ATTACHMENT D

DECISION

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

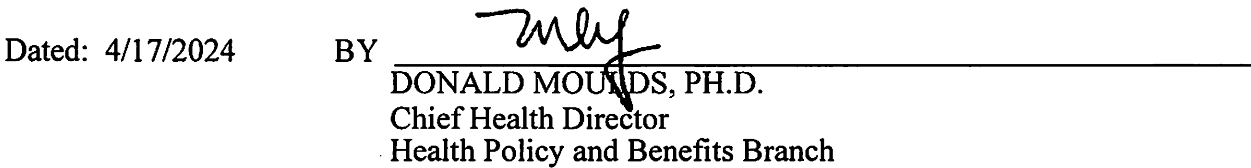
In the Matter of the Appeal Regarding Denial of Benefit Coverage for Out-of-Network Services of TINA D. LITTLE, Respondent.	)	CASE NO. 2022-0872 OAH NO. 2023081002 DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated February 22, 2024, concerning the appeal of Tina D. Little; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

* * * * *

I hereby certify that on April 16, 2024, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Administrative Law Judge's Proposed Decision is a true copy of the Decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
MARCIE FROST
CHIEF EXECUTIVE OFFICER



Dated: 4/17/2024 BY ______________________
DONALD MOULDS, PH.D.
Chief Health Director
Health Policy and Benefits Branch

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

In the Matter of the Statement of Issues Against

TINA D. LITTLE, Respondent

Agency Case No. 2022-0872

OAH No. 2023081002

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 29, 2024. The proceeding was conducted by video conference.

Cristina Andrade, Senior Attorney, California Public Employees' Retirement System (CalPERS), appeared on behalf of CalPERS.

Tina D. Little (respondent) appeared and participated in the proceeding.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 29, 2024.

SUMMARY

Respondent is a member of CalPERS. Through CalPERS, respondent is enrolled in a health care plan that CalPERS administers. Respondent was enrolled in the UnitedHealthcare SignatureValue Alliance health maintenance plan (UHC). UHC administers several medical groups. Respondent elected Mercy Physicians Medical Group, Inc., Scripps Care Affiliate, (MPMG/Scripps) as her network medical group.

In December 2021, MPMG/Scripps approved respondent’s referral for arthroscopic knee surgery from Girard Orthopedic Surgeons Medical Group, Inc., (Girard Orthopedic Group) in San Diego. The service was approved to be provided at Scripps Memorial Hospital.

Michael Kimball, M.D., a member of the Girard Orthopedic Group, was respondent’s physician for the surgery. He, however, refused to perform arthroscopic knee surgery at Scripps Memorial Hospital.

Dr. Kimball performed the surgery at the University Ambulatory Surgery Center (University Surgery Center).

Respondent’s medical group, MPMG/Scripps, had not authorized performance of the surgery at University Surgery Center. UHC denied benefit coverage for the cost of the facility, The denial concerned only the cost of the facility. The cost of Dr. Kimball’s services and the services of the anesthesiologist were covered.

The UHC plan publishes an Evidence of Coverage, which concerns benefits and claims. Services rendered without authorization from a member’s medical group or UHC are not covered, except for emergency services or urgently needed services.

Respondent contends she was entitled to have the facility costs covered. She asserts a few grounds in support of her contention. She claims the services were provided in an emergency. She claims UHC was at fault because it knew or should have known that Dr. Kimball refused to perform arthroscopic knee surgery at Scripps Memorial Hospital. She claims she was led to believe the University Surgery Center would be approved. She asserts other grounds.

The issue on appeal is: Did UHC act appropriately when it denied respondent's request for benefit coverage for the cost of the facility?

It is found and determined that the evidence does not support respondent's claims. Respondent failed to prove that UHC did not act appropriately when it denied respondent's request for benefit coverage for the cost of the facility.

