

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

**In the Matter of the Appeal of the Denial of  
PatrickXavierPT LLC as an Eligible Home Health Agency and  
Patrick Matibag as an Eligible Independent Provider for:**

**VAHE H. SIMONIAN, Respondent.**

**Agency Case No. 2022-0093**

**OAH No. 2022050386**

**PROPOSED DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on September 19 and November 10, 2022, by videoconference.

California Public Employees' Retirement System (CalPERS) was represented by Senior Attorney Charles H. Glauberman at hearing, and by Assistant Chief Counsel Elizabeth Yelland in post-hearing briefing.

Attorney Stephen Acker represented respondent Vahe H. Simonian, who was present for a portion of the hearing.

The record was held open for the submission of briefs. The closing brief and response brief of CalPERS were marked for identification as Exhibits 40 and 41. The closing brief and response brief of respondent were marked for identification as Exhibits WW and XX.

The record closed and the matter was submitted on February 10, 2023.

## **ISSUES**

Did CalPERS err in its determinations:

(1) to deny respondent's request to approve PatrickXavierPT, LLC as an eligible Home Health Agency and Patrick Matibag as an eligible Independent Provider of services after March 12, 2020; and

(2) to deny respondent's request for reimbursement for services provided to him by PatrickXavierPT, LLC or Patrick Matibag after March 12, 2020?

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. The Public Employees' Long-Term Care Act established a voluntary insurance program for long-term care for public employees, retirees, and qualified family members. (Gov. Code, §§ 21660–21664.) The CalPERS Board of Administration (Board) administers the Long-Term Care Program (LTC Program) through a third-party administrator, Long Term Care Group, Inc. (LTCG).

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2. Respondent Vahe H. Simonian has a CalPERS long-term care insurance policy administered by LTCG. The terms and conditions for respondent's benefits are set forth in the 2000 CalPERS Comprehensive Plan's Evidence of Coverage (EOC).

3. Respondent was 94 years old at the time of hearing. In the past 10 years, he has needed increasing assistance with activities of daily living such as bathing, dressing, toileting, continence, and transferring.

4. Since 2011 or 2012, respondent has received in-home care services from Patrick Matibag. Some services are covered by the LTC Program (assistance with activities of daily living), and some are not (exercises and personal training, driving, helping with computer tasks). Matibag owns a company called PatrickXavierPT, LLC (PXPT), doing business as True Care Homecare, which is a home care organization licensed by the Department of Social Services since August 25, 2016. Since about 2016, services have been provided by Matibag and other caregivers with his company, PXPT.

5. In 2017, respondent was found eligible for long-term care services and LTCG approved PXPT as the home care agency to provide services assisting respondent with activities of daily living. Respondent was reassessed in September 2019 and LTCG found that he continued to be eligible for long-term care services with PXPT as an approved provider.

6. In the fall of 2019, LTCG sought verification and supporting information for the caregiver documentation PXPT submitted. After reviewing this information, LTCG determined that PXPT was no longer an approved provider under the EOC.

7. On February 12, 2020, LTCG informed respondent that PXPT was no longer an approved provider, and explained the reasons for this determination.

Respondent was given 30 days to put eligible services in place, and was sent a list of approved home health agencies in his area.

8. Respondent sought reconsideration from LTCG, but did not provide any additional supporting information. LTCG denied the request. LTCG subsequently informed respondent his claim would be closed because he did not have approved services in place and was not incurring covered expenses.

9. Through counsel, respondent again requested reconsideration of the determination that PXPT was no longer an approved provider. Respondent also submitted a new request for benefits.

10. On February 15, 2021, LTCG sent respondent a letter stating the LTC Program had reviewed the provider's eligibility and determined that PXPT was not an approved provider. LTCG again sent respondent a list of approved providers in his area.

11. LTCG also opened a new claim in response to respondent's new request for benefits. On February 23, 2021, LTCG sent respondent a letter informing him that he was eligible for long-term care benefits, and providing a plan of care. The letter and plan of care summary again told respondent that PXPT was not an approved provider of services, and informed respondent he needed to have eligible services in place by April 8, 2021, or his claim would be closed.

