Board of Administration

# Agenda Item 9a12

**November 20, 2019**

**Item Name**: Proposed Decision – In the Matter of the Appeal of the Denial for Long Term Care Benefits of Barbara C. Aske, deceased, by BRIAN ASKE, as Executor and Trustee for the Estate of Barbara Aske, Respondent.

**Program**: Health Plan Administration Division

**Item Type**: Action

## Parties' Positions

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified.

Respondent Brian Aske's (Respondent Aske) position is included in Attachment C, if any.

## Strategic Plan

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

## Procedural Summary

Barbara C. Aske purchased a comprehensive Long-Term Care (LTC) policy issued under the authority of the Public Employees' Long-Term Care Act. After Mrs. Aske passed away, Respondent Aske, on behalf of Mrs. Aske's estate, submitted a request for reimbursement under the LTC policy of certain costs Mrs. Aske incurred. The Long-Term Care Program (Program) reviewed the facts, the applicable law, and the applicable coverage provisions contained in the LTC policy's Evidence of Coverage (EOC) Comprehensive Plan booklet and determined that the costs incurred by Mrs. Aske prior to May 14, 2014, were not eligible for reimbursement. Respondent Aske appealed this determination and the matter was heard by the Office of Administrative Hearings on July 9, 2019. A Proposed Decision was issued on September 4, 2019, affirming the Program's determination and denying the appeal.

## Alternatives

A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

   RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517 (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the

Proposed Decision, by changing “Mrs. Ask” to “Mrs. Aske” in the fifth line of paragraph 23 on page 15 of the Proposed Decision, and hereby adopts as its own Decision the Proposed

Decision dated September 4, 2019, as modified, concerning the appeal of Brian Aske; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

B. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System hereby adopts as its own Decision the Proposed Decision dated September 4, 2019, concerning the appeal of Brian Aske; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

C. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 4, 2019, concerning the appeal of Brian Aske, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

D. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 4, 2019, concerning the appeal of Brian Aske, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

E. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

   RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System requests the parties in the matter concerning the appeal of Brian Aske, as well as interested parties, to submit written argument regarding whether the Board’s Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

   RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Brian Aske.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Health Policy and Benefits Branch