

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Appeal Regarding Denial of Payment of  
Air Ambulance Transport Services Provided to/by:**

**SAMUEL E. HARVEY,**

**and**

**PHI AIR MEDICAL, LLC, Respondents**

**Case No. 2019-0706**

**OAH No. 2019090613**

**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this consolidated matter on February 18, 2020, in Sacramento, California.

Kevin Kreutz, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM

FILED June 9 20 20

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Gustavo Matheus, Attorney at Law and licensed to practice law in Virginia and the District of Columbia, appeared pro hac vice and represented respondent PHI Air Medical, LLC (PHI).

Respondent Samuel Harvey (Harvey) appeared telephonically and represented himself.

Evidence was received and the record was held open to allow the parties to submit written closing briefs. CalPERS filed a single closing brief, which was marked Exhibit 23.<sup>1</sup> PHI filed an initial and reply brief, which were marked as Exhibits PHI-57 and PHI-58, respectively. Harvey did not submit an initial or reply brief. The matter was submitted for decision on May 8, 2020.

## **ISSUE**

The sole issue on appeal is whether CalPERS and Anthem Blue Cross appropriately denied benefit coverage for air ambulance services provided to Harvey by PHI on December 28, 2017.

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<sup>1</sup> Attached to CalPERS' reply brief and identified as Exhibit A were records from Shasta County's Emergency Services Agency regarding inter-facility transports by air and ground. These records were not introduced at hearing nor did CalPERS file a motion to reopen the record for purposes of introducing new evidence. Accordingly, while CalPERS' reply brief is admitted as argument, Exhibit A to CalPERS' reply brief is excluded and its contents are not considered in this Decision.

## **FACTUAL FINDINGS**

### **Background**

1. CalPERS is the state agency charged with administering the Public Employees' Medical and Hospital Care Act (PEMHCA).<sup>2</sup> PEMHCA authorizes and requires the CalPERS Board of Administration (Board) to provide health benefits for State of California employees, dependents and annuitants, as well as employees and annuitants of contracting public agencies which elect to contract with CalPERS for health benefit coverage. CalPERS insures over 1.4 million people through its numerous health plans.

2. PERS Select health plan (PERS Select) is a preferred provider health care plan offered by CalPERS under PEMHCA. CalPERS contracts with Anthem Blue Cross (Anthem) to administer PERS Select medical claims. Anthem Utilization Management Services, Inc. (AUMS), provides utilization management services<sup>3</sup> for Anthem and Anthem Blue Cross Life and Health Insurance Company in the administration of PERS Select medical claims.

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<sup>2</sup> Government Code section 22751, et. seq.

<sup>3</sup> Generally, "utilization management" is the process of evaluating the medical necessity, appropriateness, and efficiency of the use of health care services, procedures, and facilities under the provisions of a health benefits plan.

3. Harvey is eligible for CalPERS health benefits by virtue of his marriage to Cynthia D. Harvey, a local miscellaneous member of CalPERS. At all relevant times, he was enrolled in PERS Select.

4. PHI is an air ambulance company providing air medical services to various hospitals and medical centers throughout the country. On December 28, 2017, PHI transported Harvey by air ambulance from the Mayer Memorial Hospital (MMH) in Fall River Mills to Mercy Hospital in Redding (Mercy Redding). Thereafter, PHI submitted to Anthem a bill for air transport services for approximately \$45,000. Anthem denied the claim, finding: (1) the air transport was not "medically necessary"; and (2) transport by ground ambulance was an available and less expensive option. PHI appealed.

5. Anthem conducted a second internal review of PHI's claim. On April 25, 2018, it issued a Final Adverse Benefit Determination, affirming its previous determination, and again citing that the air transport services were not medically necessary. PHI appealed to CalPERS. CalPERS then referred the matter to Advanced Medical Reviews for an external review by an independent review organization (IRO), an IRO whose determination is binding on CalPERS and Anthem. The matter was reviewed a board-certified physician reviewer. Advanced Medical Reviews then issued a Peer Reviewer Final Report, dated November 8, 2018, upholding Anthem's denial on the grounds that air transport services were not medically necessary, ground

transportation would not impede timely intervention of medical care, and air transport was significantly costlier than ground ambulance. PHI appealed.<sup>4</sup>

6. CalPERS forwarded the matter to Claims Eval, a private corporation, providing expert physicians to conduct Independent Medical Reviews (IMR). Claims Eval issued an IMR report, dated March 12, 2019, determining that air transportation was not medically necessary for Harvey's medical condition, and ground transportation could have been used to transport Harvey safely. PHI appealed. This hearing followed.

