

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

CalPERS provides medical benefits to its members through the CalPERS Health Program, which is governed by the Public Employees' Medical and Hospital Care Act (PEMHCA). (California Government Code § 22750, et seq., 2 Cal. Code Regs. § 599.500 et seq.)

PEMHCA grants CalPERS the authority to contract with Health Care Administrators to provide health benefits to members. (Government Code § 22793.) CalPERS contracts with Anthem Blue Cross (Anthem) to offer PERS Choice, a Preferred Provider Organization (PPO) health plan. Anthem administers the PERS Choice plan pursuant to the PERS Choice Evidence of Coverage Booklet (EOC). The EOC is a contract between CalPERS and its members, setting forth the sole and exclusive provisions by which Anthem is authorized to provide benefits to PERS Choice members.

Relevant to this proceeding, David Allen (Respondent) is an employee of the State of California and a member of PERS Choice. In April 2019, Respondent was involved in a motorcycle accident. He was transported to Natividad Hospital in Salinas, California, and admitted to the Intensive Care Unit (ICU), where he received treatment from Boris Borazjani, M.D., and Richard Moore, M.D. Natividad Hospital is a preferred facility under the terms and conditions of the PERS Choice EOC. Dr. Borazjani and Dr. Moore are both non-preferred providers under the PERS Choice EOC.

In May 2019, Anthem issued payment for Respondent's treatment by Dr. Borazjani and Dr. Moore.¹ Anthem paid Dr. Borazjani \$992.98, as a non-preferred provider. Anthem paid Dr. Moore \$345, as a non-preferred provider. Anthem advised Respondent he was responsible for the balances due, of \$1,998.02 and \$333, respectively, payable to the physicians. Respondent appealed Anthem's determination, arguing that additional payment should be issued to the physicians because Natividad Hospital was a preferred facility. Anthem issued a subsequent determination affirming the propriety of its payments, which CalPERS also confirmed upon an independent review.

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 May 13, 2021. 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.

¹ Anthem also issued payment to Natividad Hospital, which is not at issue in this proceeding.

At the hearing, a CalPERS analyst testified and explained that the PERS Choice EOC is a contract that sets forth the health benefits available to plan members. Pursuant to the EOC, Anthem enters into contracts with hospitals and physicians, known as “Preferred Providers,” who have agreed to accept what is known as the “Allowable Amount” as payment in full for services performed on behalf of PERS Choice members. A PERS Choice member may elect to receive medical services performed by “Non-Preferred Providers,” meaning providers who do not contract with Anthem. However, Non-Preferred Providers are not subject to the Allowable Amount maximum under the PERS Choice EOC. This means that Anthem will pay a percentage of the Allowable Amount to a Non-Preferred Provider for services provided to a PERS Choice member, but that the member can be charged for and may be responsible for any amounts above the Allowable Amount that may be billed by a Non-Preferred Provider. The EOC also explains that preferred facilities may choose to work with non-preferred providers when providing emergency care services.

Pursuant to the terms of the PERS Choice EOC, for non-emergency services, Anthem will pay 80 percent of the Allowable Amount for services performed by a Preferred Provider, subject to a member’s Out of Pocket Maximum. Once the member reaches that maximum, Anthem will pay Preferred Providers 100 percent of the Allowable Amount. For Non-Preferred Providers, Anthem agrees to pay 60 percent of the Allowable Amount, with the remaining charges payable by the member. However, Anthem pays 80 percent of the Allowable Amount to preferred and non-preferred providers who render emergency care to members. CalPERS followed this process when it issued payment to Natividad Hospital, a preferred facility, and to Dr. Borazjani and Dr. Moore, both non-preferred providers. Because Respondent had met his out-of-pocket maximum for the year, Anthem paid 100 percent of the Allowable Amount to the hospital and the physicians. The only difference was that Respondent remained responsible for all charges from the non-preferred physicians that were in excess of the Allowable Amount.

At the hearing, Respondent argued that because he was admitted to a preferred facility (Natividad Hospital), he assumed that the physicians who treated him would be preferred providers as well. Respondent argued he had no choice in selecting the physicians who provided emergency services or how they would be reimbursed by his health plan.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied the appeal. The ALJ found that the PERS Choice EOC “is an enforceable contract under which Anthem determines the maximum allowable amount for covered medical services.” There is no provision in the EOC, the ALJ held, that would allow Anthem “to pay a sum in excess of the maximum allowable amount.” Although Respondent did not know that the treating physicians were non-preferred providers, the ALJ held that Respondent had constructive notice of this possibility, because the PERS Choice EOC “informs members ... that preferred facilities may employ non-preferred providers.” For the foregoing reasons, the ALJ denied Respondent’s appeal.

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

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