

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Andy Wilson (Respondent) submitted a claim for reimbursement to the Long-Term Care Group, Inc. (LTCG) under his long-term care policy (Policy). The Policy was issued under the authority of the Public Employees' Long-Term Care Act (PELTCA). Respondent obtained coverage under the Nursing Home and Assisted Living/Residential Care Facilities Only Plan, effective December 1, 2000.

Under the PELTCA, CalPERS' Board of Administration has the jurisdiction and authority to administer the California Public Employees' Long Term Care Program (LTC Program). The LTC Program is a self-funded program designed to cover costs associated with qualified long-term care services and is administered by the LTCG.

On September 25, 2021, Respondent moved into Watermark at Cherry Hills (Watermark), an assisted living facility in Albuquerque, New Mexico. On November 16, 2021, Respondent submitted a claim form to LTCG to be reimbursed for the costs associated with his room and services at Watermark.

On March 4, 2022, LTCG sent Respondent a letter denying his claim for reimbursement. LTCG had determined that Respondent did not meet the conditions for receiving benefits as outlined in the Evidence of Coverage (EOC) because he did not require substantial assistance with at least two activities of daily living (ADLs) and did not have a "Severe Cognitive Impairment." LTCG's determination was based on a review of the Claimant Care Needs Assessment form completed by Watermark, Plans of Care from Watermark, a Physician's Cognitive Questionnaire completed by Dr. Roberto Jordan, a phone conversation between LTCG and Rebecca from Watermark, and a phone conversation with Respondent's son Alan Wilson.

Respondent submitted a Notice of Claim Reconsideration form dated April 7, 2022, requesting LTCG reconsider its denial. After receiving Respondent's Notice, LTCG requested additional information and documentation from Watermark regarding Respondent's needs and services. LTCG was provided a Mini-Mental State Examination, and a Service Plan from Watermark dated March 28, 2022. LTCG also had a phone conversation with Watermark staff regarding Respondent's care.

LTCG sent Respondent a letter dated May 4, 2022, upholding the denial of his request for reimbursement prior to March 28, 2022. However, LTCG approved Respondent's benefit eligibility beginning March 28, 2022, because it found sufficient evidence to support that he required substantial assistance with at least two ADLs and substantial assistance due to severe cognitive impairment.

Respondent 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 April 4, 2024. Respondent was not present at the hearing, but was represented by his son Alan Wilson, who has power of attorney to act on Respondent's behalf.

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 evidence in support of its determination through witness testimony and documents. A CalPERS Program representative testified that the documentation shows Respondent was not a Chronically Ill Individual as defined in the EOC.<sup>1</sup> The documents establish that prior to March 28, 2022, Respondent did not require substantial supervision with two or more ADLs due to a loss of functional capacity. Respondent's December 29, 2021 Plan of Care indicated that Respondent needed substantial supervision when bathing. He did not meet the requirement for reimbursement because he only needed supervision with one ADL, and the EOC requires at least two.

Additionally, the medical evidence did not show that Respondent had a "severe cognitive impairment" that required substantial supervision to protect Respondent from threats to his health and safety. In the cognitive questionnaire form submitted to LTCG on February 9, 2022, Dr. Jordan indicated that Respondent suffers from "severe cognitive impairment" but Respondent's egress from Watermark was not restricted.

The CalPERS Program representative further explained that after reviewing the evidence, CalPERS upheld the denial of coverage because Respondent did not meet the eligibility requirements outlined in the EOC between November 25, 2021 and March 28, 2022, so he was not eligible for reimbursement of the expenses he incurred at Watermark.

Respondent's son, Alan Wilson, testified that Respondent began showing signs of dementia in 2018 or 2019. Respondent's family administered his medication because he was forgetful. After Respondent's wife died in 2021, he moved into Watermark. Respondent is able to perform most ADLs but has to be prompted or cued to do so. Although he was permitted to exit the facility, an attendant in the vicinity always keeps an eye on him.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the evidence at hearing established that prior to March 28, 2022, the only ADL Respondent required substantial assistance to perform was bathing. The ALJ also found that Respondent had a severe

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<sup>1</sup> Under the EOC "Chronically Ill Individual" means "You have been certified by a Licensed Health Care Practitioner within the preceding 12 months as being unable to perform (without Substantial Assistance from another person) at least (2) Activities of Daily Living for a period of at least 90 consecutive days due to a loss of functional capacity; or You require Substantial Supervision to protect you from threats to Your health or safety due to Severe Cognitive Impairment."

cognitive impairment prior to March 28, 2022, but failed to establish he required substantial supervision because of his cognitive impairment.

In the Proposed Decision, the ALJ concludes that CalPERS correctly denied Respondent's claim. Respondent was not eligible to be reimbursed for services provided to him at Watermark from November 25, 2021, through March 28, 2022.

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 correcting the spelling error of "phrased" to "phrases" on page 4, paragraph 7. Staff also recommends correcting the word "reach" to "reaching" on page 4, paragraph 7.

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

June 12, 2024

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CRISTINA ANDRADE  
Senior Attorney