12. Respondent requested reconsideration from LTCG, which was denied.

13. Respondent then submitted a second-level appeal to CalPERS.

14. On September 14, 2021, the CalPERS LTC Program notified respondent that it had reviewed the matter and determined that LTCG appropriately denied

approval of PXPT as an approved home health agency and Matibag as an Independent Provider under the EOC. The letter explained the reasons for upholding LTCCG's denial, and advised respondent of his right to request an administrative hearing.

15. Respondent requested an administrative hearing on November 4, 2021.

16. On April 27, 2022, Kim Malm, Chief of the Strategic Health Operations Division for CalPERS, signed a Statement of Issues in this matter. This hearing followed.

### **Terms of the EOC**

17. The EOC governing respondent's long-term care policy defines "Home Health Care Services" to include "home health aide services provided by a Home Health Agency." This is the type of services at issue in this matter.

18. The EOC defines "Home Health Agency" as "an entity that is regularly engaged in providing Home Health Care Services for compensation and whose personnel are qualified by training and/or experience to provide care. The entity must have the appropriate state licensure or certification, where required. The entity must be bonded and/or hold appropriate liability insurance and provide ongoing supervision and training to its employees appropriate to the services to be provided."

19. Under the EOC, there are three components for reimbursement.

First, to be eligible for reimbursement, the covered person must be a "chronically ill individual" who is unable to perform at least two activities of daily living or has a severe cognitive impairment. Respondent met this requirement.

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Second, the covered person must receive qualified long-term care services, pursuant to a plan of care, from an eligible provider. LTCG initially approved PXPT, but after a later review, determined PXPT was not an eligible provider.

Third, the covered person must incur covered expenses and timely submit a request for reimbursement. LTCG found that the documentation for respondent's reimbursement requests was deficient in various ways, as described below, and was not able to reconcile the discrepancies.

### **LTCG's Review of Provider Eligibility and Respondent's Appeal**

20. Angela Forsell, vice president of clinical services for LTCG, testified at hearing. Her testimony was credible and persuasive. Forsell participated in the review and determination of respondent's eligibility and that of PXPT and Matibag, and reviewed all of the claim's supporting documentation. At hearing she explained the reasons for LTCG's decisions in the review, reconsideration, and appeal processes. In summary, respondent meets the personal eligibility requirements for coverage. However, LTCG determined that the caregiver documentation was insufficient to credibly establish the services provided, caregivers used, and expenses incurred.

21. On August 16, 2017, LTCG sent respondent a letter informing him that he qualified for long-term care benefits due to a loss of functional capacity in at least two activities of daily living. The attached plan of care listed PXPT as the approved provider of home and community-based care services to assist respondent with activities of daily living. The information provided about the claims approval process stated that respondent would be reimbursed for covered services only to the extent they are included in the approved plan of care, and that respondent must communicate any changes in the services provided or the providers caring for him. Respondent was also

notified that the home care agency must provide proof of licensure; that respondent or the provider must submit documentation including the provider's bills or invoices and daily visit notes showing the services being provided each day; and that the caregiver documentation was subject to verification to ensure accuracy.

22. On September 5, 2019, a nurse contracted by LTCG performed an in-home assessment of respondent as part of the regular process to confirm ongoing eligibility for long-term care services. On that day, Jan Concepcion was present at respondent's home as the caregiver through PXPT. Matibag was not present.

23. On September 19, 2019, LTCG sent respondent a letter informing him that after the reassessment, respondent continued to be eligible for covered long-term care services. Again, LTCG attached a plan of care with PXPT as the approved provider to assist respondent with activities of daily living, and provided information about the claims submission and approval process. LTCG's letter stated that in order to receive reimbursement:

[A] caregiver timesheet or detailed invoice and daily visit notes (DVN's) must be submitted by you or your caregiver for all dates of service. This required documentation must be completed at the time care is provided, and be signed and dated by both your caregiver and you or your legal representative. The signatures attest to the accuracy of the information. A new timesheet must be completed for each week of care. Timesheets and DVN's should be completed accurately each day, reflecting all services provided and specific hours and days worked. Your timesheets and DVN's should not be copied from one day to another.



