ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

Petition for Reconsideration

May 2, 2024

Ref. No. 2022-0872

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Subject: Decision in the Matter of the Appeal Regarding Denial of Benefit Coverage for Out-of-Network Services of TINA D. LITTLE, Respondent. OAH No. 2023081002

This "Petition for Reconsideration" is a written argument to the "Proposed Decision" scheduled to be heard before the Board at its regular meeting on June 12, 2024.

ARGUMENT

In the "Proposed Decision", under the "Fact Findings" section on page 4 are excerpts from the 2021 Evidence of Coverage (EOC). The EOC is referenced at page 7, where it states in part "When a member needs a referral to another physician or needs hospital services, the member's primary care physician will seek authorization for a referral or services." Respondent received an authorization for a referral on 1/24/2020: Approved Authorization Referral Number 23931006 Parmela Sawhney (Primary Care Physician In-Network) referred to William C Eves Surgery, Orthopedic for Office or Other Outpatient V, Sprain MCL Right Knee, Sprain ACL Left Knee. This first doctor Respondent was referred to on 1/24/2020 never saw her, after waiting in the lobby and eventually a room for over three hours watching people go in and out getting shots Respondent was told they would only give her an injection for a torn ACL.

On 3/10/2020: Approved Authorization Referral Number 24067674 Parmela Sawhney (Primary Care Physician In Network) referred to San Diego Orthopedic Associates Medical Surgery, Orthopedic for Office or Other Outpatient V, Sprain MCL Right Knee, Sprain ACL Left Knee. The second office Respondent was referred to had multiple doctors in the practice and Respondent went through them all without any reassurance they could repair her knee, they debated who would conduct the surgery, the specialist for ACLs, Meniscus, arthritis or a knee replacement. Respondent ended up going to physical therapy for a year. Respondent did not feel she was in competent hands to be unconscious during a surgical procedure with a physician not competent or sure of Respondent's condition.

On 8/11/2021: Approved Authorization Referral Number 25330005 Parmela Sawhney (Primary Care Physician In Network) referred to San Diego Orthopedic Associates Medical Surgery, Orthopedic for Office or Other Outpatient V, Spec Arthropathies Left Knee. After tearing Respondent's meniscus and ACL further she was referred back to the second office and again saw multiple doctors in the practice, went back through them all without any reassurance they could repair her knee. They again debated who would conduct the surgery, the arthritis had gotten worse and they were not convinced they could fully repair

both the ACL and Meniscus, the physicians said they could trim the Meniscus but Respondent would eventually need a knee replacement. Respondent left that appointment feeling very uneasy about this surgery as she needed to walk and could no longer do so. Respondent went back to her Primary Care Physician and asked for another referral so she could find a doctor she felt was competent with her condition.

On 10/12/2021: Approved Authorization Referral Number 25492120 Parmela Sawhney (Primary Care Physician In-Network) referred to Girard Orthopedic Surgeons Medical Group for Office or Other Outpatient V, Pain in Left Knee, Sprain ACL UNS Knee Sequela. The third office Respondent was referred to after a two year time period was approved as in-network for her medical group.

It is evident that Respondent requested and obtained the necessary referral authorizations as outlined in her EOC.

Further on page 4 of the "Proposed Decision", another section of the EOC at page 49-50 states in part,

> Services that are rendered without authorization from UHC, or the member's network medical group, are not covered except for emergency services, urgently needed services, or certain obstetrical and gynecological services. Services obtained from out-of-network providers or network providers who are not affiliated with a member's network medical group – without authorization from UHC, or the member's network medical group – are not covered except for emergency services or urgently needed services.

On 12/8/2021: Approved Authorization Referral Number 25636474 Michael Kimball at Girard Orthopedic Surgeons Medical Group (In Network) for Arthroscopic Aided ACL Repair, Arthroscopic Knee Surgical, Arthroscopy Knee W/Meniscus, Arthroscopy Knee Surgical.