FACTUAL FINDINGS

Respondent's Health Care Plan

1. Respondent is employed by California State University San Diego and, through her employment, is a member of CalPERS. CalPERS provides health benefit insurance programs for state employees. CalPERS has numerous health care plans from which members may choose. Respondent elected the UHC health maintenance plan. That plan administers a few medical and hospital care plans, one of which is MPMG/Scripps. Respondent elected MPMG/Scripps as her network medical group.

2. The UHC Evidence of Coverage serves as part of the contract between a member and CalPERS. It sets forth terms and conditions of the plan, including benefits.

The 2021 Evidence of Coverage was in effect at all times relevant to respondent's appeal.

3. The 2021 Evidence of Coverage, at page 7, provides in part: A member may select a primary care physician. If a member does not select a primary care physician, UHC will choose one for the member. Unless a member needs emergency or urgent care, he or she should consult his or her primary care physician whenever the member needs medical benefits. 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. Except in an emergency or urgent care situation, if a member sees a health care provider other than the member's primary care physician, the costs will not be covered unless a referral for services was approved by the member's primary care physician, UHC, or the member's network medical group. Respondent's primary care physician was Parmela Sawhney, M.D. As noted above, respondent's medical group was MPMG/Scripps.

4. The 2021 Evidence of Coverage, at pages 49 – 50, provides, 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.

5. The 2021 Evidence of Coverage, at page 65, provides, in part: A member should always obtain care under the direction of UHC, the member's network medical group, or the member's primary care physician. Except for emergency or urgently

needed services, if a member receives services not authorized by UHC or the member's network medical group, the member may be responsible for payment.

The Authorizations for Surgery and an Issue Regarding Location

6. In 2019 respondent sought medical care for pain in her left knee. From 2019 through 2021, UHC referred respondent to three groups of physicians. When she went to the first referral, she sat in the waiting room for three and one-half hours and left without seeing a doctor.

7. The second referral was to the San Diego Orthopaedic Associates Medical Group. Over the course of one year respondent saw several doctors in that group. In September of 2021, that group ordered a multiplanar MRI of respondent's left knee. Christopher Behr, M.D. reviewed the MRI and conducted a physical examination. He concluded that respondent had a chronic anterior cruciate ligament (ACL) tear in her left knee and that she would benefit from surgical treatment. Respondent did not feel confident that any of the doctors in the San Diego Orthopaedic Group could handle her knee repair. She asked for a referral to obtain a second opinion.

8. The third referral, which was to obtain a second opinion, was to the Girard Orthopedic Group. As noted above, Dr. Kimball was in that group. In a written summary (Respondent's Summary), respondent wrote, "Dr. Michael Kimball . . . was the first doctor competent enough to understand the severity of my knee and the immediate need of surgery to repair my anterior cruciate ligament (ACL) and Meniscus."

9. Respondent chose to have Dr. Kimball perform surgery. In a letter dated December 8, 2021, MPMG/Scripps authorized a location for respondent's surgery; it

was to be performed at Scripps Memorial Hospital. In letters dated October 12, December 8, and December 10, 2021, MPMG/Scripps authorized Girard Orthopedic Group, Dr. Kimball's office, to perform arthroscopic knee surgery. In Respondent's Summary and in other places, respondent refers to evidence that one or more of these authorizations was cancelled. There is evidence that one was a duplicate. However, whether one or more was cancelled has nothing to do with the issue in this case. The issue has to do with whether the facility where the surgery was performed had been authorized.

10. Dr. Kimball refused to perform arthroscopic knee surgery at Scripps Memorial Hospital, and Jackie, Dr. Kimball's surgery scheduler sought authorization to use the University Surgery Center.

11. Deb Kelly, Office Manager for Dr. Kimball's office, wrote a memorandum concerning certain events that occurred on December 16 and 17, 2021, (Ms. Kelly's memo). The memo is undated; it begins "This is in response to the attached Member Concern."

