

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

CalPERS provides medical benefits to its members through the CalPERS Health Program, which is governed by the Public Employees' Medical and Hospital Care Act (PEMHCA). (California Government Code § 22750, et seq., 2 Cal. Code Regs. § 599.500 et seq.)

PEMHCA grants CalPERS the authority to contract with health care administrators to provide health benefits to its members. (Gov. Code § 22793.) CalPERS contracts with Kaiser Permanente Medical Group (Kaiser) to offer a Health Management Organization (HMO) health plan (Kaiser Plan) to its members, with medical services to be performed by Kaiser-employed physicians at Kaiser hospitals and medical facilities. Kaiser administers the Kaiser Plan pursuant to the Kaiser Permanente Evidence of Coverage Booklet (EOC). The EOC is a contract between CalPERS and its members, and the terms of the EOC are the sole and exclusive provisions by which Kaiser is authorized to provide benefits to members of the Kaiser Plan.

Virginia Quezada (Respondent) is an employee of the California Department of Corrections and Rehabilitation. By virtue of her employment, Respondent is a member of CalPERS, and, relevant to this proceeding, was enrolled in the Kaiser Plan effective March 1, 2016.

Respondent has been diagnosed as having lipedema, a disorder characterized by enlargement of the legs due to deposits of fat beneath the skin, primarily in the buttocks, hips and thighs. As explained more fully below, Respondent also has a blood clotting disorder and history of deep vein thrombosis, or DVT.

In July 2017, Respondent met with Kaiser surgeon Greg Lukaszewicz, M.D., to receive treatment and discuss treatment options for her lipedema. At that time, Dr. Lukaszewicz denied Respondent's request to receive water-assisted liposuction surgery, a procedure within the field of plastic surgery that involves removing fat beneath the skin through the use of vacuum suction aided by the application of water to the surgery incision site. Respondent appealed the denial to Kaiser, which upheld Dr. Lukaszewicz's determination on the ground that the procedure was not medically necessary. CalPERS conducted an independent review and affirmed Kaiser's denial.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 1, 2019. Respondent was represented by counsel at the hearing.

The testimony and documentary evidence offered at the hearing demonstrated that Respondent has a history of deep vein thrombosis (DVT), a blood clot that forms in a vein deep in the body, and “Factor V deficiency,” a rare bleeding condition that causes poor blood clotting in Respondent following surgery or an injury. Respondent began experiencing lipedema-related symptoms in 2015, following the birth of her first child. Respondent also has a history of chronic pain.

Dr. Lukaszewicz, one of Respondent’s treating physicians, believed Respondent would benefit from water-assisted liposuction to treat lipedema, but was concerned about the increased risks of surgery given Respondent’s history of blood clotting problems and DVT. He referred Respondent to Dr. Amron, a Plastic Surgeon in Beverly Hills, for a second opinion. Dr. Amron agreed that Respondent would benefit from the surgery but did not address how to mitigate risks of blood clotting and DVT for Respondent during the procedure. After reviewing the referral documentation from Dr. Amron, Dr. Lukaszewicz ultimately concluded that he could not recommend Respondent undergo water-assisted liposuction due to the risks presented.

Following Respondent’s appeal, Kaiser reviewed the medical records and requested two Kaiser plastic surgeons review Respondent’s case generally. Kaiser determined it could not authorize surgery for Respondent because of the blood clotting and DVT concerns. Kaiser relied upon the Kaiser Plan EOC, which provides that only treatment that is “medically necessary” shall be authorized. The Kaiser Plan EOC defines the term as meaning treatment that is “medically appropriate and required to prevent, diagnose, or treat your condition or clinical symptoms in accord with generally accepted professional standards of practice that are consistent with a standard of care in the medical community.”

Respondent appealed Kaiser’s determination to the Department of Managed Health Care (DMHC), an independent public agency that oversees HMO plans in California. HMO members can appeal HMO determinations to DMHC, and if DMHC reverses the plan’s determination, that finding is binding on the HMO plan. DMHC referred Respondent’s appeal to MAXIMUS Federal Services, an Independent Medical Review (IMR) organization. MAXIMUS advised DMHC that its independent physician reviewer, a board-certified Vascular Surgeon, found that water-assisted liposuction was not medically necessary, and that Kaiser’s determination should be upheld.

Respondent appealed to CalPERS, which referred the matter to Claims Eval, another IMR organization similar to MAXIMUS. CalPERS also utilizes MAXIMUS for IMR analysis but elected to send Respondent’s appeal to Claims Eval so that she would have another independent physician organization review her request. Claims Eval referred the matter to three independent physicians within the fields of vascular surgery and plastic surgery. All three agreed that water-assisted liposuction was not medically necessary for Respondent.

CalPERS requested another level of review and referred Respondent's request to Dr. Joseph Link at Kaiser, who supervises treating physicians practicing at non-Kaiser hospitals and reviews appeals such as the one filed by Respondent. He is Board-certified in internal medicine and consults with physicians in the relevant areas of medical specialty as needed when reviewing an appeal. Dr. Link reviewed Respondent's medical records and consulted with a physician with expertise in treating lipedema, as well as three plastic surgeons who are familiar with treating lipedema.

At hearing, Dr. Link testified that he took into consideration Respondent's Body Mass Index (BMI) of 38, with anything above 20 considered to be obese. He also considered that Respondent had previously lost 78 pounds following gastric bypass surgery, her history of chronic pain, and blood clotting concerns. Based on these factors, Dr. Link testified that Respondent was at a higher risk of developing serious complications from the requested surgery. Dr. Link testified that such risks included poor wound-healing, and increased risk of blood clots due to being sedentary for longer periods of time and not being able to take her blood clotting medication before and during surgery. For these reasons, Dr. Link testified that Respondent could face serious complications such as a pulmonary embolism or death if she underwent the surgery. Dr. Link also explained at the hearing that the surgery would address parts of Respondent's body where blood clots are susceptible to form, amplifying these risks. The fact that Respondent was dealing with chronic pain above and beyond her lipedema, which also causes pain, made it uncertain how effective the surgery would be in reducing or eliminating the general pain that Respondent was experiencing due to other causes.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the medical evidence established that Dr. Lukaszewicz's decision to not authorize water-assisted liposuction for Respondent "was carefully considered and sound," and that the administrative review conducted by Kaiser and CalPERS which upheld his decision was thorough and supported by the opinions of several qualified physicians. The ALJ also credited the reports and analysis proffered by MAXIMUS, Claims Eval and Dr. Link. The ALJ noted that Respondent's arguments, while "passionate," were not based on demonstrable medical evidence. Overall, the ALJ ruled that the evidence established that the "substantial risks inherent with the surgery at issue outweigh the potential pain relief and lifestyle improvement that the surgery was intended to provide."

For the above reasons, staff argues the Proposed Decision be adopted by the Board.

December 18, 2019

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