

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 University of
California San Diego Medical Group and Scripps Clinic
Medical Group¹ as Preferred Providers of:**

MICHAEL L. CAPLAN, Respondent

Agency Case No. 2024-0591

OAH No. 2024080273

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 9, 2024, by videoconference.

¹ The Statement of Issues was captioned "In the Matter of the Appeal Regarding Denial of University of California San Diego Physicians and Scripps Clinic Medical Group Physicians as Preferred Providers of," but the issue to be decided and the caption in the brief filed by CalPERS set forth the issues as listed here, so the decision will be captioned consistent with that issue.

Lee Bickley, Senior Attorney, represented complainant, Julia Logan, Clinical Policy and Programs Division, California Public Employees' Retirement System (CalPERS).

Michael L. Caplan, respondent, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 9, 2024.

ISSUE

Did Anthem Blue Cross (Anthem) appropriately determine that UCSD Medical Group (UCSD) and Scripps Clinic Medical Group (Scripps) cannot be considered as Preferred Providers in accordance with the terms and conditions of the 2024 CalPERS Gold Basic Explanation of Coverage?

PROTECTIVE ORDER

To protect privacy and confidential personal information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued sealing Exhibits 15-26, inclusive. The order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to the order, provided that such documents are protected from disclosure to the public.

FACTUAL FINDINGS

Jurisdictional Matters and Background Facts

1. CalPERS offers health benefits to public employees and state workers. CalPERS contracts with Anthem to administer claims in accordance with plan benefits. CalPERS oversees Anthem.

2. Two of the plans offered are PERS Gold plan and PERS Platinum plan. Both are Preferred Provider plans which allow members to manage their healthcare through the selection of physicians, hospitals and other specialists, and may also include choosing Non-Preferred Providers.

3. Respondent enrolled in the PERS Gold plan, which was administered by Anthem pursuant to its contract with CalPERS.

4. On February 27, 2024, respondent advised Anthem that "someone within Anthem" and information on Anthem's website gave him a "false impression" that UCSD and Scripps, his current medical providers, were covered entities, which was why he selected the PERS Gold plan. Anthem advised him to request a Continuity of Care authorization. Respondent requested Anthem to allow UCSD and Scripps to be considered Preferred Providers under his plan.

5. On several occasions in March and April 2024, Anthem advised respondent that medical care services from various Non-Preferred Providers were approved/authorized pursuant to the Continuity of Care provision. This meant Anthem approved respondent receiving treatment from several out of network providers.

6. Anthem further advised respondent that it was denying his request that UCSD and Scripps be considered Preferred Providers under his plan. Anthem issued a Final Adverse Determination advising respondent of his right to a CalPERS Administrative Review.

7. Respondent requested that review, and CalPERS upheld Anthem's decision. On June 18, 2024, CalPERS notified respondent of its determination and his right to appeal. CalPERS also offered respondent until July 18, 2024, to change health plans outside of the open enrollment period. CalPERS acknowledged that it "confirmed that [respondent was] provided inaccurate information pertaining to two different providers within the UCSD and Scripps network prior to enrolling into the PERS Gold Plan." This was the reason CalPERS was allowing respondent to change health plans outside the open enrollment period "as a one-time exception."

8. Respondent did not exercise that option. Instead, respondent appealed CalPERS's determination, and requested a hearing. He also asked CalPERS to switch him to the PERS Platinum plan, which costs more than the PERS Gold plan, at no additional cost to him, which CalPERS denied.

9. On August 7, 2024, complainant filed a statement of issues, and this hearing followed.

Evidence Introduced at Hearing

10. Sheri Alvarado, a CalPERS Health Benefit Analyst, and respondent testified, and various documents were introduced. The factual findings reached herein are based on that evidence.

CALPERS'S POSITION

11. Physicians and medical groups who participate in the various health care plans do so via contracts. Those contracts set forth physician and medical group reimbursement rates. The PERS Gold plan offers a much narrower network of providers than the PERS Platinum plan; there are more physicians in the PERS Platinum plan. The co-pays and out-of-pocket expenses for the two plans are different, as well, with co-pays and expenses being lower in the PERS Platinum plan. Physicians receive higher reimbursement rates in the PERS Platinum plan.

12. Ms. Alvarado explained allowing individuals enrolled in the PERS Gold plan to access PERS Platinum providers is unfair to PERS Platinum plan members who pay higher costs for that plan and is unfair to those providers who have contracted with PERS Platinum because they do not accept PERS Gold lower reimbursement rates.

13. The PERS Gold plan Explanation of Coverage (EOC) constitutes a contract between the subscriber and CalPERS, governing which benefits are payable. When respondent chose the PERS Gold plan, the EOC became the contract for services between him and CalPERS.

