

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

CalPERS provides medical benefits to its members through the CalPERS Health Program, which is governed by the Public Employees' Medical and Hospital Care Act (PEMHCA). (California Government Code § 22750, et seq., 2 Cal. Code Regs. § 599.500 et seq.)

PEMHCA grants CalPERS the authority to contract with Health Care Administrators to provide health benefits to members. (Government Code § 22793.) CalPERS contracts with Anthem Blue Cross (Anthem) to offer PERS Select, a Preferred Provider Organization (PPO) health plan. Anthem administers the PERS Select plan pursuant to the PERS Select Evidence of Coverage Booklet (EOC). The EOC is a contract between CalPERS and its members, setting forth the sole and exclusive provisions by which Anthem is authorized to provide benefits to PERS Select members.

Relevant to this proceeding, Marla Young (Respondent Marla Young) is an employee of the State of California and a member of PERS Select. Her husband Derrick Young (Respondent Derrick Young) is enrolled in PERS Select as a spouse/dependent. In January 2020, Respondent Derrick Young received a knee injection from Dr. Shahriar Pirouz at the Galileo Surgery Center (Galileo). Dr. Pirouz is a preferred provider under the terms and conditions of the PERS Select EOC. Galileo is an Ambulatory Surgery Center (ASC) that is not a preferred provider under the PERS Select EOC. Respondent Derrick Young previously received a spinal injection at Galileo in September 2019. Respondent Marla Young contacted Anthem before the spinal injection and received confirmation from Anthem that Galileo was not a preferred provider. Anthem informed Respondent Marla Young during that call that under the terms of the PERS Select EOC, Anthem would only pay \$350 to Galileo for any services provided there.

In February 2020, Anthem issued payment for Respondent Derrick Young's knee injection. Anthem paid Dr. Pirouz at the preferred provider rate under the PERS Select EOC, and remitted payment of \$350 to Galileo. Respondent Marla Young appealed Anthem's determination, arguing that additional payment should be issued to Galileo. Anthem issued a subsequent determination affirming the propriety of its \$350 payment to Galileo under the terms of the PERS Select EOC. CalPERS conducted a third level of review and affirmed Anthem's determination on grounds that Galileo was not a preferred provider.

Respondents Marla L. Young and Derrick A. Young appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 03, 2021. Respondents represented themselves at the hearing.

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

At the hearing, a CalPERS analyst testified and explained that the PERS Select EOC sets forth the health benefits available to plan members. Pursuant to the EOC, Anthem enters into contracts with hospitals and physicians, known as "Preferred Providers," who have agreed to accept what is known as the "Allowable Amount" as payment in full for services performed on behalf of PERS Select members. A PERS Select member may elect to receive medical services performed by "Non-Preferred Providers," meaning providers who do not contract with Anthem. However, Non-Preferred Providers are not subject to the Allowable Amount maximum under the PERS Select EOC. This means that Anthem will pay a percentage of the Allowable Amount to a Non-Preferred Provider for services provided to a PERS Select member, but that the member can be charged for and may be responsible for any amounts above the Allowable Amount that may be billed by a Non-Preferred Provider.

Pursuant to the terms of the PERS Select EOC, for non-emergency services, Anthem will pay 80 percent of the Allowable Amount for services performed by a Preferred Provider, subject to a member's Out of Pocket Maximum. Once the member reaches that maximum, Anthem will pay Preferred Providers 100 percent of the Allowable Amount. For Non-Preferred Providers, Anthem agrees to pay 60 percent of the Allowable Amount. However, with respect to services performed at non-preferred ASCs like Galileo, the CalPERS analyst explained that the maximum that Anthem is authorized to pay under the PERS Select EOC is \$350, as it did with respect to the knee injection Respondent Derrick Young received in January 2020.

At the hearing, Respondent Derrick Young testified that the first injection he received at Galileo in September 2019 "was covered," and that Galileo had two ASC locations but "because of COVID, they closed the Atascadero" office. He also testified that his provider told him the Galileo facility was "covered," implying that it was a preferred provider under the PERS Select EOC.

Respondent Marla Young testified at the hearing that the Galileo services "should be covered" because the physician who administered the injection is a preferred provider. Respondent Marla Young did not recall where Respondent Derrick Young received the September 2019 injection, but then responded "Yes" when asked if that facility had been closed due to COVID.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied the appeal. The ALJ found that it was Respondents' responsibility to verify that Galileo was a preferred provider. Even though the physician was a preferred provider, the ALJ confirmed that the evidence established Galileo was not a preferred provider. Additionally, the ALJ noted that Respondent Marla Young called before the

September 2019 procedure and confirmed that Galileo was not a preferred provider. The ALJ noted there was no evidence that Respondent Marla Young called again to confirm Galileo's status had not changed. Additionally, the ALJ held that Respondent Derrick Young's testimony was "unconvincing," including specifically his testimony that one of Galileo's facilities was shut down in January 2020 "because of COVID," as no COVID-related shutdowns were in place in the United States at that time. The ALJ noted that Marla Young's testimony was also not credible, in part because the Court could hear Respondent Derrick Young coaching Respondent Marla Young's testimony in the background of the phone call. For the foregoing reasons, the ALJ denied the appeal filed by Respondents Marla Young and Derrick Young.

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

July 14, 2021

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Senior Attorney