12. On December 16, 2021, respondent went to her pre-operation appointment at Dr. Kimball's office with the doctor's staff. According to Ms. Kelly's memo, Jackie informed respondent that MPMG/Scripps was not approving Dr. Kimball's request for authorization to perform the surgery at University Surgery Center. Jackie told respondent the surgery needed to be cancelled.

13. Respondent and Dr. Kimball's staff talked on the telephone with Russell of MPMG/Scripps about authorizing University Surgery Center. Respondent says Russell asked whether the surgery was time sensitive or whether it was an emergency.

According to Ms. Kelly's memo, Russell instructed Jackie to submit the request again, and he would expedite it. Jackie resubmitted the request.

14. The request is entitled "Selected Authorization." Near the bottom of the first page, it says:

> Notes: please approve University Surgery Center, Dr. Kimb
>
> Status: Pending by System

15. Respondent says Dr. Kimball's staff talked with Russell over the course of the next two days and reported to respondent that she could apply for a letter of authorization after the fact, i.e., she could have the surgery at University Surgery Center and apply for retroactive authorization of the facility.

16. According to Ms. Kelly's memo, on Friday, December 17, 2021, Jackie, "again tried to cancel the surgery with the patient.......... [The patient] did not want any further delay in getting it done. Pt insisted we keep her on and asked Jackie to get a quote for Cash Pay." Ms. Kelly wrote, "I spoke to Lori Imhof at MPMG and left a message for Loretta Moody. Both told me the other was responsible for approving the facility. I told pt. I would not be able to get anything approved by Monday and expressed my concern that it would not be approved at all."

17. In respondent's opening statement, she contended that the evidence would show that Lori L. Imhof, who is with MPMG/Scripps, "basically said" they would approve a letter of authorization after the fact. Respondent did not testify to that under oath. Moreover, it is inconsistent with what Ms. Kelly reported in her memo.

18. Because the authorization for the facility was pending, Dr. Kimball's office required respondent to pay $19,131 in advance of the surgery. She paid that with credit cards.

19. Because of a billing error, respondent received a refund of $5,815.52. Thus, in this proceeding, respondent is seeking $19,131 less $5,815.52, i.e., $13,315.48.

The Surgery and the Denial of Coverage

20. On December 20, 2021, Dr. Kimball performed the surgery at the University Surgery Center.

21. UHC denied the request to issue an after-the-fact letter of authorization for performance of the surgery at University Surgery Center. The denial concerned only the cost of the facility. The cost of Dr. Kimball's services and the services of the anesthesiologist were covered.

Respondent's Appeals

22. Respondent asked UHC to review the denial. UHC received the request on January 10, 2022. In a letter dated February 8, 2022, UHC advised respondent as follows: An Appeals and Grievance Medical Director performed a review. It was determined that the previous decision should be upheld because out-of-network services are not a covered benefit except when emergency or urgent care is required. Exceptions for out-of-network services were not met in this case. The letter advised that respondent may have a right to further review through the UHC appeals process.

23. On April 12, 2022, respondent requested reconsideration of the denial of her claim. In a letter dated April 15, 2022, UHC advised respondent that medical professionals in the Clinical Review Department would perform an investigation. In the

letter, UHC further advised respondent that, if she had a grievance against UHC, she could file a complaint with the California Department of Managed Health Care. In a letter dated May 12, 2022, UHC advised respondent that, after a review, it was determined that the previous decision should be upheld because the service was not a covered benefit. A service is a covered benefit only if it is provided by an in-network provider. An exception can be made for emergency services or urgently needed services. UHC again determined that, in respondent's case, the criteria for exceptions were not met.

24. Respondent filed an Independent Medical Review Complaint with the California Department of Managed Health Care. That department is a State of California entity with a mission to protect consumers' health care rights and ensure a stable health care delivery system. In a letter dated June 2, 2022, the department advised respondent that the department determined that UHC had complied with respondent's health plan contract. The department further advised respondent that she may have a right to appeal to CalPERS.