24. In October 2019, LTCG began re-evaluating the eligibility of PXPT as an approved provider. LTCG had been told that Matibag was the only caregiver providing in-home services to respondent. At the nurse's in-home assessment on September 5, Matibag was not present and a different caregiver (Concepcion) was present. As Forsell explained in her testimony, the EOC requires that the agency must be licensed by the State of California as a home health care agency or home health care organization. The agency's caregiver employees must be registered as home health care aides. Each caregiver must provide daily documentation of the services provided.

25. LTCG requested supporting documentation from PXPT from August to November 2019, to confirm if the presence of another caregiver on the September 5 assessment date was an aberration. Forsell explained that if an alternate caregiver such as Concepcion works for the approved provider PXPT, those services would be reimbursable. However, in order to approve reimbursement, LTCG must confirm that the caregiver is the agency's employee and is a registered home health aide, and the caregiver must complete a daily visit note to document services provided each day.

26. On November 8, 2019, LTCG sent PXPT a letter stating that the CalPERS LTC Program was reviewing the supporting documentation for services provided to respondent and the billing for those services. LTCG requested that PXPT provide the following supporting documentation for the period of August 1 to November 6, 2019:

- payroll records or statements showing the categories of pay period, hours worked, and dollars paid related to respondent;
- a copy of the account ledger listing billed and paid amounts for respondent;
- all on-site assessments conducted in the last six months for respondent;

- the caregiver's scheduled hours;
- a written statement created, signed, and dated by the caregiver describing services provided to respondent during the above time period; and
- a copy of the service agreement between PXPT and respondent listing the contracted rate.

27. In November 2019, PXPT submitted the following documentation to LTCCG in response to the above requests:

- checks from respondent that were made out to Patrick Matibag personally (rather than PXPT);
- unsigned daily visit notes listing Matibag as the only PXPT caregiver for respondent;
- invoices from PXPT to respondent for "caregiving services";
- a narrative statement signed by Matibag on November 19, 2019, stating that his regular schedule was Monday, Tuesday, and Wednesday from 8:00 a.m. to 3:00 p.m. (including one hour of travel), and sometimes Thursday and Saturday; and describing services he provided to respondent on those days;
- notes from a PXPT staff person named Anne reflecting her telephone conversation with Heather France of LTCCG on November 20, 2019, stating: payroll records for Matibag were not available because he does not submit timesheets; Matibag has "a different monetary agreement" with respondent and has an "independent contract" with respondent; and that respondent pays for more than the items covered by long-term care insurance;

- PXPT's home care organization license from the Department of Social Services; and
- an undated home care agreement between respondent and PXPT (signed by Matibag as owner), providing for personal care services three days per week at a rate of \$500 per day for eight hours including travel time.

28. An LTCG investigator had multiple telephone conversations with PXPT staff person Anne in October, November, and December 2019, regarding the requested documentation. The investigator also tried to reach respondent's son by telephone for clarification, without response, and made multiple attempts to discuss the caregiver and billing discrepancies with respondent and/or his wife by telephone.

On January 27, 2020, an LTCG investigator called respondent's home and spoke with both respondent and Matibag. Respondent seemed confused during that conversation and was unable to explain the discrepancy between the amounts billed and paid. Matibag then told the investigator he had "a different arrangement" with respondent for payment and he was hired as an independent caregiver. Matibag also stated that a person named Carlos provided care to respondent when needed.

Respondent's wife also confirmed in a telephone call on February 6, 2020, that respondent received care from other PXPT caregivers besides Matibag, but did not know their names.

29. In March 2020, PXPT provided some payroll records for Matibag from 2019, but these also contained irregularities. The employee earning reports and paystubs for Matibag did not contain check numbers (the space for check numbers stated "ADJ" on the earning reports and were blanks on the paystubs). Moreover, in November 2019, PXPT told LTCG there were no payroll records for Matibag, leading to

a suspicion that the subsequently provided records were not contemporaneous. Further, LTCG requested all payroll records related to respondent's care, but only these records for Matibag were submitted, despite the presence of other caregivers.

