

ATTACHMENT B

STAFF'S ARGUMENT

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

Victor Wanek (Respondent) established membership with CalPERS through his employment with the Los Angeles Police Department for 25 years, and as a state Police Officer for 8 years. By virtue of his employment, Respondent was at all times 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 Platinum Basic Plan (PERS Platinum) Preferred Provider Organization (PPO) health care plan offered by CalPERS under PEMHCA.

On June 28, 2022, Respondent fell in his home and suffered a subacute right subdural hematoma. Respondent, who was in his nineties, was hospitalized for several weeks during which time he contracted COVID-19. After his recovery from COVID-19, Respondent was admitted to a Skilled Nursing Facility (SNF) on July 19, 2022. Anthem approved his stay and agreed to provide insurance coverage for his SNF costs through August 15, 2022.

At the SNF, Respondent received physical, occupational, and speech therapies. Relevant medical records of Respondent's stay through August 15, 2022, note:

8/2/2022: Respondent required maximum assistance with hygiene, partial/moderate assistance with lower body dressing, partial/moderate assistance with toilet transfer, and maximum assistance with toileting hygiene.

8/3/2022: Respondent was unmotivated to participate in therapy and refused further therapeutic exercise.

8/4/2022: Respondent participated in upper extremity exercises but refused to participate in standing exercises.

8/5/2022: Respondent required minimal/supervision assistance for functional mobility and activities of daily living. Respondent refused to get dressed and insisted on staying in bed.

8/8/2022: Respondent was able to ambulate 200 feet back and forth in a front wheeled walker. Respondent demonstrated good balance overall and appeared short of breath after each lap.

8/15/2022: Respondent required maximum assistance with lower body dressing and toileting. It was also noted Respondent's assistance levels for lower body dressing, perineal hygiene, and lower body dressing were unchanged from reported August 2 and August 8, 2022, dates of service.

There was also no change in supervision for the level of care for bed mobility.

Additional reports from Respondent's therapists indicate Respondent continued to receive speech, occupational and physical therapy between August 9 and 12, 2022. Respondent's speech and occupational therapists noted Respondent demonstrated potential for rehabilitation, but maximum improvement had yet to be attained. Respondent's physical therapist noted his consistent progress toward reaching his goals, but there was no change in his progress between August 2 and 15, 2022.

Prior to August 17, 2022, Respondent requested coverage for an additional seven days at the SNF, for coverage from August 16 to August 22, 2022. In the end, Respondent stayed at the SNF from August 16 until September 19, 2022.

On August 17, 2022, Anthem denied Respondent's request to stay at the SNF past August 15, 2022, based on the absence of medical necessity as defined in the EOC. Anthem found Respondent's skilled services could be managed at a lower level of care. He could move about with light help, and Anthem determined there was no reason Respondent could not receive speech, occupational and physical therapies on an outpatient basis or at a custodial facility.

On August 19, 2022, Respondent requested an urgent appeal review of Anthem's denial. On September 22, 2022, Anthem denied Respondent's coverage request. Anthem again found an extension of Respondent's stay at the SNF was not medically necessary because his care needs could be met in another place, such as his home with support, or a custodial facility.

Relevant medical records of Respondent's post-August 16, 2022, stay indicate he was alert and oriented and continued to receive physical therapy, occupational therapy and speech therapy. On September 19, 2022, Respondent moved to an assisted living facility where he continued to receive therapy on an outpatient basis.

On November 21, 2022, Respondent requested that CalPERS arrange a review of Respondent's request for coverage and Anthem's denial. CalPERS referred the matter to Advanced Medical Reviews (AMR), where a board-certified reviewer found his continued stay at an SNF to be medically unnecessary under the PERS Platinum policy.

On January 10, 2023, CalPERS informed Respondent of AMR's findings. In response, on January 16, 2023, Respondent requested a CalPERS administrative review of his request for extended SNF services and Anthem's coverage denial.

CalPERS referred the matter to National Medical Reviews Inc. (NMR) for an independent review. NMR upheld the denial of Respondent's claim stating:

In this case, the member was initially admitted for weakness status post fall. He has been undergoing physical therapy, occupational therapy and

speech therapy in a skilled nursing facility environment. The request is for ongoing stay at the skilled nursing facility between 8/16/2022 and 9/19/2022; however, there are no recent physician progress notes, no abnormal objective examination findings, no acute medical issues, and no evidence why the member cannot participate in the lower level of care, such as outpatient physical therapy or occupational therapy.

Given the nature of this member's clinical issues, the ongoing stay at the skilled nursing facility between 8/16/2022 and 9/19/2022 is considered not medically necessary.

On March 30, 2023, CalPERS denied Respondent's coverage request. Specifically, CalPERS noted: (1) the skilled nursing services were not medically necessary because they were not for the continued treatment of any injury or illness and the services could be provided at a lower level facility; and (2) the PERS Platinum plan did not provide coverage for services not considered medically necessary.

On April 8, 2024, Respondent passed away. Respondent's representative, his son John Wanek (J.W.), was authorized to act on Respondent's behalf in the matter pursuant to California Probate Code section 13051. J.W. appealed this 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 16, 2024, at which J.W. represented Respondent. Sandra Wanek, Respondent's wife, was also present at the hearing and agreed that J.W. was authorized to act on Respondent's behalf.

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

CalPERS presented the testimony of a board-certified reviewer at NMR, who described her review of Respondent's medical records. She explained that skilled nursing care is medically necessary under the following circumstances: if a patient required daily skilled nursing services such as complex wound care, intravenous fluid infusions, or diabetic care; or if a patient needed skilled inpatient services only provided by SNFs. Based on her review of the medical records, she found Respondent did not meet these criteria and therefore an extended SNF stay was not medically necessary. She noted that Respondent's records contain no clinician notes justifying an extended stay, the nursing notes did not indicate an extended stay was required, in part because the notes did not indicate Respondent had any significant active medical issues. Therefore, the NMR reviewer believed Respondent could have progressed at a lower level of care by receiving outpatient therapy while in his home, in a custodial facility, or in an assisted living facility.

Respondent's son acknowledged that the medical records were incomplete, and that Respondent continued to receive physical, occupational, and speech therapies after his discharge from the SNF. However, Respondent's son testified the medical reviewers

failed to acknowledge Respondent could not go home from the SNF because his 86-year-old wife could not care for him. Further, during Respondent's stay at the SNF, Respondent was treated for chronic prostatic hypertrophy and resolution of appropriate treatment had not been determined as of August 15, 2022. Respondent's son acknowledged the chronic prostatic hypertrophy condition was not noted in the medical records. Respondent's son also testified that Respondent needed more extensive and sustained therapy for his COVID-19 infection.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proof to show that his benefits claim was within the scope of coverage provided by the 2022 PERS Platinum health plan, and Respondent failed to meet his burden. The ALJ reviewed the Evidence of Coverage (EOC) which governs the benefits payable. To receive reimbursement, the service in question must be a covered benefit and medically necessary. Whether a service is medically necessary is defined in the EOC as services provided to an insured for preventing, evaluating, diagnosing, or treating an illness, injury or disease or its symptoms, and which are (i) provided in accordance with medical standards, (ii) clinically appropriate and effective, (iii) not primarily for the convenience of an insured or the physician or other health care provider, and (iv) not more costly than an alternative service at least as likely to produce equivalent therapeutic or diagnostic results. Services can be deemed not to be medically necessary even though they are beneficial to the patient and recommended by the patient's caregiver. Additionally, services that can be safely provided in a lower level of care or lower cost setting/place of care are not medically necessary if they are given in a higher level of care or higher cost setting/place of care. Moreover, to be eligible for covered rehabilitative care, there must be an expectation that the patient has restorative potential and will realize significant improvement in a reasonable length of time.

The ALJ found that Respondent failed to prove extended care at the SNF was medically necessary. Respondent's coverage request was formally reviewed by four different doctors, and each of those reviewers found the medical records failed to show continued SNF care was medically necessary as defined in the PERS Platinum policy EOC. The medical records did not indicate Respondent suffered from a condition requiring skilled nursing services or that the services provided at the SNF could not be replicated at a lower-level facility. As Respondent's son acknowledged, Respondent's chronic prostatic hypertrophy was not noted in the medical records, and there was no determination that such a condition would require continued skilled care. There was no evidence Respondent's abilities were markedly improved during his approved stay at the SNF, and no evidence the therapies could not have been provided in a less costly manner at home, on an out-patient basis, at a custodial facility or at an assisted living facility as the PERS Platinum policy requires. To the contrary, the ALJ found the evidence showed Respondent received physical, occupational and speech therapies while he was at an assisted living facility and he continued to benefit from those therapies.

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 that the year “2024” be replaced with the year “2022” in paragraph 19, page 15.

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

January 13, 2025

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