

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Bradley D. Heinz (Respondent Heinz) appealed a determination by CalPERS to uphold a previous determination made by Anthem Blue Cross (Anthem) denying Respondent Heinz's request for additional reimbursement on claims for nonemergency medical services provided by a Non-Preferred Provider. Respondent Heinz is a member of CalPERS by virtue of his employment with the Judicial Counsel of California and entitled to health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA).

For the relevant periods of this appeal, Respondent Heinz was a member of a preferred provider plan (PPO). In 2008, Respondent Heinz was enrolled in PERS Care; and in 2009, he was enrolled in PERS Choice. At all relevant times, Respondent Heinz received treatment from Joe Walker, M.D.

In 2008, Dr. Walker changed his physicians' group and was no longer a preferred provider for the Anthem-administered PPO's. Despite Dr. Walker no longer being a preferred provider, Respondent Heinz continued to receive treatment from Dr. Walker. Pursuant to the relevant Evidence of Coverage (EOC) in effect (2008- PERS Care, 2009- PERS Choice), Anthem reimbursed Respondent Heinz at a rate of 60% of the "Allowable Amount" for the medical services performed by Dr. Walker.

Respondent Heinz requested additional reimbursement because Respondent Heinz believed Anthem should reimburse based on 60% of the usual, customary or reasonable rates for Dr. Walker's services. Anthem denied these requests and Respondent Heinz appealed to CalPERS for a review of Anthem's denial. CalPERS staff performed a "paper review" and upheld Anthem's decision. Respondent Heinz then formally appealed and an administrative hearing was held on May 2 and November 28, 2016.

Respondent Heinz was represented by counsel throughout the appeal and proffered documentary and testimonial evidence. Through his counsel, Respondent Heinz attempted to vastly expand the issue on appeal to include arguments relating to the manner in which CalPERS contracts with Anthem to administer the PPO plans, and to expand the parties to include all similarly situated PPO members that receive nonemergency medical treatment from non-preferred providers. The Administrative Law Judge (ALJ) denied these attempts by counsel and contained the issue on appeal to whether Anthem adhered to the provisions of the EOC and properly reimbursed Respondent Heinz for the claims submitted.

A recent California Court of Appeal case, that has now been followed by federal courts, is on point and controlling in this appeal. *Orthopedic Specialists of Southern California v. CalPERS* (2014) 228 Cal.App.4th 664, held that the EOC for the PERS Choice health plan allows Anthem itself to determine what is an appropriate amount to pay an out-of-network provider for nonemergency services. The EOC language regarding "Allowable

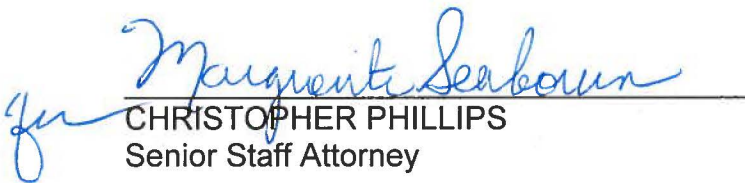
Amount" considered by the *Orthopedic Specialists* court is identical to the relevant EOC language at issue in Respondent Heinz's appeal.

The ALJ found that Respondent Heinz did not meet his burden of demonstrating Anthem failed to comply with the terms of the applicable EOC's in denying his request for additional reimbursement for services provided by Dr. Walker while Dr. Walker was not a preferred provider.

The ALJ concluded that the 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.

March 15, 2017

A handwritten signature in blue ink, appearing to read "Christopher Phillips", is written over a horizontal line. To the left of the signature, the word "for" is written in a cursive script. Below the line, the name "CHRISTOPHER PHILLIPS" and the title "Senior Staff Attorney" are printed in a standard font.

CHRISTOPHER PHILLIPS
Senior Staff Attorney