30. At hearing, Forsell explained why the documentation received from PXPT was insufficient to resolve LTCG's concerns.

- PXPT was the approved provider, and the entity sending invoices, but respondent's checks were made out to Matibag personally.
- The amounts on the checks do not reconcile with the invoices for the same period of time, and there was no explanation why respondent's payments were more than the invoiced amounts. In addition, the invoices bill for \$200 per day, rather than the \$500 per day stated in the undated home care agreement. Forsell prepared a spreadsheet trying to reconcile the invoices against payments made for June through September 2019, and found that PXPT's invoices totaled \$16,000 but respondent's checks totaled \$26,500.
- The invoices from PXPT listed "caregiving services" but contain no details for the care provided on each day. Matibag's written narrative is a general summary of the overall services he provided during this time period. It does not substitute for the requirement of daily visit notes documenting specific services provided each day. The daily visit notes provided were simply duplicates of each other, and appeared to have "white-out" applied over the dates. Forsell testified (consistent with LTCG's September 19, 2019 letter) that daily visit notes must be completed on a daily basis and show the care provided for each day, rather than being copied from day to day.

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- Matibag was not the only caregiver providing services to respondent, but this was not reflected in the daily visit notes for that period, which only listed Matibag. On September 5, 2019, Concepcion was present to provide caregiving services at respondent's home and Matibag was not. However, the daily visit notes for September 2, 3, and 4 showed Matibag as the caregiver, and there is no daily visit note at all for September 5. Nor did the invoice from PXPT list a charge for services on September 5, 2019.
- LTCG never received proof that any of the caregivers employed by PXPT were registered home health care aides.

31. LTCG sent respondent a letter on February 12, 2020, informing him that PXPT was no longer an approved provider. LTCG explained it had reviewed the documentation submitted by PXPT to determine if it substantiated the eligible services received by respondent, the expenses he incurred, and that the agency meets requirements as a provider. LTCG explained the reasons that it found PXPT was no longer an eligible provider:

- Documentation such as daily care notes showed Matibag as the caregiver, and PXPT's staff person confirmed that Matibag was not an employee of PXPT, but was providing services to respondent as an Independent Provider and was paid directly by respondent.
- No payroll documentation was received from PXPT as requested, for Matibag or any PXPT employee for caregiving services to respondent.
- There was a significant discrepancy between the reported hours of care and the billed hours of care.

- No documentation was submitted showing that respondent received services from anyone other than Matibag, despite reporting that his direct caregiver was someone other than Matibag.
- An in-home assessment was conducted on September 5, 2019, showing that Concepcion was providing care, but there are no daily visit notes or other records to substantiate this, and Matibag was not present.
- The PXPT invoices charged respondent \$200 per day, but his home care agreement with PXPT stated he would be charged \$500 per day.
- The canceled checks from respondent showed he was making payments to Matibag personally, rather than to PXPT.
- The amounts paid by respondent to Matibag were substantially greater than the billed amounts on the PXPT invoices. The "other services" reportedly provided by Matibag were not further described.
- Matibag stated that other caregivers provide services when he is unavailable, but there is no record or documentation for other caregivers.

The letter noted that when LTCG approved respondent's claim for benefits, it had been informed that respondent would be receiving services from PXPT through its employees. PXPT was then approved as a home care agency by LTCG. However, the documentation submitted by PXPT showed that respondent was receiving services from Matibag as an Independent Provider, and was paying him directly. LTCG told respondent that if he wanted LTCG to consider approving Matibag as an Independent Provider, he needed to contact customer service to make that request.

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In this letter, LTCG gave respondent 30 days to transition his care to an eligible provider, or his claim would be closed. During the 30-day period, LTCG would only cover eligible services provided by employees of PXPT for amounts charged by PXPT consistent with rates charged for similar services to other clients of the agency. LTCG stated it would send respondent a list of eligible providers in his area.

