

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Melinda K. Leiser (Respondent) submitted a request for reimbursement under a long-term care policy (Policy) that she had purchased, which was issued under the authority of the Public Employees' Long-Term Care Act (LTC Act). Respondent obtained coverage under the 1995 Long-Term Care Comprehensive Plan.

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 contacted LTCG on August 30, 2019, regarding a recent request for benefits. Respondent was provided with a Claim Intake Packet in response to her request. On September 4, 2019, LTCG contacted Watermark by the Bay (Watermark), the assisted living facility where Respondent resides, regarding a claim for benefits submitted by Respondent. LTCG requested that Watermark provide information to allow LTCG to determine eligibility for benefits. A representative from Watermark submitted a claim form and a Claimant Care Needs Assessment Form on behalf of Respondent on September 13, 2019.

LTCG initiated a Benefit Eligibility Assessment (BEA) for Respondent to determine benefit eligibility on January 20, 2020. An in-person visit by an independent clinician performed the assessment on this date. Respondent scored a perfect score on the cognitive evaluation and did not demonstrate that she needed assistance with any activities of daily living other than bathing.

LTCG sent Respondent a letter on February 4, 2020, denying her claim for benefits. A Notice of Claim Reconsideration Form and a Third-Party Authorization Form were also provided to Respondent at this 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 (ADLs), did not have a cognitive impairment and did not have a complex, yet stable medical condition. LTCG based its determination on the information it had received from Respondent, as well as the BEA.

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.

LTCG sent Respondent a letter denying her request for reconsideration on March 23, 2020. LTCG upheld its decision made on February 4, 2020; however, LTCG approved Respondent's 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 ADLs, did not have a cognitive impairment and did not have a complex, yet stable medical condition. LTCG approved Respondent's benefit eligibility beginning March 3, 2020, based on the fact this was the first date there was any medical support indicating that her cognitive impairment qualified her for benefits.

Thereafter, on April 14, 2020, LTCG received Respondent's request for appeal. Respondent appealed LTCG's denial of benefit eligibility contained in its March 23, 2020, letter.

On April 20, 2020, LTCG sent Respondent a letter acknowledging her request for appeal of LTCG's denial of benefit eligibility from September 6, 2019 to March 2, 2020 and forwarded the appeal to the LTC Program for processing.

The LTC Program conducted a thorough review of the information gathered by LTCG and submitted by Respondent. On May 13, 2020, the LTC Program sent a letter to Respondent informing her that after the LTC Program's administrative review process, it was upholding LTCG's initial denial of benefit eligibility from September 6, 2019 through March 2, 2020 and gave her further appeal rights information. The LTC Program's determination was based on the information available to the LTC Program at the time it performed its administrative review.

By letter dated May 28, 2020, Katherine Foos, Assisted Living Director at Watermark, submitted an appeal on behalf of Respondent regarding the LTC Program's determination that Respondent was not eligible to be reimbursed for services provided to her from September 6, 2019 through March 2, 2020 and Respondent 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 was held on March 1, 2021. Respondent represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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 LTC Program presented evidence in support of its determination through witness testimony and documents. That evidence showed that Ms. Leiser was assessed in January 2020 and that she scored a perfect score on the cognitive assessment and did not need any assistance in performing more than two ADLs. The information only demonstrated that Ms. Leiser needed assistance with bathing. Once she was assessed

by a medical professional as having a cognitive impairment, she was deemed eligible for coverage by LTCG and began receiving benefits.

Respondent testified on her own behalf. Respondent testified that she moved into Watermark at the recommendation of her doctors, family and friends. Respondent testified that she needed significant assistance, which was often performed by Brigid Dwyer, her goddaughter, and Jocelyn Herndon, her niece.

Respondent also called Ms. Dwyer and Ms. Herndon to testify on her behalf. Ms. Dwyer and Ms. Herndon both testified that they have been involved in Respondent's care since she had a stroke in 2016. They testified that they convinced Respondent to move into Watermark because of repeated falls. They testified that she was unable to bathe, dress, shop for food and/or prepare meals. Ms. Dwyer and Ms. Herndon testified that Respondent was unable to care for herself and needed assistance with making and keeping medical appointments.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that Respondent required "substantial human physical assistance with more than two ADLs and had cognitive impairment that required significant supervision." The ALJ found the Respondent's condition had not changed or gotten worse since September 2019, so that when her benefits were approved for March 3, 2020, they should have also been granted for September 6, 2019 through March 2, 2020.

In the Proposed Decision, the ALJ concludes that Respondent established by a preponderance of the evidence that she is entitled to be reimbursed for services provided to her at Watermark from September 6, 2019 through March 2, 2020.

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

June 16, 2021

John Shipley
Senior Attorney