14. The 2024 PERS Gold plan EOC cautions subscribers to familiarize themselves with the information contained in the EOC and warned that lack of knowledge or lack of familiarity with the information contained in the EOC does not serve as a reason for noncompliance. The EOC sets forth the steps to take to ensure subscribers are using a Select PPO Preferred Provider which include asking the physician if she/he is a plan provider and requesting the physician's tax identification number (TIN); calling Member Services to verify; visiting Anthem's website; and

requesting the Select PPO Preferred Plan Directory. The EOC specifically cautions in bold:

Changes frequently occur after the directories are published; therefore, it is your responsibility to verify that the provider you choose is still a Preferred Provider and any providers you are referred to are also Preferred Providers. Check the [Anthem] website, [website address], and call Member Services [telephone number] one week prior to your visit or procedure to confirm that the provider is a Preferred Provider.

The EOC provided additional information regarding copayments, coinsurance responsibilities, accessing and paying for Non-Preferred Providers, as well as other benefit and payment information. The Continuity of Care describes the circumstances during which a subscriber would be able to continue treatment if Anthem terminated its contractual relationship with a Preferred Provider with whom the subscriber was undergoing a course of treatment.

15. Anthem disclaimers on the provider website pages cautioned that although it does its best to ensure that its list of doctors and hospitals is up-to-date, and accurate, providers do leave the network and the listings change. The disclaimer recommended contacting the provider to ensure to ensure he or she was in the network and that the desired service was covered.

RESPONDENT'S POSITION

16. Respondent is an attorney who began a new job with the Department of Managed Healthcare, a state agency. Although complainant asserted that this made

respondent knowledgeable in healthcare law, respondent explained that he was new to this area of law, and no evidence demonstrated that when he enrolled in the PERS Gold plan that he was a healthcare expert.

17. Respondent suffers from significant health issues. He has been diagnosed with stage III melanoma and stage I lung cancer, the latter of which he described as being surprising since he has never smoked.

18. Respondent was a stay-at-home dad for his autistic children prior to his return to the workforce in January 2024. His wife then became a stay-at-home mom caring for the children and his health insurance would cover the family.

19. Owing to his health issues, respondent wanted to ensure that his medical providers, UCSD and Scripps, were covered by the plan he chose. He reviewed Anthem's website which showed that those groups were providers on the PERS Gold plan. He relied on that information in choosing his plan.

20. Respondent described the quick time frame he was given by his employer to select a health care plan because the Human Resources (HR) person was leaving for jury duty. As a result, he did not have time to obtain TIN information from all of his providers to ensure they participated in the PERS Gold plan. He contacted Anthem and was instructed to review the information on the Anthem website regarding plan providers. Respondent relied on the accuracy of that website information when choosing the PERS Gold plan.

21. Shortly after he enrolled, respondent found out that UCSD and Scripps were not in the PERS Gold plan network. Email exchanges documented that respondent learned his providers were out-of-network in mid-January 2024.

22. In one email exchange, dated January 12, 2024, respondent advised Anthem that he “would have gone with the platinum if it wouldn’t have cost an additional \$800/mo for the family. Unfortunately [redacted] I just can’t afford that much in case I die.”

23. Respondent contacted his HR person but was told he could not switch plans. He had “no alternative” but to make the PERS Gold plan work. He described the supplemental insurance plan he took out to help defray costs, as well as the extremely high out-of-pocket expenses he has incurred to pay for medical care.

24. Respondent never contacted CalPERS in January 2024 to see if he could switch plans. Ms. Alvarado testified it is possible, based upon respondent’s situation, that CalPERS would have made an exception and allowed him to change plans past the open enrollment date, especially as his effective date, February 1, 2024, had not yet occurred. Notably, given that, CalPERS’s offered respondent an opportunity to change plans after it conducted its administrative review, it is likely CalPERS would have made that exception had it been aware of this information in January 2024.

25. February 2024 Anthem phone logs documented conversations with respondent wherein he inquired as to why his providers were not covered by his PERS Gold plan, and Anthem’s response that they were out-of-network. Anthem also advised respondent that he could seek treatment with those providers pursuant to a Continuity of Care request as he was in a course of treatment with those providers.

26. Numerous letters documented Anthem’s authorizations to respondent’s physicians to provide “continuation of care” treatment to respondent.

27. Several emails documented respondent’s exchanges with Anthem and CalPERS regarding the matters at issue in this hearing.

28. Respondent testified about his medical condition, his surgery, recovery from treatment, birth of his third child, and his new job, all taking place in 2024, which were his priorities. He asserted CalPERS failed to properly administer Anthem and the PERS Gold plan, to his detriment. He argued that the principles of promissory estoppel, equitable estoppel, and public policy require his appeal be granted. Respondent also argued that CalPERS cannot hide behind Anthem to escape liability. Those arguments are addressed below.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an individual has the burden of proving by a preponderance of the evidence that he or she is entitled to the relief sought. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) Respondent has the burden of proving that Anthem inappropriately determined that UCSD and Scripps cannot be considered Preferred Providers in the 2024 PERS Gold Basic plan.

2. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.] . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Code Sections and Regulation

3. Government Code sections 22750 et seq., the Public Employees' Medical and Hospital Care Act (Act), and California Code of Regulations, title 2, section 599.99 et seq., govern CalPERS's health program.