25. Respondent filed a request for an administrative review with CalPERS. In a letter dated July 21, 2022, CalPERS advised respondent that, after conducting an administrative review, CalPERS upheld the UHC and Department of Managed Health Care decisions. Those decisions appropriately denied benefit coverage at University Surgery Center in accordance with the terms and conditions of the 2021 Evidence of Coverage.

26. Respondent filed a request for hearing before OAH, and this hearing followed.

The Grounds Respondent Asserts in Support of Her Appeal

27. There is no evidence of a concise statement of the grounds respondent asserts in support of her appeal. However, her opening statement, testimony, and Respondent's Summary contain the following assertions.

28. By the time Dr. Kimball performed the surgery, respondent's condition presented an emergency. In Respondent's Summary, respondent wrote, "We were at the point where the surgery would no longer be an option if it was delayed any longer." Respondent contends that, therefore, the emergency exception to the authorization requirement applies.

29. The fact that respondent's condition became an emergency was the fault of UHC because, for two years, they referred respondent to physicians who were not competent to treat her condition.

30. UHC was at fault because it should have known that Dr. Kimball did not perform arthroscopic knee surgery at Scripps Memorial Hospital.

31. MPMG/Scripps was at fault for failing to authorize University Surgery Center because of MPMG/Scripps's "oversight." In Respondent's Summary, she says:

> MPMG/Scripps could have done a [letter of authorization] after the fact for University Surgery Center which MPMG/Scripps resolved their *oversight* through by following their counterpart with SDPMG (San Diego Physicians Medical Group), both under the umbrella of UHC. (*Sic.*) (Italics added.)

32. MPMG/Scripps's contention that University Surgery Center was not in-network is false. In Respondent's Summary, she says:

> I have had confirmation from Dr. Kimball and his staff, Heidi Granada and Jackie Alcala (Deb Kelly previously) at Girard Orthopedic and Lori L. Imhof at MPMG/Scripps that the University Ambulatory Care Facility is "in-network" by MPMG/Scripps as it should have been initially since it was taken by Joyce Cook at SDPMG, both are under the umbrella of United Healthcare (UHC). University Surgery Center was in-network under UHC.

33. A representative of MPMG/Scripps promised to approve University Surgery Center. In Respondent's Summary, she says, "Lori L Imhof at MPMG/Scripps stated she would approve Scripps to use the University Surgery Center for Dr. Kimball to conduct this specific surgery, still need letter of authorization."

Testimony of Sheri Alvarado

34. As noted above, respondent filed a request for an administrative review with CalPERS, and in a letter dated July 21, 2022, CalPERS advised respondent that CalPERS upheld the UHC and Department of Managed Health Care decisions. CalPERS determined that those decisions appropriately denied benefit coverage.

35. Sheri Alvarado participated in the CalPERS administrative review, and she testified in the present proceeding. Ms. Alvarado has worked at CalPERS for 16 years. For the past 13 years she has been a research data specialist in the CalPERS Health Benefits Compliance and Appeals Unit. She assists members with issues concerning CalPERS health plans. She regularly reviews medical procedures, benefits, and evidence

of coverage. The CalPERS Health Benefits Compliance and Appeals Unit seeks to ensure that members receive the benefits to which they are entitled.

36. Regarding respondent's administrative review, Ms. Alvarado testified as follows: Ms. Alvarado gathered information from respondent and from her health plan. The CalPERS investigation resulted in a determination that the University Surgery Center was an out-of-service provider. The Evidence of Coverage for respondent's plan provides that services performed by an out-of-service provider are not covered unless authorized by UHC or the member's medical group. University Surgery Center is not an in-service provider for respondent's medical group, MPMG/Scripps. Neither UHC nor MPMG/Scripps authorized University Surgery Center services.

E-Mails Respondent Sent Concerning Respondent's Appeals

37. The following are excerpts from e-mails respondent sent concerning her appeals. Some of the e-mails are lengthy; some repeat matters stated in earlier e-mails. The following brief excerpts focus on facts and contentions concerning respondent's theories as to why her appeal should be granted.