### **December 27 and 28, 2017 Hospital Visit and Transport**

7. On December 27, 2017, at approximately 6 p.m., Harvey, a 60-year-old man, was admitted to MMH emergency room, presenting with left lower quadrant stabbing abdominal pain, which he rated as five out of ten. He also had experienced an intermittent, low-grade fever, but not vomiting or diarrhea, over the prior two weeks. The abdominal pain first appeared following a colonoscopy performed in June 2017, was constant, and was unaffected by food or position. Harvey had been treated previously with antibiotics including Cipro, Flagyl, and Augmentin. The antibiotics provided temporary relief while Harvey was taking them, but the pain returned after he finished them. Finally, Harvey had a history of renal cancer, hypertension, and diverticulitis.<sup>5</sup>

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<sup>4</sup> On January 3, 2019, CalPERS received Harvey's Designation of Representative/Authorization Form, designating PHI as Harvey's representative in the administrative review process.

<sup>5</sup> Diverticulitis is an infection of the underlying condition of diverticulosis, where the wall of the colon becomes weak and forms little pockets or pouches. These

8. At approximately 7 p.m., William Dykes, M.D., physically examined Harvey and found him to be alert and in no acute distress. His blood pressure was 134/89, and his vital signs and blood tests were normal. An abdominal exam revealed "tenderness in his left lower quadrant, guarding, abnormal decreased bowel sounds, no abdominal bruit, [and] no pulsating mass." At approximately 10:30 p.m., the results of a CT scan of the abdomen and pelvis showed multiple diverticula in the descending colon, and an abscess<sup>6</sup> measuring 2.5 centimeters in diameter. There was no free fluid or free air in the abdomen or pelvis, and no significant abdominal or pelvic adenopathy. Finally, there was "mild ectasia of the distal abdominal aorta with a maximum caliber of 2.5 cm."

9. Dr. Dykes made the following diagnosis

Distal descending and sigmoid colon diverticulosis with acute diverticulitis and a 2.5 cm abscess in the distal descending colon. The inflammatory changes are new since the prior study.

Mild ectasia of the abdominal aorta without aneurysm, also new since the prior study.

New subsegmental atelectasis right lower lobe.

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pouches can collect stool and undigested food, causing bacterial overgrowth and an infection of the area. Symptoms generally include pain and fever, and sometimes include loose stool or diarrhea with or without bleeding.

<sup>6</sup> An abscess is a collection of pus usually caused by a bacterial infection.

Interval resection of the left lower pole renal mass.

10. Dr. Dykes recommended consultations from interventional radiology and gastrointestinal surgical services to see if the abscess should be drained and if surgery was recommended. However, neither service was available at MMH. Mercy Redding was located 73 miles away and was the nearest hospital with an available bed and the capacity to perform the required services and continued care. Dr. Dykes contacted Mercy Redding and spoke with Dr. Knutson,<sup>7</sup> who accepted the transfer request. Thereafter, at around 11 p.m., Dr. Dykes ordered an air ambulance transport to Mercy Redding for “diagnostic and therapeutic treatment not available” at MMH. Dr. Dykes also indicated there was little risk of deterioration from or during transfer. He did not document anywhere in the order form or otherwise in Harvey’s medical record whether ground transport was unavailable, what efforts were made to secure ground transport, or why air transport was medically necessary.

11. Prior to the arrival of the air ambulance, MMH administered a Zosyn IV to Harvey. Zosyn is the brand name for piperacillin/tazobactam and is a penicillin antibiotic used to treat bacterial infections. It is typically administered every six hours. The Zosyn IV was not documented in MMH’s medical records and thus the exact time of administration is unknown.