32. On February 13, 2020, LTCG sent respondent a list of four approved providers in his area, noting that he was not required to select one of those agencies, but that he should contact LTCG after choosing a provider for long-term care services so that the provider's eligibility could be confirmed.

33. Respondent submitted a reconsideration request on April 3, 2020, regarding the denial of PXPT as an eligible provider. Respondent stated that he was collecting supporting documentation to be submitted later.

34. On May 28, 2020, LTCG denied reconsideration and upheld its decision. LTCG stated that it had not received any additional documentation from respondent, and that it would close the reconsideration request by June 3 if nothing was received.

35. On September 24, 2020, LTCG informed respondent that his claim was closed (effective March 14, 2020) because he did not have approved services in place and was not incurring covered expenses.

36. Respondent's counsel again requested reconsideration of the determination that PXPT was no longer an approved provider. Respondent also submitted a new request for benefits.

37. On February 15, 2021, LTCG sent respondent a letter stating again that PXPT was not approved as a provider, and reiterating the timeline of events. LTCG

included a list of eligible providers in respondent's area. LTCG also advised respondent that it had opened a new claim in response to respondent's request received on December 22, 2020, which was being reviewed.

38. On February 23, 2021, LTCG sent respondent a letter regarding the new claim, informing him that he was eligible for long-term care benefits, and providing a plan of care. The letter and plan of care summary again told respondent that PXPT was not an approved provider of services.

39. On April 6, 2021, respondent's counsel requested reconsideration of the denial of PXPT as an approved provider. He provided copies of PXPT's license from the Department of Social Services, articles of organization, statement of information, and listings for the agency from the Secretary of State and Better Business Bureau. Respondent did not otherwise address the reasons for denial given by LTCG.

40. LTCG denied reconsideration on May 13, 2021, and upheld its decision.

41. Respondent's counsel then submitted a second-level appeal, in a letter dated July 9, 2021. Respondent provided invoices from PXPT (billing for "caregiving services" at \$200 per day). He also provided daily visit notes for several caregivers (Matibag, Concepcion, and Andrian and/or Ian Garcia). A few of these documents were for early 2020, prior to LTCG's denial. Most were for later in 2020 or 2021.

42. On September 14, 2021, CalPERS LTC Program notified respondent that it had reviewed the matter and determined that LTCG appropriately denied approval of PXPT as an approved home health agency and Matibag as an Independent Provider under the EOC, due to the discrepancies in the documentation provided. CalPERS noted that the EOC does not allow reimbursement for unapproved providers. The letter advised respondent of his right to request an administrative hearing.



43. Sheri Alvarado, research data specialist for CalPERS, testified credibly at hearing. She explained that the role of CalPERS in the appeal process is to ensure that LTCG processed the member's appeal in accordance with the EOC. CalPERS reviewed all documents that LTCG reviewed in the initial appeal and reconsideration. CalPERS determined that LTCG's decision was appropriate, and issued the September 14, 2021 letter upholding the denial. Alvarado was part of the CalPERS review process with her manager Dennis De Vore, who was the signatory on the letter.

### **Respondent's Additional Evidence**

44. Matibag testified at hearing. Matibag personally provided care to respondent, and after he formed PXPT, some of his employees also provided care to respondent. Matibag and PXPT have continued to provide care to respondent after LTCG's denial of respondent's reimbursement requests.

45. Matibag reports that when PXPT was requested to provide information about invoices, services, and its employees who provided care to respondent, his office staff responded. He did not recall specifics of what was provided.

46. At hearing, Matibag discussed several payroll documents from PXPT or True Care Homecare: for Concepcion in October to December 2019, and for John Calma in May 2020. It was not clear when or whether these payroll documents had been provided to LTCG or CalPERS.

47. When shown different invoices from his company to respondent that have different formats and different amounts for the same time period, Matibag was not able to explain the differences, stating that his office staff handled paperwork. Matibag also had no explanation for why the home care agreement was undated, why

the invoices did not correspond to amounts received from respondent, or why respondent's checks were made out to him personally rather than his company, PXPT.

