ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Anthony Waters established membership with CalPERS through his employment with the State of California. By virtue of his employment, Mr. Waters and his dependents, including his wife Dagmar Waters (Respondent),[1] are eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA).[2] At all times relevant to this appeal, Mr. Waters and Respondent were enrolled in Blue Shield Access+ HMO Basic Plan (Plan). The Plan is a health maintenance organization plan (HMO) offered by CalPERS.

Respondent lives in Chico, California. In 2015, she started experiencing bilateral hip pain. In 2018, Respondent's primary care physician referred her to an orthopedic specialist who diagnosed Respondent with hip osteoarthritis. The orthopedic specialist recommended treatment of the hip osteoarthritis with medication and physical therapy. Respondent followed the recommended treatment.

In 2018, Mr. Waters took a limited term position with the California State University, Chico in Chiang Mai, Thailand. After receiving approval from her orthopedic specialist, Respondent accompanied Mr. Waters to Thailand for his work.

Beginning in January 2019, Respondent sought treatment for her hip pain in Thailand, where she underwent physical therapy. Her pain worsened, and Respondent was prescribed opioids starting in May 2019.

Respondent's hip pain continued to worsen, and her orthopedic specialist in Thailand recommended a total right hip replacement surgery in November 2019. The Plan authorized the surgery to take place between December 15 and 19, 2019, as an urgent procedure with direct payment from the Plan. Because Respondent was diagnosed with a urinary tract infection at the same time as her surgery was calendared, the surgery was postponed while the infection resolved.

Respondent's surgery was rescheduled for January 29, 2020. Prior to surgery, Respondent attempted to secure authorization and payment from the Plan. The Plan did not authorize the surgery, advising Respondent to pay the hospital upfront and then file a claim for potential reimbursement. Respondent proceeded with the surgery, and she was discharged from the hospital on February 6, 2020.

Respondent submitted a claim to the Plan for reimbursement of costs, totaling $19,612.93, related to her surgery. The Plan's Evidence of Coverage (EOC) details the

[1] Most of the claims, complaints, and appeals were submitted by Mr. Waters on Respondent's behalf. Respondent is referred to as the filing individual throughout the Staff Argument for efficiency purposes.
[2] Gov. Code § 22750 et seq.

services and procedures that are, and are not, covered by the Plan. Under the EOC, when a service is performed outside the United States, only those services deemed as either an emergency or urgent are covered by the Plan. The EOC defines emergency services as:

> An emergency means an unexpected medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a layperson who possesses an average knowledge of health and medicine could reasonably assume that the absence of immediate medical attention could be expected to result in any of the following: (1) placing the Member's health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of any bodily organ or part.

The EOC defines urgent services as:

> [T]hose covered services rendered outside of the Personal Physician service area (other than emergency services) which are medically necessary to prevent serious deterioration of a Member's health resulting from unforeseen illness, injury or complications from an existing medical condition, for which treatment cannot reasonably be delayed until the Member returns to the Personal Physician service area.

Because Respondent's total hip replacement occurred outside of the United States, and was neither an emergency nor urgent, the Plan denied Respondent's claim for coverage. Instead, the Plan deemed the surgery an unauthorized elective procedure. Respondent timely submitted a grievance regarding the denial. The Plan denied the grievance, again stating that the procedure was neither emergent nor urgent.

Next, Respondent submitted a Complaint Form to the Department of Managed Health Care (DMHC). The DMHC referred Respondent's complaint to MAXIMUS Federal Services, Inc. (MAXIMUS) for an Independent Medical Review (IMR). The MAXIMUS IMR agreed with the Plan's determination, and DMHC denied Respondent's complaint on December 14, 2020. DMHC's denial advised Respondent of her right to an administrative review with CalPERS.

Respondent requested CalPERS' administrative review on December 18, 2020. CalPERS referred the matter to CoreVisory for another IMR. Following its IMR, CoreVisory agreed with the Plan's and MAXIMUS' determinations. CalPERS issued a determination consistent with the Plan, MAXIMUS, and CoreVisory, and advised Respondent of her appeal rights.

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 March 8, 2022, by videoconference. Respondent and Mr. Waters appeared at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

Both IMR's, the Plan's 2019 and 2020 EOC's, Respondent's medical records, and other documents were submitted into evidence.

Peter Jebson, MD, the CoreVisory physician who performed the IMR on CalPERS' behalf, testified at the hearing. Dr. Jebsen noted that Respondent experienced hip pain since at least March 2018, which was treated with physical therapy, pain medication, and anti-inflammatory medication. Dr. Jebsen explained that Respondent likely met the criteria for elective hip replacement surgery.

However, Dr. Jebsen testified that Respondent's hip replacement surgery was an elective procedure, and did not qualify as an emergency or urgent. He testified that hip replacement surgery is rarely performed on an urgent basis. There are two exceptions: (1) when a patient sustains a hip fracture or dislocation, and the patient is either older or has pre-existing osteoarthritis in that hip; or (2) when there is a protrusio - a condition where the hip ball penetrates through the pelvis. Based on his review of imaging studies and clinical notes, Dr. Jebson found no evidence that Respondent suffered from either qualifying exception.

Dr. Jebsen further explained that severe pain does not qualify a patient for emergency surgery. She must meet one of the documented exceptions. Dr. Jebsen also stated that Respondent would have been able to safely travel to California, her coverage area, to have the surgery performed. Hence, Respondent's hip surgery was not an emergency or urgent, but elective.

Respondent testified at hearing on her own behalf. Respondent explained that she proceeded with the surgery in Thailand instead of returning to California for several reasons. She was eager to resolve her pain and mobility issues. Returning to California for the surgery would interrupt Mr. Waters' job, if he were to return with her. If he did not return, she would have little support in California following her surgery. Respondent also did not think that she could have flown to California given her condition prior to the surgery. Respondent considers her surgery as a total success. Respondent called her husband to testify, and his testimony was consistent with hers.

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 CalPERS' Health Program is

governed by PEMHCA and its implementing regulations. Here, Respondent had the burden of proof to show by a preponderance of the evidence that the Plan erroneously denied benefit coverage for her hip replacement surgery services from January 29 to February 6, 2020. The ALJ found Respondent did not establish the Plan erroneously denied benefit coverage for those services. The ALJ found that Dr. Jebsen credibly testified that delaying Respondent's surgery, even for a few months for her to return to California, would not have resulted in serious deterioration of her health. The ALJ also reasoned that Respondent would have been able to safely travel to California to have the surgery. The logistical reasons for having the surgery in Thailand, interrupting Mr. Waters' work and the lack of a support system in California, could not be considered under confines of the EOC. Accordingly, the ALJ found that Respondent's surgery was neither an emergency or urgent, and denied the appeal.

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

June 15, 2022

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Senior Attorney