38. Respondent sent an e-mail dated February 1, 2022, to the Department of Managed Health Care. She said the following: During two years, MPMG/Scripps referred respondent to three medical groups. Dr. Kimball practiced with the third referral, and he was the first doctor respondent felt was competent to repair her ACL. Because she had not felt confident in the doctors she saw before Dr. Kimball, she put off a repair for two years. Respondent said:

> MPMG/Scripps approved Dr. Kimball to do this surgery, and all was set until the day of my pre-op appointment when MPMG/Scripps argued about the location. Since I had

> waited so long to find a competent doctor and my knee was in immediate need of surgery along with my other knee getting worn out from overcompensating for the knee that needed surgery, there was no time to delay this already-scheduled procedure.

39. Respondent sent an e-mail dated February 23, 2022, to the Department of Managed Health Care. She said the following: She tried to get her ACL repaired for two years. She went through physical therapy while MPMG/Scripps referred her to different medical groups. She did not see a doctor from the first medical group because she left the office after sitting in the waiting room for three and one-half hours. She saw a few doctors from the second medical group to which MPMG/Scripps referred her. One doctor from that group was not confident in his assessment of how he would handle the surgery, so respondent opted to continue physical therapy. Physical therapy worked for a while. Respondent asked for a second opinion, and MPMG/Scripps referred her to Dr. Kimball's office. The day of respondent's pre-operation appointment at Dr. Kimball's office, there was an issue concerning the location of the surgery. In her e-mail, respondent wrote that she could not push the surgery off any longer due to the rise of COVID cases, the weakness of her right knee, the two years she had sought help, and arthritis setting in.

40. Respondent sent an e-mail dated April 12, 2022, to the Department of Managed Health Care. She said the following: She chose a doctor who was in a medical group to which UHC referred her. That doctor does not operate at Scripps. UHC should have known that.

41. Respondent sent an e-mail dated April 13, 2022, to the Department of Managed Health Care. She said the following: She followed all the insurance procedures while being referred to doctors who were not competent. She said:

> I kept following my insurance rules while my knee that did not need surgery overcompensated for my knee that did.
>
> [¶] . . . [¶]
>
> I finally found a competent doctor in the network, and this surgery could not be put off any longer, or I would have had to do surgery on both knees.

42. Respondent sent an e-mail dated May 24, 2022, to CalPERS Health Appeals. She said the following: Respondent went to a doctor to whom she was referred and who was in the network. UHC approved respondent's surgery. The doctor does not operate at Scripps; UHC should have known that. Respondent spent two years before she found a doctor; she followed all the policies and procedures concerning referrals. Before referring respondent to Dr. Kimball's office, UHC referred her to doctors who were not competent. Respondent was in physical therapy for two years while she tried to navigate the system. Dr. Kimball was competent enough to refuse to perform the surgery in a facility with outdated equipment. All the delay, from wasting time with poor referrals, was extremely costly and unnecessary.

43. Respondent sent an e-mail dated October 19, 2022, to the Department of Managed Health Care. She said the following:

> I contacted Lori L. Imhof at MPMG/Scripps who spoke with Deb Kelly in June from Girard Orthopedic (she has since

been replaced by Heidi Granada) to discuss the need for an authorization or referral request since the only two facilities Dr. Kimball uses are now accepted by Scripps for reasons I previously mentioned (outdated equipment, etc.)

> I have been working with Jackie Alcala and Deb Kelly at Girard Orthopedic Surgeons since my pre-op appointment when we were jumping through hoops to find the correct language with Russell at MPMG/Scripps . . . to rush this approved surgery through.

44. Respondent sent an e-mail dated August 28, 2023, to the Department of Managed Health Care. She said the following:

> I have confirmation from Dr. Kimball and his staff (Heidi and Jackie) at Girard Orthopedic and Lori at MPMG/Scripps that the University Ambulatory Care Facility is "in-network" by MPMG/Scripps as it should have been initially since it was taken by SDPMG, both are under the umbrella of United Healthcare (UHC).
>
> All that needs completed is a LOA[1] after-the-fact for University Surgery Center for MPMG/Scripps since this facility is accepted.

[1] Letter of Authorization.

This information has all been confirmed with Lori L. Imhof at MPMG/Scripps, Joyce Cook at SDPMG, Heidi Granada and Jackie Alcala at Girard Orthopedic (Dr. Kimball's office).

45. Respondent sent an e-mail dated October 9, 2023, to the San Diego State University Appeals Department. This e-mail does not contain new or additional information concerning respondent's grounds in support of her appeal except that she says, "we could not hold off any longer due to pain and potential complications."

Respondent's Testimony

46. Respondent testified as follows: For over two years she saw several doctors to whom she was referred. She said she went to many doctors in the San Diego Orthopaedic Associates group; none of them "owned" respondent's problem.

47. Respondent attended the pre-operation appointment on December 16, 2021. Dr. Kimball's office was under the impression UHC approved of University Surgery Center.

48. Respondent chose Parmela Sawhney as her primary care physician. She was with MPMG/Scripps.

49. Respondent did not receive authorization for surgery at University Surgery Center.

50. Dr. Kimball's office required respondent to pay in advance. Respondent's health care plan reimbursed her for Dr. Kimball's fees. Respondent seeks an additional reimbursement of $13,316.

Specific Factual Findings

51. Respondent was enrolled in the UHC health maintenance plan.

52. Respondent's network medical group was MPMG/Scripps.

53. UHC administers a few network medical groups. University Surgery Center is an in-service provider for certain network medical groups that UHC administers. But University Surgery Center is not an in-service provider for MPMG/Scripps.

54. Because MPMG/Scripps is respondent's network medical group, respondent has no right to benefits to pay for University Surgery Center services unless she obtains authorization for University Surgery Center services.

55. Neither UHC nor MPMG/Scripps authorized the use of the University Surgery Center.

56. Respondent failed to prove that her surgery was performed pursuant to an emergency. There was no evidence that any medical professional opined that respondent's surgery was performed pursuant to an emergency.

57. Respondent failed to prove that her surgery was performed as an urgent matter. There was no evidence that any medical professional opined that respondent's surgery was performed as an urgent matter.

58. Respondent's contention that, during the four days before the surgery, she believed the University Surgery Center would be approved, is not believable. Other than respondent's testimony and her assertions in her e-mails, there is no evidence that UHC, MPMG/Scripps, or anyone gave respondent reason to believe University

Surgery Center would be approved. On December 16, 2021, at the pre-operation appointment, Jackie told respondent that MPMG/Scripps was not authorizing use of University Surgery Center and that the surgery needed to be cancelled. When respondent and Dr. Kimball's staff talked with Russell at MPMG/Scripps, he told the staff to submit the request again, and he would expedite it. There was no evidence that he said the request would be approved. The evidence is that he would expedite the request, which meant he would cause it to receive prompt attention. When Jackie resubmitted the request, she wrote, "Notes: please approve University Surgery Center, Dr. Kimb. Status: Pending by System." Respondent says she was told she could have the surgery at University Surgery Center and apply for retroactive authorization of the facility. But Ms. Kelly of Dr. Kimball's office talked with respondent and said she could not get authorization by Monday, and perhaps University Surgery Center would not be approved at all. Respondent contends that Lori Imhof at MPMG/Scripps "basically said" they would approve a letter of authorization after the fact. But respondent did not say that under oath. Moreover, Ms. Kelly talked with Ms. Imhof, who said she was not responsible for approving the facility. On December 17, 2021, which was the Friday before the Monday surgery, Jackie told respondent that they needed to cancel the surgery because of the lack of authorization. Respondent insisted on going forward with the surgery and asked Jackie to get a quote for "a cash pay." Respondent chose to pay cash for the surgery and get reimbursed by her health care plan. Because the authorization for the facility was pending, Dr. Kimball's office required respondent to pay $19,131 in advance of the surgery. She paid that with credit cards. The evidence is overwhelming that respondent was not misled.

59. The evidence does not support any of respondent's grounds for appeal.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent has the burden of proving that she is entitled to benefit coverage for services performed at University Surgery Center. Evidence Code section 500 provides, in part, "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." Respondent appeals from CalPERS' determination that UHC acted appropriately when it denied respondent's request for benefit coverage.

2. The standard of proof is a preponderance of the evidence. (Evid. Code, § 500.)

Statutory Authority

3. CalPERS provides health plans to public employees. The program is governed by the Public Employees' Medical and Hospital Care Act (PEMHCA), commencing at Government Code section 22750. CalPERS is a state agency charged with administering the PEMHCA. The Act authorizes and requires CalPERS to provide health benefits for state employees and certain other persons.

Respondent's Health Plan

4. UHC is one of the health maintenance organization plans CalPERS offers. Respondent elected and was enrolled in UHC. That plan administers a few primary medical groups. Respondent selected MPMG/Scripps as her primary medical group. The UHC Evidence of Coverage concerns benefits and claims. Services rendered without authorization from a member's medical group or UHC are not covered, except

for emergency services or urgently needed services unless the services were by an in-service provider under MPMG/Scripps. This requirement of authorization is stated in a few places in the 2021 Evidence of Coverage.

5. The 2021 Evidence of Coverage, at page 7, provides in part: Except in an emergency or urgent care situation, if a member sees a health care provider other than the member's primary care physician, the costs will not be covered unless a referral or services was approved by the member's primary care physician, UHC, or the member's network medical group. At pages 49 through 50, the 2021 Evidence of Coverage provides, 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. At page 65, the 2021 Evidence of Coverage provides, in part: A member should always obtain care under the direction of UHC, the member's network medical group, or the member's primary care physician. Except for emergency or urgently needed services, if a member receives services not authorized by UHC or the member's network medical group, the member may be responsible for payment.

Credibility

6. Evidence Code section 780 sets forth factors to consider in determining the credibility of a witness: the demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness that are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given.

7. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co*. (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id*. at pp. 67-68, quoting *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

Hearsay

8. Counsel for CalPERS objected that much of what is contained in respondent's exhibits is hearsay. That objection was sustained. The hearsay statements are treated as hearsay.

9. Hearsay statements can be used for the purpose of supplementing or explaining other evidence but, over a hearsay objection, shall not be sufficient to support a finding of fact. (Gov. Code § 11513, subd. (d).)

Evaluation

10. It is undisputed that respondent was enrolled in the UHC health maintenance plan and that her network medical group was MPMG/Scripps.

11. Respondent failed to prove that University Surgery Center is an in-service provider for MPMG/Scripps. UHC, California Department of Managed Health Care, and CalPERS all determined that University Surgery Center was not an in-network provider for MPMG/Scripps. Ms. Alvarado worked on the CalPERS investigation regarding

respondent's appeal. Ms. Alvarado testified as follows: She gathered information from respondent and from respondent's health plan. The University Surgery Center was not an in-service provider under respondent's medical group, MPMG/Scripps.

12. The 2021 Evidence of Coverage provides that, unless a member needs emergency or urgent care, the cost of services will be covered only if provided by an in-service provider unless UHC or the member's medical group authorized a referral. The evidence is uncontroverted that neither UHC nor MPMG/Scripps authorized a referral for the University Surgery Center.

13. Respondent failed to prove that her surgery was performed pursuant to an emergency. There was no evidence that any medical professional opined that respondent's surgery was performed pursuant to an emergency.

14. Respondent failed to prove that her surgery was performed as an urgent matter. There was no evidence that any medical professional opined that respondent's surgery was performed as an urgent matter.

15. Respondent contends that UHC was at fault because, for two years, they referred respondent to physicians who were not competent to treat her condition. There was no evidence that UHC or MPMG/Scripps ever refused to refer respondent to an additional medical group. Indeed, it was respondent who chose to stay with the San Diego Orthopaedic Associates group despite her claim that she was dissatisfied with the doctors there. When she asked for a referral for a second opinion, MPMG/Scripps referred her to Dr. Kimball's office. There was no evidence that UHC or MPMG/Scripps caused a delay in respondent's surgery.

16. Respondent contends that, during the four days before the surgery, she came to understand that University Surgery Center would be approved. That

contention is not believable. Other than respondent's testimony and her assertions there is no evidence that UHC, MPMG/Scripps, or anyone gave respondent reason to believe University Surgery Center would be approved. At the pre-operation appointment, Jackie told respondent that MPMG/Scripps was not authorizing University Surgery Center and that the surgery needed to be cancelled. Russell, who is with MPMG/Scripps, told the staff to submit the request again, and he would expedite it; there is no evidence that he said it would be approved. Ms. Kelly talked with Ms. Imhof, who said she was not responsible for approving the facility. There is no evidence that Ms. Kelly had any reason or motive for falsely reporting what Ms. Imhof told her. On Friday, before the Monday surgery, Jackie, again, told respondent they needed to cancel the surgery because of the lack of authorization. Respondent, however, insisted on going forward. Dr. Kimball's office required respondent to pay $19,131 in advance of the surgery. She paid that with credit cards. The evidence is overwhelming that respondent was not misled.

17. Respondent contends that UHC was at fault because it should have known that Dr. Kimball did not perform arthroscopic knee surgery at Scripps Memorial Hospital. However, there was no evidence that a health maintenance plan or a network medical group has an obligation to know whether a doctor refuses to use a particular facility for a particular purpose.

18. Respondent contends that MPMG/Scripps was at fault for failing to authorize University Surgery Center because of MPMG/Scripps's "oversight." In Respondent's Summary, she says, "MPMG/Scripps could have done a [letter of authorization] after the fact for University Surgery Center *which MPMG/Scripps resolved their oversight through* by following their counterpart with SDPMG, both under the umbrella of UHC." (*Sic.*) (Italics added.) What respondent means by this is

unclear. There was no evidence that MPMG/Scripps committed an “oversight.” There was no evidence that MPMG/Scripps resolved an oversight “through by following their counterpart with the” San Diego Physicians Medical Group. (*Sic.*)

19. It is found and determined that respondent failed to prove that UHC did not act appropriately when it denied coverage for the cost of the facility.

ORDER

Respondent Tina D. Little’s appeal of CalPERS’s decision is denied.

DATE: February 22, 2024

Robert Walker
Robert Walker (Feb 22, 2024 08:33 PST)

ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On April 17, 2024, I served the foregoing document described as:

DECISION - In the Matter of the Appeal Regarding Denial of Benefit Coverage for Out-of-Network Services of TINA D. LITTLE, Respondent. Case No. 2022-0872; OAH No. 2023081002.

on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Tina D. Little

(Via Certified Mail, First Class Mail & Electronic Transmission)

Office of Administrative Hearings
Emerald Plaza
402 W. Broadway, Ste. 600
San Diego, CA 92101-8511

(Via OAH SECURE e-FILE)

[XX] BY CERTIFIED AND FIRST CLASS MAIL -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[XX] BY ELECTRONIC TRANSMISSION: I caused such document(s) to be sent to the addressee(es) at the electronic notification address(es) above. I did not receive within a reasonable time of transmission, any electronic message, or other indication that the transmission was unsuccessful.

[XX] BY ELECTRONIC FILING: I caused such documents to be e-Filed via OAH SECURE e-FILE.

Executed on April 17, 2024, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dejeune Johnson
NAME

Dejeune Johnson
SIGNATURE