

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Michael L. Caplan (Respondent) established membership with CalPERS through his employment as a lawyer with the California Department of Managed Health Care in January 2024. By virtue of his employment, Respondent is eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA). At all times relevant to this appeal, Respondent was enrolled in the PERS Gold Basic Plan (PERS Gold Plan), a Preferred Provider Organization (PPO).

CalPERS contracts with Anthem Blue Cross (Anthem) to administer PERS Gold medical claims. The PERS Gold Plan is administered under the terms and conditions of the 2024 CalPERS Gold Basic Explanation of Coverage (EOC). Respondent received a copy of the EOC. The EOC provides that members can see non-preferred providers under the PERS Gold Plan, but at a higher cost. It also details how a member should check whether a provider is preferred under the plan. He should (1) call his physician or provider to ask if he or she is a preferred provider and request their tax identification number (TIN); (2) call Anthem to verify the provider is a preferred provider at the location where services are rendered along with the provider's TIN; (3) visit Anthem's website; and/or (4) request a preferred provider directory.

The EOC cautions members that “[c]hanges 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 that any providers you are referred to are also Preferred Providers. Check the Anthem Blue Cross website, www.anthem.com/ca/calpers, and call Member Services at 1-877-737-7776 one week prior to your visit or procedure to confirm that the provider is a Preferred Provider.”

In January 2024, after he enrolled in the PERS Gold Plan, Respondent became aware that many of the medical providers he and his family wanted to see were not preferred providers in the PERS Gold Plan but would be preferred providers in the PERS Platinum Basic Plan (PERS Platinum Plan). He requested to Anthem that the providers he desired from the UCSD Medical Group (UCSD) and Scripps Medical Group (Scripps) be considered preferred providers under the PERS Gold Plan. He alleged that he had been given a “false impression” from Anthem's website that UCSD and Scripps were preferred providers under the PERS Gold Plan. Anthem denied his request on April 22, 2024, in accordance with the terms of the EOC, but approved many of the physicians Respondent wanted to see under continuity of care provisions and as an out-of-network referral.

In April 2024, Respondent requested CalPERS' administrative review. Respondent requested that the UCSD and Scripps providers he wanted to see be considered preferred providers under the PERS Gold Plan. Alternatively, he wanted to be enrolled in the PERS Platinum Plan without paying additional costs associated with the plan. On June 18, 2024, CalPERS upheld Anthem's decision that UCSD and Scripps cannot be considered preferred providers in accordance with the PERS Gold Plan EOC. CalPERS' determination letter noted that Respondent had been provided with inaccurate information

concerning two providers, so CalPERS offered Respondent a one-time exception to change health plans outside of the open enrollment period. Respondent refused that opportunity, stating in an e-mail to CalPERS that he wanted to switch to the PERS Platinum Plan at no additional cost or be allowed to use UCSD and Scripps providers for no additional charge.

Respondent appealed CalPERS' determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on September 9, 2024. Respondent represented himself at the hearing.

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

CalPERS presented the testimony of a Health Benefit Analyst who described the appeals process, the role of CalPERS as the administrator of various health care plans, the PERS Gold Plan EOC, the differences between the PERS Gold Plan and the PERS Platinum Plan, and the reasons why CalPERS upheld Anthem's denial of Respondent's request that all his UCSD and Scripps providers be treated as preferred providers under the PERS Gold Plan. CalPERS staff testified that the EOC for the PERS Gold Plan governs which benefits are payable. It cautions members to familiarize themselves with the information contained in the EOC and warns 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 steps a member should take to ensure he is using a preferred provider, including asking one's physician if she/he is a plan provider, requesting the provider's TIN, and verifying coverage with Anthem's Member Services, among other things. The EOC includes cautionary language informing members that changes frequently occur after provider directories are published and that a member should check coverage again one week prior to services. CalPERS staff also testified that Anthem has disclaimers on its website cautioning 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 listings change.

CalPERS also presented as evidence an e-mail from Respondent from January 2024, where he wrote to Anthem that he "would have gone with the platinum if it wouldn't have cost an additional \$800/mo for the family."

Respondent testified on his own behalf that he was entitled to have UCSD and Scripps providers be considered preferred providers under the PERS Gold Plan because of inaccuracies in Anthem's online provider directory. He testified he was pressured to decide about health care plans very quickly by his human resources person. He testified, without any corroborating support and without ever before making this argument, that he had called a few of his providers who inaccurately told him they were preferred under the PERS Gold Plan. He testified about his medical condition, his surgery, recovery from treatment, the birth of his third child, and his new job, all taking place in 2024. He argued that the principles of promissory estoppel, equitable estoppel, and public policy required that his appeal be granted.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent was unable to establish the estoppel requirements. There was no evidence that CalPERS or Anthem was aware of any website inaccuracies. Anthem specifically cautioned website users not to rely on the information because 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 members should do to confirm coverage. The ALJ found there was no evidence that CalPERS or Anthem intended Respondent to rely on the inaccurate information. In fact, Anthem cautioned website users about the inaccuracy of the information listed on the website. Respondent could not claim he was unaware that the website may contain inaccuracies.

In the Proposed Decision, the ALJ found that CalPERS correctly pointed out Anthem's mistakes on the website and that is why it offered Respondent the opportunity to switch plans. The ALJ agreed with CalPERS that it is Respondent's responsibility to verify that his providers are contracted with the PERS Platinum. Had Respondent conducted this inquiry, he would have learned that his providers were not part of the PERS Gold Plan. In addition, the ALJ found that the reason Respondent did not accept CalPERS' offer to change plans was because he did not want to pay increased costs, as evidenced by his January 2024 email. Allowing Respondent to switch plans to the PERS Platinum Plan at no cost would give him a benefit to which he is not entitled. The ALJ denied Respondent's appeal and found no public policy reason to reach a different result.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends deleting the redundant "to ensure" in paragraph 15 on page 6; and replacing "599.99" with "599.500" in paragraphs 3 and 4 on page 10.

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

November 20, 2024

Lee Bickley
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