12. A PHI air ambulance transport, with a registered nurse onboard, arrived at MMH at 12:10 a.m. on December 28, 2017. Harvey’s blood pressure was taken and measured at 174 over 98. He walked to the PHI air stretcher “without difficulty.” The air transport departed MMH at 12:20 a.m., and arrived at Mercy Redding at 12:58 a.m., for

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<sup>7</sup> Dr. Knutson’s first name was not found in the record.

a total travel time of 38 minutes. Harvey remained comfortable throughout the flight and there were no changes to his condition were noted. He was admitted to Mercy Redding at approximately 1:05 a.m.

13. At Mercy Redding, an interventional radiologist evaluated Harvey and determined the abscess could not be drained due to its size and location. He was continued on the Zosyn IV. Harvey also consulted with a surgeon who recommended treating the infection with "conservative treatment." Harvey thereafter completed five days of IV antibiotics. He was discharged on January 1, 2018, and directed to continue treatment with oral antibiotics for an additional five days.

14. On October 7, 2019, Dr. Dykes entered an addendum to Harvey's medical record regarding "[j]ustification for air transport." In the record, he noted that "[p]atient was transported by helicopter because our ground unit was out on a separate call and it was not felt prudent or in the patient's best interest to await their return to the hospital."

## **CalPERS' Evidence**

### **PERS SELECT EVIDENCE OF COVERAGE**

15. The PERS Select Evidence of Coverage Booklet (EOC) serves as the contract between the member and CalPERS, and governs which benefits are payable. When Harvey elected to receive health benefits under the PERS Select plan, the EOC became the contract for services between himself and CalPERS.

16. The 2017 EOC, effective January 1 to December 31, 2017, sets forth the conditions of the PERS Select plan, including those pertaining to benefits, claims and payment of claims. The plan provides coverage "only for those services that are

determined to be "medically necessary." Medically necessary services are procedures, treatments, supplies, devices, equipment, facilities or drugs that a qualified health professional exercising prudent clinical judgment would provide a covered individual for the purpose of preventing, evaluating, diagnosing or treating an illness, injury or disease or its symptoms. In determining medical necessity, the plan sets forth a four-prong analysis to see if the services are:

1. 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 in relevant clinical areas and any other relevant factors); and
2. clinically appropriate in terms of type, frequency, extent, site duration and considered effective for the covered individual's illness, injury or disease; and
3. not primarily for the convenience of the covered individual, Physician or other health care provider; and
4. 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.** (Bolding in original.)

17. Under the 2017 EOC, ambulance services are also subject to medical necessity review. Concerning coverage for air ambulance services, the plan provides the following, in pertinent part:

... When using an air ambulance in a non-emergency situation, Anthem reserves the right to select the air ambulance provider. If you do not use the air ambulance Anthem selects in a non-emergency situation, no coverage will be provided.

[¶] ... [¶]

Ambulance services are not covered when another type of transportation can be used without endangering your health. Ambulance services for your convenience or the convenience of your Family Members or Physician are not a covered service.

[¶] ... [¶]

**Important information about air ambulance coverage:**

Coverage is only provided for air ambulance services when it is not appropriate to use a ground or water ambulance. For example, if using a ground ambulance would endanger your health and your medical condition requires a more

rapid transport to a Hospital than the ground ambulance can provide, this plan will cover the air ambulance. Air ambulance will also be covered if you are in a location that a ground or water ambulance cannot reach.

[¶] . . . [¶]

**Hospital to Hospital Transport:** If you are being transported from one Hospital to another, air ambulance will only be covered if using a ground ambulance would endanger your health and if the Hospital that first treats you cannot give you the medical services you need . . .  
(Bolding in original.)

### **GROUND AMBULANCE SERVICES IN FALL RIVER MILLS**

18. Fall River Mills is a small, rural town in Shasta County with a population of roughly 570. MMH is the sole hospital in the area. It has two ground ambulances on-site, provided and staffed by Sierra Emergency Medical Services Alliance (SEMSA). Both ambulances are equipped for Advanced Life Support (ALS) services and staffed with paramedics. An additional ground ambulance is located nearby at the Burney Fire Department. Finally, Shasta County contracts with American Medical Response, Inc. (AMR) to provide emergency medical services, including ALS transport. AMR has 11 ground ambulances available within the county. Nothing in the AMR contract prohibits AMR from performing inter-facility transports.

## **DALE CURTIS, M.D., EXPERT WITNESS**

19. CalPERS called Dr. Curtis as its expert witness. Dr. Curtis is the Medical Director, EMS Medical Director, and Department Chairperson for the Verde Valley Medical Center Emergency Department in Cottonwood, Arizona. He earned his medical doctorate in 1993 and completed his residency in emergency medicine in 2001. He is licensed to practice in California, Wisconsin, Georgia, Arizona, Ohio, Pennsylvania, Illinois, and Kentucky. He has been board-certified in emergency medicine since 2004.

20. Dr. Curtis has also served as a consultant for Claims Eval since 2008, performing eight to ten claim eligibility reviews per year. Dr. Curtis was one of the consultants from Claims Eval who reviewed Harvey and PHI's request for reimbursement for air transport services.<sup>8</sup>

21. Dr. Curtis reviewed Harvey's medical records from MMH and Mercy Redding, as well as the PHI air transport records. In reaching his conclusion, he also considered MMH's rural location as well as the time of year and weather conditions on the night the services were provided. Weather records indicated that December 2017 was a relatively dry month in Fall River Mills. An internet map indicated MMH was approximately 70 miles from Mercy Redding, and the shortest route would have taken an estimated 90 minutes to travel by ground.

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<sup>8</sup> Dr. Curtis did not author the Claims Eval IMR issued on March 12, 2019. The author of the IMR had been deployed and was unavailable for hearing. However, Dr. Curtis was familiar with the report, had reviewed all pertinent records related to the claim, and concurred with and was qualified to explain the IMR findings.

22. Dr. Curtis noted diverticulitis has a spectrum of severity. Less severe cases can be treated conservatively with oral antibiotics, graduating to IV antibiotics if oral is unsuccessful. More severe cases may have one or more complications, such as excessive bleeding, abscess formation, or perforation of the colon, which could require surgery. Given the formation of a 2.5 cm abscess, Dr. Curtis considered Harvey's diverticulitis to be of medium severity, and the referral for interventional radiology and gastrointestinal surgery consultation was appropriate.

23. Dr. Curtis explained there are three levels of ambulance transport: critical care; Advanced Life Support (ALS), and Basic Life Support (BLS). Critical care transport is for critical care patients who are intubated, on various medications, or have a chest tube in place, and require monitoring by a flight nurse or nurse on a ground ambulance. ALS support transport is for patients who require monitoring by a paramedic. Often patients will be on IV fluids and may need to receive medication which a paramedic is licensed to give. Finally, BLS support transport is for patients who do not require monitoring and can be performed by an emergency medical technician (EMT).

24. In this case, Dr. Curtis opined that Harvey required an ALS support ground ambulance to transfer to Mercy Redding. He was receiving IV fluids and required monitoring by a licensed paramedic. Dr. Curtis also opined that transport by air ambulance was not medically necessary or appropriate. He explained the use of air ambulance transport generally should be reserved for patients with "critical conditions that require the most expeditious and thorough transport for those critical care conditions." Here, Harvey's condition was not so critical in nature that he required expeditious transport. The records did not indicate Harvey's condition had deteriorated since the time of admission. He did not have low blood pressure or

excessively high heart rate, there was no blood in his stool, the risk of sepsis was low, and he was alert with his mental status intact. For all of these reasons, Dr. Curtis opined that air transport was not medically necessary for Harvey's medical condition on December 28, 2017, and that ground transport was the most appropriate means to transport Harvey safely from MMH to Mercy Redding.

25. While Dr. Curtis recognized that certain deference should be given to the treating physician, he noted Dr. Dykes did not document in Harvey's record any symptom or circumstance to warrant an expeditious air over ground transport. In fact, Dr. Dykes noted there was little risk of deterioration from or during Harvey's transfer. Instead, Dr. Curtis opined, ground ALS transport, with a paramedic on-board to monitor Harvey's IV fluids, would have been appropriate. When asked if his opinion would change, using the Medicare guidelines, Dr. Curtis stated his opinions would remain the same. He explained nothing documented about Harvey's condition warranted air over ground transportation.

