

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 members. (Government Code § 22793.) CalPERS contracts with Anthem Blue Cross (Anthem) to offer PERS Select, a Preferred Provider Organization (PPO) health plan. Anthem administers the PERS Select plan pursuant to the PERS Select Evidence of Coverage Booklet (EOC). The EOC is a contract between CalPERS and its members, setting forth the sole and exclusive provisions by which Anthem is authorized to provide benefits to PERS Select members.

Relevant to this proceeding, Samuel Harvey (Respondent Harvey) is eligible for CalPERS health benefits by virtue of his marriage to Cynthia Harvey, a local miscellaneous member of CalPERS. Respondent Harvey was enrolled in the PERS Select plan.

On December 28, 2017, Respondent PHI Air Medical LLC (Respondent PHI) transported Respondent Harvey by helicopter from Mayers Memorial Hospital (MMH) in Fall River Mills to Mercy Hospital in Redding. Respondent PHI submitted an invoice to Anthem, under the PERS Select PPO plan, seeking reimbursement of approximately \$45,000 for the interfacility transport of Respondent Harvey. Following several internal and external reviews, Anthem and CalPERS determined that the cost of this air ambulance service was not covered by the plan, because it was not medically necessary to transport Respondent Harvey by air ambulance. There was no credible evidence that transporting Respondent Harvey by ground ambulance would have endangered his health.

Respondent PHI, by assignment of rights from Respondent Harvey, appealed CalPERS' determination, exercising Respondent Harvey's right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on February 18, 2020. Respondent Harvey represented himself at the hearing and participated by telephone. Respondent PHI was represented by counsel, Gustavo Matheus, at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent Harvey and the need to support his case with witnesses and documents. CalPERS provided Respondent Harvey with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Harvey's questions and clarified how to obtain further information on the process.

At the hearing, the parties submitted documents and testimony establishing that MMH admitted Respondent Harvey to its emergency room around 6:00 p.m. on December 27, 2017. Respondent Harvey presented with complaints of stabbing abdominal pain, which he rated at a pain level of 5 out of 10. He also presented with intermittent, low grade fever without vomiting or diarrhea over the past two weeks prior to admission. Respondent Harvey's abdominal pain emerged after a colonoscopy performed in June 2017. He had been treated with antibiotics that did not resolve the pain.

At approximately 7:00 p.m. on December 27, 2017, William Dykes, M.D., examined Respondent Harvey. Dr. Dykes found him to be alert, not in acute distress, and with blood pressure of 134/89. Respondent Harvey's vital signs and blood tests were normal. Dr. Dykes noted that Respondent Harvey had "tenderness in his left lower quadrant, guarding, abnormal decreased bowel sounds, no abdominal bruit, no pulsating mass." A CT scan of Respondent Harvey taken at approximately 10:30 p.m. that evening showed multiple diverticula in the descending colon and a 2.5-centimeter abscess. The CT scan also found that Respondent Harvey had "mild ectasia of the distal abdomen aorta."

Dr. Dykes diagnosed Respondent Harvey as having diverticulosis with acute diverticulitis and an abscess, a collection of pus usually caused by a bacterial infection. Dr. Dykes recommended that Respondent Harvey see an interventional radiologist to determine if the abscess could be drained or if surgery would be required. Because MMH does not provide such services, Dr. Dykes contacted Mercy Redding to see if Respondent Harvey could be transferred there. Mercy Redding is approximately 70 miles away from MMH.

Dr. Knutson at Mercy Redding spoke with Dr. Dykes and agreed to accept Respondent Harvey. Dr. Dykes ordered an air ambulance to transfer Respondent Harvey to Mercy Redding. Records relating to the transfer show that Dr. Dykes felt there was little risk of Respondent Harvey's condition deteriorating during the interfacility transfer. There was no evidence in the record that Dr. Dykes attempted to secure ground ambulance transport, whether such transport would have been available, or whether it was medically necessary to transport Respondent Harvey by air ambulance versus ground ambulance. MMH administered Zosyn, a penicillin antibiotic, to Respondent Harvey intravenously prior to his transfer to Mercy Redding. Zosyn doses are typically administered every six hours.