48. Respondent's eldest son, Gary Simonian, also testified at hearing. He described the decline in his father's physical abilities and increasing need for assistance with activities of daily living. He also described Matibag as trusted by respondent, and well-liked and accepted by respondent's family.

49. Simonian reports that his parents did not understand the letters they received from LTCG and CalPERS about the denial of Matibag and PXPT.

50. Simonian received voicemails from a person wanting to talk about his parent's home care services, but did not return the calls because he thought it was a scam. Then he later realized it had to do with CalPERS long-term care services, after his parents showed him one of the letters. Simonian spoke with an LTCG staff person on the telephone who voiced a concern that his parents may be fraud victims and overpaying for services, but the person would not provide him with more information.

51. Simonian reviewed the letters to respondent about PXPT eligibility, but he also did not understand what the problem was. Simonian did not seek the requested documents from Matibag or PXPT.

52. Simonian reported that his father contacted some of the approved providers on the lists sent by LTCG, but that the providers said they could not provide in-home services during the COVID-19 pandemic. Simonian had a conversation with one provider who said they were not sure if they had a caregiver available, but they would charge more money than Matibag did and it would be cost-prohibitive.

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## LEGAL CONCLUSIONS

1. The party asserting the affirmative in an administrative hearing bears the burden of proof, and the standard of proof is a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) Respondent has the burden to prove by a preponderance of the evidence that PXPT and/or Matibag should have been approved as providers and that respondent is entitled to be reimbursed for services provided by them after March 12, 2020.

Respondent's reliance on Code of Civil Procedure section 1094.5, subdivision (b), is inapposite. That statute provides the standard of judicial review on writ petitions challenging final decisions by the agency decisionmaker (such as the CalPERS Board of Administration), not the standard applied in this administrative proceeding under the Administrative Procedure Act. (Gov. Code, § 11370 et seq.)

2. Under the Public Employees' Long-Term Care Act, the long-term care insurance plans shall include home, community, and institutional care. (Gov. Code, § 21661, subd. (c).) The Board shall establish eligibility criteria for enrollment, define the scope of covered benefits, and define criteria to receive benefits. (*Id.*, subd. (h).) Those criteria are set forth in the EOC in this matter. (Factual Findings 2 and 17-19.)

3. Forsell credibly and persuasively explained the many reasons why LTCCG re-evaluated PXPT's provider eligibility, and why the information received during the review process was insufficient to substantiate respondent's reimbursement claims under the EOC. (Factual Findings 20-31.) The subsequent review by CalPERS (Factual Findings 41-43) was also appropriate.

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4. Respondent argues that LTCG and CalPERS failed to provide explanations for their determinations, and that the decisions were arbitrary and unreasonable. These contentions are unsupported by the evidence. LTCG explained at some length the reasons it determined that PXPT was not eligible as an approved provider. Before making that determination, and during the reconsideration and appeals process, LTCG (and CalPERS) provided many opportunities for respondent, Matibag, and PXPT to submit further supporting documentation or explanations, and they did not do so, or provided documents that contained further irregularities.

5. Respondent also argues that the decision to deny reimbursement for services during the pandemic was “shocking and unconscionable.” This contention is rejected. LTCG provided respondent with multiple referrals to approved providers, and there is no evidence that respondent ever complained to LTCG that he could not secure a new approved provider. Nor do any difficulties securing a new provider justify reimbursement for Matibag’s or PXPT’s services without appropriate supporting documentation.

6. All arguments raised by the parties in their briefs were considered. To the extent they are not discussed in this decision, they were found to be without merit.

7. LTCG and CalPERS correctly applied the terms and provisions of the EOC and made the correct determination that PXPT and/or Matibag did not satisfy the requirements to be approved providers of long-term care services. Respondent failed to meet his burden to show he should be reimbursed under the EOC for services provided by PXPT and/or Matibag after March 12, 2020. Respondent’s appeal is denied, and the CalPERS September 14, 2021 determination letter is affirmed.

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## ORDER

The appeal of respondent Vahe H. Simonian is denied. CalPERS's September 14, 2021 determination letter is affirmed.

DATE: 03/13/2023



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings