

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Edward Moore (Respondent Moore) appealed a determination by CalPERS to uphold previous determinations made by Blue Shield of California (BSC) and the Department of Managed Healthcare (DMHC) denying Respondent Moore's request for coverage of a non-medically necessary treatment from a non-contracted provider. Respondent Moore is eligible for health benefits under PEMHCA by virtue of his spouse's employment with the California Department of Transportation (DOT). A hearing on Respondent Moore's appeal was held February 17 and 20, 2015. Respondent Moore represented himself at the hearing and was assisted by his wife, a Senior Staff Attorney with DOT.

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

Respondent Moore suffers from a rare voice disorder known as spasmodic dysphonia (SD) and was diagnosed in 2008. At the time, Respondent Moore's treating physician, Dr. Mark S. Courey, discussed speech therapy, botulinum toxin therapy (botox), and surgery as treatment options. Respondent Moore chose speech therapy and treated with Linda Reece, MA, CCC-SLP, for approximately two years. Later, Respondent Moore returned to his primary care physician to seek a referral because speech therapy was not helping.

Respondent Moore's primary care physician, Dr. Garth Tanner, evaluated Respondent Moore and Dr. Tanner agreed to seek authorization for referral to Dr. Morton Cooper, a Speech Pathologist that claimed to specialize in SD and voice disorders. Despite a lack of published, peer-reviewed studies or journal articles, Dr. Cooper claimed to have developed a cure for SD known as Direct Voice Rehabilitation (DVR). Dr. Cooper was not a contracted provider with BSC.

Dr. Tanner made a request to AllCare, the agent of BSC responsible for reviewing requests for referral to an out-of-network provider, for referral to Dr. Cooper by letter. In response, AllCare informed Respondent Moore that his request for DVR treatment from Dr. Cooper was denied due to a lack of medical necessity and because Dr. Cooper was a non-contracted provider. AllCare did provide a referral to an in-network provider, Dr. Edward Damrose, an Otolaryngologist at Stanford Hospital and Clinics who specializes in voice and swallowing disorders.

Despite AllCare denying Respondent Moore's request to seek treatment from Dr. Cooper, Respondent Moore proceeded to treat with Dr. Cooper over the next month and pay \$20,000 in out-of-pocket medical expenses. Respondent Moore's appeals with BSC, DMHC, and CalPERS concern reimbursement of the \$20,000.

At the hearing, Respondent Moore testified on his own behalf and described his condition, the treatments he has sought, the reasons why he did not want to undergo surgery and the reason he did not want botox injections. Respondent Moore did not have any physician testify on his behalf.

CalPERS staff testified to the Evidence of Coverage (EOC) that was controlling at the time of the request for referral and why it was proper for AllCare to deny the request and instead grant the referral to Dr. Damrose at Stanford. CalPERS medical staff also testified to the lack of medical necessity determinations that were made. Specifically, there were two Independent Medical Reviews (IMR) undertaken as well as a comprehensive review of all evidence performed by CalPERS medical staff.

The first IMR was commissioned by DMHC and performed by an independent Otolaryngologist who concluded that the medical necessity of DVR had not been established due to the lack of any published controlled studies supporting the use of DVR for treatment of patients with SD.

The second IMR was commissioned by CalPERS and performed by an independent licensed Speech-Language Pathologist who concluded DVR is not considered standard care for treatment of SD.

The Administrative Law Judge (ALJ) found that the burden was on Respondent Moore to demonstrate that DVR was medically necessary for the treatment of SD and that Respondent Moore failed to establish that the DVR services furnished by Dr. Cooper were in accordance with generally accepted professional standards to treat SD. The ALJ noted that even if DVR were to be medically necessary, the EOC provides that BSC, where there are two or more medically necessary services, is bound only to provide benefits based on the most cost-effective service. Respondent Moore had not established that DVR was the most cost-effective service.

The ALJ further noted that Respondent Moore was fully within his rights to select what he believed to be his best treatment option; he was placed on early notice that his request for referral to Dr. Cooper was being denied; and he chose to pursue DVR treatments knowing that BSC had already determined that such services were not medically necessary.

The ALJ concluded that Respondent Moore'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.

May 20, 2015



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