## **PHI's Evidence**

### **OTHER UTILIZATION MANAGEMENT GUIDELINES**

26. In addition to the 2017 EOC, PHI asserts two other guidelines are relevant to determining whether air ambulance transport was medically necessary. First, Anthem's Clinical Utilization Management Guideline for Ambulance Services: Air and Water, CG-ANC-04H, published December 27, 2017, recommends coverage for air transport when all of the following criteria are met:

- A. The ambulance must have the necessary equipment and supplies to address the needs of the individual; and

B. The individual's condition must be such that any form of transportation other than by ambulance would be medically contraindicated; and

C. The individual's condition is such that the time needed to transport by land poses a threat to the individual's survival or seriously endanger the individual's health; or the individual's location is such that accessibility is only feasible by air or water transportation; and

D. The individual is transported to the nearest hospital with appropriate facilities for treatment; and

E. There is a medical condition that is life threatening or first responders deem to be life threatening . . .

27. Second, the Centers for Medicare and Medicaid Services (CMS) publishes a Medicare Benefit Policy Manual (revised April 13, 2018). Chapter 10.4.3, entitled *Time Needed for Ground Transport*, provides:

Differing Statewide Emergency Medical Services (EMS) systems determine the amount and level of basic and advanced life support ground transportation available. However, there are very limited emergency cases where ground transportation is available but the time required to transport the patient by ground as opposed to air endangers the beneficiary's life or health. As a general guideline, when it would take a ground ambulance 30-60 minutes or more to transport a beneficiary whose medical

condition at the time of pick-up required immediate and rapid transport due to the nature and/or severity of the beneficiary's illness/injury . . .

## **EXPERT TESTIMONY**

### **Eric Rudnick, M.D.**

28. PHI called Dr. Rudnick as an expert witness. Dr. Rudnick is the Air Methods Medical Director for Merced and Mariposa Helicopter Bases and the Medical Director for both SEMSA and Escalan Ambulance Service. He is also a wound-care physician for Dignity Health in Red Bluff. He earned his medical doctorate in 1990, and completed his residency in emergency medicine in 1993. He is board-certified in emergency medicine. He has been licensed in California since 1993. He was previously licensed in Michigan.

29. Dr. Rudnick is familiar with MMH, having visited the facility several times, presenting educational training to staff and helping them become more involved in the community standard "systems approach" to EMS in Northern California. Dr. Rudnick described MMH as an "incredibly small" critical access hospital with less than 25 beds, no intensive care unit, and minimal resources and staffing. There are two beds in the emergency department. At night, it is sometimes staffed with only one registered nurse and one physician. He is familiar with the route from MMH to Mercy Redding, which he described as "not a straight shot" but a "winding, torturous road."

30. Dr. Rudnick described the emergency response system in Fall River Mills as a "frontier system," in which the majority of responders are volunteers and there is minimal EMS activity. According to Dr. Rudnick, the Burney Fire District ambulance is not approved to transport patients out of the area. The SEMSA ambulance service is

primarily responsible to the 911 system. Similarly, the AMR ambulances contracted with Shasta County are primarily responsible to the 911 system in Redding. If called for a non-emergency (i.e., non-911) matter, AMR has up to an hour before deciding to accept the call. For these reasons, Dr. Rudnick explained, if a ground ambulance had been utilized to transport Harvey to Mercy Redding, depending on the level of activity that night, there may have been no ambulance available in the area to transport 911 patients from the field to MMH. However, when questioned, Dr. Rudnick conceded he did not know whether there was a ground ambulance available on the night of December 27-28, 2017. If he were in a similar circumstance, it would have been his custom and practice to document any efforts he made to secure ground transport or when it might be available. Here, the only record asserting no ground transport was available was the addendum entered by Dr. Dykes nearly two years after the fact.

31. Dr. Rudnick also testified and opined to the medical necessity of air transport for Harvey. From the outset, he conceded MMH's medical records were lacking and that better documentation would have helped in forming his opinion. Dr. Rudnick agreed that Harvey's diverticulitis was of medium severity due to the presence of the abscess. The next level of severity would be a perforation or rupture of the colon with pus, and the most severe level would include the presence of fecal material inside the abdomen causing peritonitis.

32. Dr. Rudnick noted that any patient with an infection is at risk for decompensating, and that an air ambulance is equipped to address any decompensation. But he conceded that, in Harvey's case, the probability of that risk was "hard to tell what the sending physician was thinking because they didn't document it." He also pointed to the conditions of road travel between MMH and Mercy Redding, suggesting that it might cause discomfort to Harvey who was already

experiencing pain. Additionally, Dr. Rudnick noted that Harvey had been administered a Zosyn IV before leaving MMH, though this was also not documented in the medical record. He explained that, legally, Zosyn IV must be administered by a registered nurse, such as one on an air ambulance crew. A paramedic, such as one on the crew of an ALS support ground ambulance, is not authorized to administer Zosyn IV. Finally, Dr. Rudnick considered the limited resources of MMH, and that had Harvey stayed longer at MMH awaiting a ground transport, he was making one less hospital bed available to the community at-large.

33. Based on these factors, Dr. Rudnick opined he "probably would have defaulted to air" if he were in the same situation. He conceded his decision was based on the assumption there was no ground ambulance available. On cross-examination, Dr. Rudnick was noncommittal on whether he would still believe air transport was medically necessary if ground transport were available. It was 38 minutes from the time the air transport departed MMH with Harvey to the time it arrived at Mercy Redding. Dr. Rudnick estimated ground transport would have taken 90 minutes. He conceded, when comparing those two timelines, there was a low likelihood that the additional time to transport Harvey by ground would have made a difference.

### **Runa Naqib, M.D.**

34. PHI also called Dr. Naqib as an expert witness. Dr. Naqib is a physician reviewer in the utilization management unit of Intersect HealthCare in Maryland. She earned her medical degree from Dhaka University in Bangladesh, a master's degree in health policy and hospital administration from New School for Social Research in New

York, and a master's degree in public health from Yale University School of Medicine.<sup>9</sup> She has been a physician reviewer in utilization management since 2012.

35. Dr. Naqib reviewed the relevant medical records from MMH and Mercy Redding, as well as the PHI air transport records. She opined air transport for Harvey from MMH to Mercy Redding was medically necessary due to the time difference between air and ground transport. Her opinion was based on her research of potential complications which may occur with diverticulitis with abscess. She asserted the additional time for ground transport was not appropriate when Harvey had an abscess of unknown parameters, was in danger of life-threatening bacteria which could lead to septic shock or fatality, and was at risk of developing an aortic aneurysm based on the new diagnosis of an abdominal aorta ectasia. Upon cross-examination, Dr. Naqib conceded her conclusions were based, in significant part, on a mistaken assumption that Harvey presented to MMH with a pain level of 10 out of 10.

## **Analysis**

36. In 2018, Anthem denied PHI's request for payment for air ambulance services provided to Harvey on December 28, 2017, because the services were not medically necessary. PHI's claim was reviewed four times, each concluding that air ambulance services were not medically necessary and Harvey could have been transported safely by ground ambulance. PHI presented the testimony of two physician experts who disagree.

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<sup>9</sup> The years of matriculation for each of these degrees was not found in the record.

37. It is undisputed that Harvey had diverticulitis with an abscess measuring 2.5 cm. It is also undisputed that: (1) Dr. Dykes' recommendation of interventional radiology of gastrointestinal surgery consultations was appropriate; (2) MMH could not provide such services; and (3) Mercy Redding offered such services and was able to accept Harvey's transfer. The issue is whether transportation by air ambulance was medically necessary.

38. The 2017 EOC provides coverage for air ambulance transport only when it is not appropriate to use a ground ambulance, such as where a ground ambulance is not available or transport by ground ambulance would endanger the patient's health and medical condition. Here, credible evidence established, that at any given time, there were two ground ambulances with ALS support on-site at MMH, and 11 AMR ground ambulances with ALS support within Shasta County. Although these ambulances were primarily responsible for 911 calls, they nonetheless were authorized to perform inter-facility transports.

39. There was no direct evidence establishing no ground ambulance was available to transport Harvey to Mercy Redding on December 28, 2017.<sup>10</sup> The lack of documentation by Dr. Dykes of any attempt to secure ground transportation indicates

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<sup>10</sup> Charlann Stabb, Manager of Clinical Services, Clinical Compliance, Privacy and Risk for PHI, testified at hearing that she had spoken with MMH staff and others regarding the availability of ground transport on the subject night. However, none of the individuals to whom she spoke testified at hearing, nor did her testimony explain or supplement any other direct evidence offered at hearing. Accordingly, her testimony cannot be used to establish there was no ground transport available from MMH to Mercy Redding on the night of December 27 and 28, 2017.

that he made no such attempt before requesting PHI's services. Dr. Dykes wrote the nearly two years after the fact and in the midst of a lengthy appeal process. It is therefore afforded no weight. PHI has the burden of establishing medical necessity, and therefore the burden of proving no ground ambulances were available. It failed to meet this burden.

40. The evidence also did not establish that transport by ground ambulance would have endangered Harvey's life or medical condition. At the time of transfer, Dr. Dykes indicated there was little risk of deterioration from or during transfer. At hearing, Drs. Curtis and Rudnick concurred that Harvey's diverticulitis was of medium severity and the risk of developing sepsis was low. Dr. Rudnick also conceded that the additional time needed for ground transport would not have made a difference to Harvey's condition. Dr. Naqib's opinion that ground transport posed life-threatening risks to Harvey was not credible, as it was not supported by the evidence, was speculative, and was based in considerable part on Dr. Naqib's mistaken belief that Harvey's pain level was 10 out of 10, rather than 5 out of 10.

41. Finally, Dr. Rudnick's suggestion that the fact that Harvey was taking Zosyn IV rendered air transport necessary was not persuasive. It is undisputed that Zosyn IV is typically administered every six hours. The evidence established he was administered a Zosyn IV once prior to boarding the air ambulance, and again after being admitted to Mercy Redding, less than six hours later. Ground transportation would have extended the time between doses, but by a maximum of 52 additional minutes; ample time to administer another dose within the six-hour timeframe. In other words, there was no evidence it was necessary to administer a Zosyn IV during the transport, which would have necessitated the presence of a nurse.

42. PHI's argument that the Board should consider the guidance in the Medicare Benefit Policy Manual, Chapter 10.4.3, and Anthem's Clinical UM Guideline for Ambulance Services, in conjunction with the 2017 EOC, is without merit. The 2017 EOC is the sole contract between Anthem and Harvey which governs which services are covered. Likewise, PHI's argument that Anthem revised the EOC in 2019 to incorporate the Medicare guidelines is rejected as there was no evidence such revision was made retroactive to the 2017 time period.

43. When the evidence is considered as a whole, the determination by CalPERS and Anthem to deny coverage for the air ambulance services provided to Harvey on December 28, 2017, should be affirmed. PHI and Harvey's appeal should be denied.

## LEGAL CONCLUSIONS

1. PHI has the burden of establishing the air ambulance services it provided to Harvey on December 28, 2017 are within the scope of the coverage provided by the PERS Select health plan. (*Dyer v. Northbrook Property and Casualty Ins. Co.* (1989) 210 Cal.App.3d 1540, 1547; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. Under Government Code sections 22794 and 22796, the CalPERS Board is granted all powers reasonably necessary to carry out and enforce the provisions of the PEMHCA, and to adopt necessary rules and regulations pertaining to the scope, content and standards for its health benefit plans.

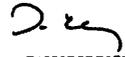
3. The 2017 EOC functions as the contract between Harvey and Anthem. A member seeking reimbursement for medical services can do so only if the EOC

denotes the services as a covered benefit. (Cal. Code Regs., tit.2, § 599.508.) Here, the 2017 EOC covers only those services which are medically necessary. As set forth in Factual Findings as a whole, and in particular 36 through 43, PHI did not establish that the air ambulance services provided to Harvey on December 28, 2017 were medically necessary.

## **ORDER**

The determination by CalPERS and Anthem to deny coverage for air ambulance service, provided by respondent PHI Air Medical, LLC, to respondent Samuel Harvey on December 28, 2017, is AFFIRMED. Respondents' appeal is DENIED.

DATE: June 8, 2020

DocuSigned by:  
  
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TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings