ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Timothy E. Ramos (Respondent) was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. In 2002, Respondent was approved for disability retirement. In 2016, Respondent was enrolled in the PERSCare Health Plan (PERSCare). CalPERS contracts with Anthem Blue Cross (Anthem) to administer PERSCare claims for services and/or products. Anthem Utilization Management Services Inc. (AUM) provides utilization review and management services to Anthem.

ARPWave, LLC, manufacturer of a device known as the ARPWave Rx100 machine (ARPWave), submitted a letter to Anthem requesting pre-determination or prior authorization for the purchase of an ARPWave on behalf of Respondent on October 14, 2016. On October 17, 2016, and October 18, 2016, AUM sent letters to Respondent denying authorization for purchase of the ARPWave. On October 27, 2016, Respondent appealed to Anthem. Thereafter, on November 9, 2016, and November 18, 2016, Anthem sent letters to Respondent affirming AUM’s determination to deny authorization for coverage for the purchase of the ARPWave. On December 9, 2016, Respondent contacted Anthem and requested an independent external review. Anthem contracted with Network Medical Review (NMR) for an Independent Medical Review (IMR). NMR sent Respondent a Notice of Independent Review Decision, upholding Anthem’s denial of coverage for the ARPWave on January 9, 2017.

A month later, on February 8, 2017, Respondent sent an email to CalPERS, requesting an administrative appeal regarding the denial of coverage for the ARPWave. On June 2, 2017, CalPERS contracted with MAXIMUS Federal Services, Inc. (MAXIMUS) for an Independent Medical Review (IMR) by three Board Certified Physicians in Neuromuscular medicine. CalPERS received the IMR report from MAXIMUS on June 13, 2017, finding that the ARPWave was not medically necessary and that it is experimental and investigational. On July 21, 2017, CalPERS sent Respondent a lengthy and detailed letter, explaining the reasons for CalPERS to uphold Anthem’s denial of coverage for the purchase of an ARPWave.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) on August 4, 2017. A hearing was held on May 23, August 14, and September 27, 2018. 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.
The PERSCare Evidence of Coverage (EOC) is the contract between Respondent and the Plan and sets forth the provisions of the Plan, including those pertaining to benefits, claims and the payment of claims. The Plan provides coverage “only for those services that are determined to be Medically Necessary” and also notes that “even Medically Necessary services are subject to the Benefits Limitations, Exceptions and Exclusions section.”

**PERSCare Coverage**

“Medically Necessary” services are procedures, treatments, supplies, devices, equipment, facilities or Drugs (all services) that a qualified Health Professional, exercising prudent clinical judgment, would provide to a covered individual for the purpose of preventing, evaluating, diagnosing or treating an illness, injury or disease or its symptoms, and that are:

- in accordance with generally accepted standards of medical practice (i.e., standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, national Physician specialty society recommendations and the views of medical practitioners practicing relevant clinical areas and any other relevant factors); and

- clinically appropriate in terms of type, frequency, extent, site and duration and considered effective for the covered individual's illness, injury or disease; and

- not primarily for the convenience of the covered individual, Physician or other health care provider; and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that covered individual's illness, injury or disease.

The fact that a provider may prescribe, order, recommend or approve a service, supply, or hospitalization does not in itself make it Medically Necessary. The Plan reviews services to assure that they meet the medical necessity criteria above. The Plan's review processes are consistent with processes found in other managed care environments and are consistent with the Plan's medical and Pharmacy policies. A service may be determined not to be Medically Necessary even though it may be considered beneficial to the patient.

(Ibid.)
The Plan does not provide for convenience items, non-standard services and supplies, and experimental or investigational practices or procedures (EOC 2017, Benefit Limitations, Exceptions and Exclusions, pp. 74-75.) and states:

**Convenience Items and Non-Standard Services and Supplies.** Services and supplies determined by the Plan as not Medically Necessary or not generally furnished for the diagnosis or treatment of the particular illness, disease or injury; or services and supplies which are furnished primarily for the convenience of the Plan Member, irrespective of whether or not prescribed by a Physician.

**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... are not covered.

*(Ibid.)*

The Plan defines Experimental or Investigational as:

Any treatment, therapy, procedure. Drug or Drug usage for non-FDA approved indications, facility or facility 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 by 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, treatment, or Prescription Drug is Experimental or Investigational will be resolved by Anthem Blue Cross or OptumRX, as applicable, which will have discretion to make an initial determination on behalf of the Plan.

*(EOC 2017, Definitions, pg. 111.)*
The ALJ received into evidence, reviewed and considered the contents of all of the medical reviews and determination letters regarding Respondent’s request to have the Plan pay for an ARPWave. The ALJ summarized the evidence as follows:

“17. In October 2016, Anthem denied respondent's request for an ARPWave, indicating that the requested device was not medically necessary and is considered experimental/investigational for the treatment of MS and muscle spasticity and atrophy. In total, eight physicians evaluated respondent's request for an ARPWave, comparing his clinical records and the applicable provisions of the PERSCare EOC. Seven of the eight physicians determined that the ARPWave is not medically necessary and is experimental and investigational; a DME must be medically necessary and not experimental and/or investigational to be covered by the Plan. While MAXIMUS Physician #3 found the ARPWave to be medically necessary, he failed to cite any scientific references or peer-reviewed literature to support his findings. In addition, MAXIMUS Physician #3 inaccurately conflates the TENS device with the ARPWave; according to ARPWave, LLC, the technology is quite different.

18. In addition, Dr. Sun identifies several supplementary reasons to support Anthem’s findings, including: other managed care organizations do not cover the ARPWave; there is no mention of ARPWave in the Independent Medical Review database of the California Department of Managed Health Care; and there is no mention of ARPWave in the UpToDate or PubMed databases.

19. In the end, respondent failed to present sufficient medical evidence to support the use and coverage of an ARPWave for MS and muscle spasticity and atrophy. Whereas, CalPERS presented sufficient evidence to prove the ARPWave falls outside the PERSCare coverage.”

Additionally, the ALJ noted and considered the fact that Respondent, as a military veteran, receives health care through the Department of Veteran’s Affairs (DVA), in addition to care or services received through his PERSCare Plan. A DVA Neurologist recommended the ARPWave for Respondent. DVA, like Anthem, denied coverage.

Respondent testified on his own behalf. Respondent testified that he has used the ARPWave and that it has provided him with relief of pain and muscle spasticity.

In the Proposed Decision, the ALJ concludes that Respondent’s appeal should be denied and the Anthem and CalPERS determination to deny coverage for the ARPWave should be affirmed.
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

December 19, 2018

__________________________

RORY J. COFFEY
Senior Attorney