

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

California Public Employees' Retirement System (CalPERS) administers the Public Employees' Medical and Hospital Care Act (PEMHCA). (Gov. Code § 22750 et. seq.) PEMHCA authorizes and requires the Board of Administration of CalPERS to provide health benefits for state employees, dependents and annuitants, as well as for employees and annuitants of contracting public agencies which elect to contract with CalPERS for health benefit coverage.

Pamela Walchak was eligible for health benefits under PEMHCA by virtue of her husband, David Walchak's employment with San Francisco Bay Area Rapid Transit District. She enrolled in the PERS Choice health plan effective July 1, 2009. CalPERS contracted with Anthem Blue Cross to administer PERS Choice claims.

CalPERS provided the Walchaks with a PERS Choice Evidence of Coverage booklet (EOC) pertaining to each calendar year of membership. This EOC contained the terms and conditions of the plan, including, but not limited to, provisions concerning benefits, claims, and payment of claims (See Cal. Code Regs., tit. 2, § 599.508, subd.(a)(6)). The PERS Choice 2010 EOC did not cover unilateral fusion of sacroiliac joint surgery.

By letter, Anthem Blue Cross denied Mrs. Walchak's request for coverage of bilateral¹ fusion of sacroiliac joint (SI joint) surgery, deeming the procedure experimental and investigational. The request went through several reviews at Anthem Blue Cross with the same outcome. Mrs. Walchak subsequently submitted a petition for reconsideration to Anthem Blue Cross. After a third review, Anthem Blue Cross denied the petition for reconsideration and provided further appeal rights. Mrs. Walchak appealed Anthem Blue Cross's decision to CalPERS.

CalPERS staff performed an administrative review of the medical records and upheld the decision of Anthem Blue Cross. CalPERS also sent the claim and all the medical records for an Independent Medical Review (IMR) by a panel consisting of three doctors. The doctors found that coverage of unilateral fusion of the SI joint was not likely to be more beneficial for treatment of the medical condition in Mrs. Walchak's case than available standard therapy. CalPERS sent the IMR to the Walchaks and David Walchak appealed the decision. A hearing was held on October 7, 2014.

PERS Choice 2010 Evidence of Coverage (EOC) contained the following provisions at all times relevant this appeal. The EOC states the following benefit exclusion:

Experimental or Investigational. Experimental or investigational practices or procedures, and services in connection with such practices or procedures. Costs incurred for any treatment or procedure deemed by Anthem Blue Cross Medical Policy to be experimental and investigational, as defined on page 99, are not covered. (See page 71.)

¹ Mrs. Walchak changed her request to a unilateral fusion of the SI Joint during the Anthem Blue Cross appeal process.

The PERS Choice EOC defines "Experimental or Investigational":

Experimental or Investigational – any treatment, therapy, procedure, drug or drug usage, facility or facility usage, equipment or equipment usage, device or device usage, or supplies which are not recognized in accordance with generally accepted professional medical standards as being safe and effective for use in the treatment of an illness, injury, or condition at issue. Additionally, any services that require approval by the federal government or any agency thereof, or by any state governmental agency, prior to use, and where such approval has not been granted at the time the services were rendered, shall be considered experimental or investigational. Any services that are not approved or recognized as being in accord with accepted professional medical standards, but nevertheless are authorized by law or a government agency for use in testing, trials, or other studies on human patients, shall be considered experimental or investigational. Any issue as to whether a protocol, procedure, practice, medical theory, or treatment is experimental or investigational will be resolved by Anthem Blue Cross, which will have full discretion to make such determination on behalf of the Plan and its participants. (See page 99.)

Prior to the hearing, CalPERS explained the hearing process to the Walchaks and the need to support their case with witnesses and documents. CalPERS answered their questions, provided discovery well in advance of the hearing, and clarified how to obtain further information on the process.

Mrs. Walchak, who has worked as a paralegal, represented herself with the assistance of her husband during the hearing. She effectively put forth her case for coverage of the SI joint fusion and had her medical evidence admitted. She also testified on her own behalf.

At the hearing, Dr. Richard Sun, M.D. M.P.H, testified as a witness for CalPERS and explained that the medical evidence did not support a finding that a fusion of the SI joint would resolve Mrs. Walchak's complaints of lower back pain. Dr. Sun's testimony was supported by the testimony of Dr. Lynn Cooman from Anthem Blue Cross. Dr. Cooman explained the review process at Anthem Blue Cross and he was one of the doctors who evaluated the Walchak's request. In addition, Dr. Sun explained the Independent Medical Review process and that the three independent doctors also found that the fusion of the SI joint is not likely to be more beneficial for treatment of Mrs. Walchak's medical condition than any available standard therapy. Dr. Sun had surveyed commercial health plans on the internet and found them to all classify SI joint fusion as experimental or investigational for treatment of lower back pain.

In the Proposed Decision, the Administrative Law Judge (ALJ) explained that the medical literature demonstrated that SI joint fusion is not recognized, in accordance with

generally accepted professional medical standards, as being effective for the use in treatment of lower back pain.

The ALJ further found that "the evidence establishes the proposed unilateral SI joint fusion is experimental and investigational for treatment of claimant's low back pain and therefore is not covered by the PERS Choice plan."

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 17, 2014

for Marguerite Seaborn

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