

ATTACHMENT C

RESPONDENT(S) ARGUMENT

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VIA EMAIL ONLY

Board Services Unit Coordinator
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
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Re: In the Matter of the Statement of Issues Against Andy R. Wilson, Jr., Respondent.
Agency Case No. 2023-0057; OAH No. 2023060709
RESPONDENT'S ARGUMENT

Ladies and Gentlemen:

The May 3, 2024 proposed disposition by Administrative Law Judge Block is the latest avoidance of coverage in this lengthy dispute. It is very hard to believe that very many clients of CalPERS can sustain an effort to appeal a wrongful denial of benefits as has Mr. Wilson. Mr. Wilson's application was first filed two and a half years ago. He is 95+ years old. It is fortunate that he is still living, and that he has family members capable of enduring this appellate process.

The decision is not the first time that the essential reason for denying benefits has changed. Judge Scott denies the appeal because, although he agrees now that Mr. Wilson suffered from cognitive impairment, it was not severe cognitive impairment. At first, CalPERS stated that Mr. Wilson wasn't eligible because he didn't satisfy the Substantial Assistance definition. Mr. Wilson pointed out that his application did not seek to qualify under the definition of Substantial Assistance: He never claimed to need physical assistance or intervention in Activities of Daily Living. That has never been a point of contention. Later, CalPERS focused on an entry on a form by a random nurse stating that she was not aware of a diagnosis of cognitive impairment as a reason to deny coverage, a basis which has been abandoned by the company. But, in every response and communication, CalPERS focuses on the category of Substantial Assistance as an essential part of its justification. The application was clear that Mr. Wilson suffered from a severe cognitive disorder and *required cueing* for medically necessary events, like eating and medications. Those *cueing requirements, alone, obligate coverage under the policy*, as that is what the category of Substantial Supervision states. CalPERS has never contested that a man who needed to be

reminded when to take medicines and when to eat was a man who needed "cueing" as that term is used in the Policy. The application was accompanied by a diagnosis of Mr. Wilson's primary care physician who specifically identified the diagnoses of dementia and depression and stated that Mr. Wilson needed an assisted care facility to provide the care needed by that condition. Nevertheless, after some months of communications through this Appeal, CalPERS adjusted its justification to claim that Mr. Wilson did not suffer from a cognitive disorder, oddly focusing on the fact that Mr. Wilson could walk outside the assisted living facility, using a walker, without the immediate accompaniment of another person. To justify its denial of coverage due to Mr. Wilson's cognitive deficiency, CalPERS knowingly ignored Mr. Wilson's original application and the written diagnosis of Mr. Wilson's primary physician, and exaggerated the meaning of Mr. Wilson's ability to walk outside of the building as indicating cognitive ability.

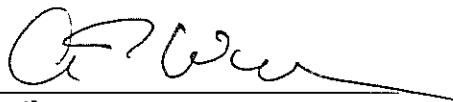
Even the decision from Administrative Law Judge Scott is obfuscated with lengthy and meaningless references to definitions of Substantial Assistance. The ongoing attempt to reinforce its denial of coverage by constant reliance on spurious and irrelevant criteria would not be permitted by an ordinary court, and at some point, this policy should be enforced on the one distinct point that Mr. Wilson has made throughout: His safety and well-being were at jeopardy unless he was in an environment that could supervise his medications and nutrition through cueing. The decision also focuses on subjective use of words by different people in different contexts. If a test categorizes a total cognitive impairment as "mild" or "moderate" or "severe" that does not alter whether the patient needs cueing for critical issues of welfare and safety. Such words are not defined by the Policy, and have no specific definitions in their use in any of Mr. Wilson's records. What is irrefutable, and what is objectively true, is that Mr. Wilson required cueing as that word is defined in the policy.

The plain language of the policy states that the need for cueing for the safety and well-being of the client is all that is required for Substantial Assistance.

Mr. Wilson's appeal should be granted, coverage should be provided as of the date of first service, and Administrative Law Judge Scott's Proposed Decision should be disregarded.

Sincerely,

WILSON LAW FIRM P.C.



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