Records from Respondent PHI show that Respondent Harvey walked to the PHI air stretcher without difficulty and that total travel time was approximately 38 minutes. Mercy Redding admitted Respondent Harvey at approximately 1:05 a.m. on December 28, 2017. At Mercy Redding, an interventional radiologist evaluated Respondent Harvey and determined they could not drain the abscess due to its size and location. A surgeon recommended that Respondent Harvey receive five days of intravenous antibiotics, and was discharged on January 1, 2018, with directions to continue oral antibiotics for an additional five days.

Nearly two years later, on October 7, 2019, Dr. Dykes at MMH placed an addendum in Respondent Harvey's medical records stating that the justification for using air ambulance for Respondent Harvey was because the MMH ground ambulance 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."

Anthem, which administers the PERS Select plan, reviewed PHI's transport of Respondent Harvey by air ambulance against the terms of the PERS Select EOC. The EOC provides that only services that are determined to be "medically necessary" are covered. Medically necessary services are treatments, procedures, supplies, or similar services that a qualified health professional, exercising prudent clinical judgment, would provide for the purpose of preventing, evaluating, diagnosing or treating an illness, injury or disease.

Ambulance transports are subject to medical necessity reviews under the PERS Select EOC, which provides coverage for air ambulance transport, but only,

"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." When air ambulance is used to transport a PERS Select member from one hospital to another, the plan only covers air ambulance "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..."

At the hearing, the evidence established that MMH is the only hospital in Fall River Mills, a rural town in Shasta County with a population of approximately 570 people. MMH has two ground ambulance on site, which are staffed by Sierra Emergency Medical Services Alliance (SEMSA). Both ambulances offer Advanced Life Support (ALS) services and are staffed by paramedics. Burney Fire Department, which is near MMH, also has a ground ambulance, and Shasta County contracts with American Medical Response, Inc. (AMR), to provide ALS-level ground transport countywide. AMR's contract with Shasta County does not prohibit AMR from performing interfacility ground transports.

CalPERS offered the testimony of Dale Curtis, M.D., the Chair of the Verde Valley Medical Center Emergency Department in Cottonwood, Arizona. Dr. Curtis has been a consultant for Claims Eval since 2008. CalPERS uses Claims Eval to conduct independent medical reviews of claims submitted under all of its plans, including the PERS Select plan. Dr. Curtis reviewed the medical records from MMH, PHI and Mercy Redding. He also took into consideration the rural location of MMH, the time of year, time of day, and weather conditions applicable on the evening Respondent Harvey was transported by PHI to Mercy Redding. Dr. Curtis

also reviewed an internet map showing MMH was approximately 70 miles from Mercy Redding, and that traveling by ground would have taken approximately 90 minutes.

Dr. Curtis testified that he believed Respondent Harvey's diverticulitis was of moderate severity, and that it was appropriate for Dr. Dykes to refer him for an evaluation at Mercy Redding with an interventional radiologist and for possible surgery by a gastroenterologist. Ambulance support, according to Dr. Curtis' experience working in emergency rooms both at Verde Valley and other hospitals, can range from Basic Life Support (BLS), ALS, or Critical care transport. Dr. Curtis opined that Respondent Harvey required ALS transport, which can be completed by paramedic staffing on a ground ambulance. He also testified that Respondent Harvey's condition was not so critical in nature that he required air transport. The medical records, Dr. Curtis testified, did not indicate that Respondent Harvey's condition had deteriorated since he was admitted to MMH. He did not have low blood pressure or a high heart rate, there was no blood in his stool, the risk of sepsis was low, and Respondent Harvey was alert with mental status intact. For all of these reasons, Dr. Curtis testified that it was not medically necessary to transport Respondent Harvey by air ambulance.

Respondent PHI called Eric Rudnick, M.D, to testify on PHI's behalf. Dr. Rudnick is a Director for SEMSA, the organization that provides ambulance staffing at MMH, among other services SEMSA provides in Shasta County. During his testimony, Dr. Rudnick admitted that MMH's medical records were "lacking" and that better documentation would have assisted him in forming an opinion about the appropriate use of transport. However, in taking into account the size of the MMH facility, its limited ground transport, and the condition of the road from MMH to Mercy Redding, Dr. Rudnick testified that he "probably would have defaulted to air" transport had he been on duty at MMH the evening it admitted Respondent Harvey. He admitted his opinion was based on the assumption that no ground ambulance was available that evening, as set forth in the addendum by Dr. Dykes prepared in October 2019. Dr. Rudnick agreed with Dr Curtis that Respondent Harvey's diverticulitis was of medium severity. On cross-examination, Dr. Rudnick estimated it would take approximately 90 minutes to transport Respondent Harvey by ground ambulance compared to the 38 minutes it took to transport him by PHI air ambulance. When comparing those two timelines, Dr. Rudnick admitted there was a low likelihood that transporting Respondent Harvey by ground ambulance would have made a difference in the overall outcome.

Respondent PHI also called Runa Naqib, M.D., to testify. Dr. Naqib provides physician review in the utilization management department of Intersect Healthcare, based in Maryland. Dr. Naqib testified that the increased time it would have taken to transport Respondent Harvey by ground ambulance made it medically necessary to transport him by air ambulance. Dr. Naqib also testified that Respondent Harvey was at risk of life-threatening complications if he waited for a ground ambulance. On cross-examination, however, it was demonstrated that Dr. Naqib's opinions were based, "in significant part," upon her mistaken belief that Respondent Harvey was experiencing pain rated 10 out of 10 when he was admitted to MMH on the evening of December 27, 2017. PHI also called a flight nurse with PHI, to testify.

Her testimony, while not admitted by the ALJ as expert testimony, consisted of her opinion that air ambulance was necessary for Respondent Harvey because ground ambulance was not available, and because ground ambulances in Shasta County do not offer hospital-to-hospital transports.

After considering all of the evidence, the ALJ denied Respondent PHI's appeal. The ALJ noted that CalPERS and Anthem reviewed the request for payment four different times, including by three independent medical reviewers (including Claims Eval), and that all four determined it was not medically necessary to transport Respondent Harvey by air ambulance. The ALJ concluded that there was no direct evidence establishing that ground ambulance was not available to transport Respondent Harvey on the evening of December 27, 2017. The ALJ also determined that because there was no evidence in the medical records that MMH attempted to secure ground transport, it was reasonable to infer that no such effort was actually made. The ALJ also gave no weight to Dr. Dykes' addendum, nearly two years after the transport, claiming that air ambulance was used because no ground ambulance was available. For these reasons, the ALJ determined that Respondent PHI failed to meet its burden to prove it was medically necessary to transport Respondent Harvey by air ambulance.

The ALJ also determined that the evidence failed to show that transporting Respondent Harvey by ground ambulance would have endangered his medical condition, one of the core requirements of the PERS Select EOC. In reaching this conclusion, the ALJ relied on Dr. Dykes' statement that Respondent Harvey was not at risk of deteriorating during transfer, the agreement between Dr. Curtis and Dr. Rudnick that Respondent Harvey's diverticulitis was of medium severity, and Dr. Rudnick's admission that the extra-45-minutes or so of additional time it would have taken to transport Respondent Harvey by ground ambulance would not have placed him at risk. The ALJ disregarded Dr. Naqib's contrary opinions, because they were not supported by the evidence, were speculative, and based on a mistaken belief in Dr. Naqib as to Respondent Harvey's level of pain at the time of transport. Finally, the ALJ rejected Dr. Rudnick's assertion that air ambulance transport was medically necessary to continue the intravenous administration of Zosyn.

The ALJ found that Zosyn is administered every 6 hours, and that any additional time needed to transport Respondent Harvey by ground would have been well within the timeframe of that dosage schedule. Relying solely on the terms and conditions of the PERS Select EOC and rejecting Respondent PHI's attempts to modify those requirements by reference to Medicare or other medical industry standards, the ALJ denied the appeal.

Staff finds the Proposed Decision to be very thorough, detailed, and extremely well-reasoned. For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

July 15, 2020

Kevin Kreutz
Senior Attorney