean Spees (Respondent) was the beneficiary of a long-term care (LTC) insurance policy administered for CalPERS by a third-party insurer, Long Term Care Group, Inc. (LTCG). The scope of her benefits is set forth in the 2002 CalPERS Comprehensive Plan Long Term Care Evidence of Coverage (EOC). Among other benefits, she receives a Nursing Home Benefit and a Residential Care Facility Benefit. The Nursing Home Benefit reimbursement rate is higher than the Residential Care Facility reimbursement rate.

Under the LTC Act, CalPERS' Board of Administration has the jurisdiction and authority to administer the California Public Employees' Long-Term Care Program (LTC Program). The LTC Program is a self-funded program designed to cover costs associated with qualified long-term care services and is administered by the Long-Term Care Group, Inc. (LTCG).

Respondent became eligible for LTC benefits in November 2016 and was reimbursed at the daily Residential Care Facility Benefit rate. In early 2020, Respondent's functioning declined such that her facility could no longer meet her daily needs. Her LTC facility recommended that she be transferred to a sister facility which provides a higher level of care, but Respondent's family felt it would be detrimental to her health to be separated from her husband. The family contracted with an agency to provide trained caregivers for six hours per day, at an initial cost of \$25 per hour. This supplemental care allowed Respondent to remain at her current facility with her husband.

Around May 2020, Respondent's family notified LTCG that Respondent needed additional assistance due to moderately severe cognitive impairment, hoping to increase her coverage to the higher Nursing Home Benefit reimbursement rate. The family requested increased reimbursement and provided all information requested by LTCG in support of their request.

In October 2020, LTCG notified Respondent that her request to increase reimbursement to a higher rate was denied based on its determination that her assisted living facility did not provide memory care. Her family submitted a request for reconsideration which LTCG denied on February 1, 2021.

On February 5, 2021, the family appealed LTCG's denial to CalPERS. On May 3, 2021, CalPERS sent Respondent's family a determination letter which upheld LTCG's decision denying reimbursement at the higher Nursing Home Benefit rate.

Respondent passed away in July 2021.

On May 11, 2021, Respondent appealed the LTC Program's determination that she was not eligible to be reimbursed for services provided to her at the Nursing Home Rate and

exercised her right to a hearing, relating to this determination, before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing regarding her appeal was held on August 1, 2022. Respondent's son, John Spees, represented Respondent's estate at the hearing.

Prior to the hearing, the assigned attorney explained the hearing process to Respondent's son and the need to support his mother's estate's case with witnesses and documents. Respondent's son was provided with a copy of the administrative hearing process pamphlet. The assigned attorney also answered Respondent son's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS' LTC Program staff presented evidence in support of its determination through witness testimony and documents. Specifically, the EOC defines "Nursing Home" as either a facility licensed to provide nursing care to inpatients by licensed registered nurses, practical nurses, or vocational nurses; or a facility that is licensed as a specialized Alzheimer's care unit. The EOC specifies that Nursing Home does not refer to a facility that provides only residential or retirement care.

The EOC defines Residential Care Facility (also known as an Assisted Living Facility) as providing "24-hour a day care and services sufficient to support needs resulting from inability to perform Activities of Daily Living or Severe Cognitive Impairment". The EOC provides that the Nursing Home Benefit pays for covered expenses incurred for nursing home care while an eligible individual is an inpatient in a Nursing Home. The EOC provides that the Residential Care Facility Benefit pays for covered expenses incurred while an eligible individual is residing in a residential care facility. Under Respondent's EOC, the Nursing Home Benefit was 100% of covered expenses up to \$213 per day while the Residential Care Facility Benefit was 100% of covered expenses, up to \$107 per day.

Respondent's son acknowledged that Respondent was not living in a Nursing Home and that her facility did not have a secured Alzheimer's/memory care unit. He described Respondent's declining health which required increased supervision, and that the family incurred significant expenses for her care beginning in February 2020 until Respondent passed away in July 2021. Rather than cause Respondent emotional harm by separating her from her husband, the family tried to duplicate the level of care provided by an Alzheimer's/memory care unit. He noted that the cost of care provided by her facility alone exceeded the \$107 per day Residential Care Facility Benefit she received. He also testified that the family is frustrated that the LTC policy failed to meet Respondent's needs. He argued that an exception to the EOC would be appropriate, because Respondent required that level of care and the family incurred expenses for this care in excess of the Residential Care Facility Benefit she received.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent's estate had the

burden to prove that it is entitled to be reimbursed for the difference between the Residential Care Facility Benefit rate and the Nursing Home Benefit rate (\$106 per day) from when she established her increased need for care until her death.

The ALJ concluded that: (1) CalPERS correctly applied the terms and conditions of the EOC and made the correct determination that Respondent was not eligible to be reimbursed for services provided to her from February 2020 through July 2021, and (2) CalPERS correctly applied the terms and conditions of the EOC and made the correct determination that Respondent could not be reimbursed at the Nursing Home Benefit rate, which is only available for expenses incurred while an individual is an inpatient in a Nursing Home. The ALJ further found that there is no provision in the EOC to reimburse an individual residing in a Residential Care Facility (as Respondent was) for expenses in excess of the daily Residential Care Facility Benefit reimbursement rate.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” To avoid ambiguity, staff recommends that the agency’s case number be changed from 2020-0503 to 2021-0503 on page one of the Proposed Decision.

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

November 16, 2022

Elizabeth Yelland
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