On 12/8/2021: Approved Authorization Referral Number 25636475 Girard Orthopedic Surgeons Medical Group (In Network) for Office or Other Outpatient V.

On 12/10/2021: Approved Authorization Referral Number 25636476 Michael Kimball at Girard Orthopedic Surgeons Medical Group (In Network) for Knee Orthosis, Adjustable KN.

On 12/16/2021: Approved Authorization Referral Number 25660156 Michael Kimball at Girard Orthopedic Surgeons Medical Group (In Network) for Routine Time Sensitive Arthroscopic Aided ACL Repair, Arthroscopic Knee Surgical, Arthroscopy Knee W/Meniscus, Arthroscopy Knee Surgical.

It is further evident that Respondent met the requirements of the EOC by obtaining authorizations for her surgery.

In Respondent's evidence in support of her complaint, she provided a copy of each referral/authorization obtained. Listed on the authorizations for the surgical procedure it states, "All lab, x-ray and pre-operation testing ordered by your Primary Care Physician or Specialty Physician is to be done at Mercy Physicians Medical Group South unless authorized for another location."

The authorization did not state any referral or authorization requirement for the surgical facility. Furthermore, the EOC does not state a requirement for referral or authorization for the surgical facility. The language in the EOC states, that a referral and/or authorization is needed for the "services" page 7 of

the EOC. Further on page 49-50 of the EOC it states a referral is needed for "hospital services". As stated above and throughout Respondent's assertions, the required referrals and authorizations were properly obtained before having services rendered by a physician that was not her primary care physician (PCP). Respondent properly obtained the authorization for the "services" of Dr. Kimball. Respondent did not seek "hospital services" from University Surgery Center, she sought the "services" of Dr. Kimball. A surgery center cannot give services because it is merely a facility. The physicians within the facility provide the services.

In accordance with the language in the EOC, Respondent has met the burden of proving that she obtained the required referrals and authorizations needed to have the surgical services provided by Dr. Kimball approved and paid by her insurance. Mercy Physicians Medical Group, Inc., Scripps Care Affiliate, (MPMG/Scripps) have done an insufficient job in providing an EOC that an insured can comprehend and understand. Most insured like Respondent are lay people and read and interpret the language in their EOC as it appears on the page. "If an ambiguity cannot be eliminated by the language and context of the policy, then we invoke the principle that ambiguities are construed against the party who caused the uncertainty--the insurer--in order to protect the insured's reasonable expectations of coverage." (*General Star Indemnity Co. v. Superior Court* (1996) 47 Cal. App. 4th 1586, 1593 [55 Cal. Rptr. 2d 322]). The language in the EOC is ambiguous for more than one reason. First, it references a PCP and/or Provider which is generally classified as being a doctor (a person). Second, a hospital is generally referenced as a facility where a person can stay overnight. A surgery center is generally defined as an outpatient facility (not a hospital) where there is no overnight stay. Thus, because the EOC does not state that an insured must obtain a referral and/or authorization when having an approved surgical procedure done by an in-network physician at an any out-of-network facility, the language is ambiguous.

MPMG/Scripps drafted the 2021 EOC for its insured (such as Respondent), however it appears that MPMG/Scripps is requiring the insured to interpret language that is not in the EOC. MPMG/Scripps was expecting Respondent to interpret that she would have to get an additional referral and/or authorization for the facility of her surgery even though her approved referred physician had authorization to perform an approved surgery. Respondent had a reasonable expectation that her surgery would be fully covered because she had obtained the required referrals and authorizations from her PCP.

CONCLUSION

Therefore, Respondent met her burden of proving that for two years she obtained the required referrals and authorizations to have the surgery performed on her knee. MPMG/Scripps and UHC did not act appropriately in denying Respondent's claim after a drawn-out referral process in search of a competent surgeon as her knee continued to deteriorate to the point she could not walk and needed surgery. As a result, Respondent should be reimbursed fully for the expenses incurred in the amount of $13,315.48.