4. California Code of Regulations, title 2, section 599.99, defines applicable terms used in the Act.

Estoppel Arguments

5. Estoppel is an equitable doctrine that is centuries old. It seeks to prevent a person or entity from profiting from their own wrongdoing. "The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations on which he acted." (*California School Employees Association v. Jefferson Elementary School District* (1975) 45 Cal.App.3d 683, 692.) In determining whether or not estoppel shall be applied to a given situation, the burden of establishing that all of the requirements have been met is on the party asserting the estoppel.

6. The court in *Medina v. Board of Retirement, Los Angeles County Employees Retirement Assn.* (2003) 112 Cal.App.4th 864, 868-869, discussed when equitable estoppel may be asserted against a governmental entity:

Equitable estoppel may be asserted against the government in some circumstances..... The requisite elements for equitable estoppel against a private party are: (1) the party to be estopped was apprised of the facts; (2) the party to be

estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended; (3) the party asserting estoppel was ignorant of the facts; and (4) the party asserting estoppel suffered injury in reliance on the conduct. [Citation.] . . . The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel are present and . . . the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.

7. It is well settled that estoppel cannot be used to enlarge the powers of the Public Employees' Retirement System. (*Page v. City of Montebello* (1981) 112 Cal.App.3d 658, 667; *Board of Administration, State Employees' Retirement System v. Ames* (1963) 215 Cal.App.2d 215, 230; and *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 643.)

8. Estoppel cannot be used to provide a benefit which is not otherwise statutorily authorized because public employee benefits are wholly statutory. (*Hudson v. Posey* (1967) 255 Cal.App.2d 89, 91.)

9. Respondent is unable to establish the estoppel requirements. There was no evidence that CalPERS or Anthem were aware of any website inaccuracies. In fact, Anthem specifically cautioned website users not to rely on the information as providers and medical groups change and advised website users to contact their providers to confirm coverage. The EOC contained the same types of caution and gave

instructions of what subscribers should do to confirm coverage. Likewise, there was no evidence that CalPERS or Anthem intended respondent to rely on the inaccurate information; in fact, as noted, Anthem cautioned website users about the accuracy of the information listed on the website. As such, respondent cannot claim he was unaware the website may contain inaccuracies. Thus, his estoppel arguments fail.

Evaluation

10. Respondent's argument that "CalPERS cannot hide behind Anthem" missed the mark. CalPERS acknowledged Anthem's misstatements. That is why it offered respondent the opportunity to switch plans outside the open enrollment period. However, as CalPERS correctly pointed out, it is incumbent upon subscribers, such as respondent, to verify their providers are contracted with the plan. Had respondent performed that inquiry, he would have learned that his providers were not part of the PERS Gold plan. Given that knowledge, he likely would have selected the PERS Platinum plan. Having done so, he would have been paying the costs for that plan, which is what CalPERS offered when they gave him the opportunity to switch plans. It seemed the sole reason he did not accept CalPERS's offer was because he did not want to pay those increased costs, as he stated in his email. Being enrolled in the PERS Gold plan, and paying the costs associated with that plan, does not entitle a subscriber to utilize physicians in the PERS Platinum plan, except in very limited circumstances. Respondent was allowed to do so here via a Continuity of Care exception. Making respondent "whole" would have been accomplished by allowing him to switch plans and pay for the difference in those plans; but allowing him to switch plans to the PERS Platinum plan at no cost gives him a benefit to which he is not entitled.

Respondent had knowledge of his medical condition and the providers with whom he wanted to treat. Respondent had knowledge of his family's medical conditions and their chosen providers. This was information neither Anthem nor CalPERS possessed when respondent selected the PERS Gold plan. Given respondent's knowledge, it was incumbent upon him to select the correct plan. His claim that he was rushed to make his decision because of the HR person's jury duty schedule is an issue between him and his employer; that was neither Anthem's nor CalPERS's fault, and neither entity had any way of knowing that fact. The documents were replete with cautions given by Anthem about the accuracy of the information on its website and in the documents because plans and providers routinely change. The EOC instructed respondent how to ensure providers and coverage, none of which respondent did. Given those warnings and instructions, coupled with respondent's knowledge of his and his family's medical conditions, the onus was on respondent to ensure he was choosing the correct plan.

On this record, his appeal is denied. No public policy requires a different result.

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ORDER

Michael L. Caplan's appeal that Anthem Blue Cross (Anthem) inappropriately determined that UCSD Medical Group (UCSD) and Scripps Clinic Medical Group (Scripps) cannot be considered as Preferred Providers in accordance with the terms and conditions of the 2024 CalPERS Gold Basic Explanation of Coverage is denied. Anthem and CalPERS correctly determined those medical groups are not Preferred Providers under that plan. CalPERS correctly denied respondent's request to switch plans at no increased cost to respondent.

DATE: September 26, 2024


Mary Agnes Matyszewski (Sep 26, 2024 07:38 PDT)
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings