

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Tina Little (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated February 22, 2024. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent established membership with CalPERS through her employment with California State University, San Diego. By virtue of her employment, Respondent is 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 UnitedHealthcare SignatureValue Alliance health maintenance plan (UHC Plan). Respondent elected Mercy Physicians Medical Group, Inc., Scripps Care Affiliate, (MPMG/Scripps) as her network medical group.

In December 2021, MPMG/Scripps approved Respondent's referral for arthroscopic knee surgery from Girard Orthopedic Surgeons Medical Group, Inc., (Girard Orthopedic Group) in San Diego. The service was approved to be provided at Scripps Memorial Hospital. Respondent chose Michael Kimball, M.D., a member of Girard Orthopedic Group, to perform the surgery. Dr. Kimball refused to perform arthroscopic knee surgery at Scripps Memorial Hospital. Instead, he performed the surgery at the University Ambulatory Surgery Center (University Surgery Center).

Respondent's medical group, MPMG/Scripps, did not authorize performance of the surgery at University Surgery Center. United Health Care (UHC) denied benefit coverage for the cost of the facility. The denial concerned only the cost of the facility. The cost of Dr. Kimball's and the anesthesiologist's services were covered.

The UHC Plan publishes an Evidence of Coverage which concerns benefits and claims. Services rendered without authorization from a member's medical group or UHC are not covered, except for emergencies or urgently needed services.

Respondent requested reimbursement for the facility cost at University Surgery Center. UHC denied her request because out-of-network services are not a covered benefit except when emergency or urgent care is required, and neither exception for out-of-network services were met in this case. Respondent requested reconsideration of the denial of her claim. Once again, Respondent was advised that the service was not a covered benefit. The letter advised Respondent that she could file a complaint with the Department of Managed Health Care (DMHC).

Respondent submitted an Independent Medical Review Complaint with the DMHC. On June 2, 2022, DMHC advised Respondent that UHC had complied with the health plan contract. DMHC's denial advised Respondent of her right to an administrative review with CalPERS.

Respondent requested CalPERS' administrative review on July 21, 2022. CalPERS issued a determination which advised Respondent that CalPERS upheld the UHC and DMHC decisions which appropriately denied benefit coverage at University Surgery Center in accordance with the terms and conditions of the 2021 Evidence of Coverage. The letter informed Respondent of her appeal rights.

A hearing on Respondent's appeal was held on January 29, 2024. The resulting Proposed Decision was adopted by the Board on April 16, 2024. Respondent submitted a Petition for Reconsideration on May 2, 2024, which brings forth the same arguments already presented and denied by the ALJ in the Proposed Decision.

Respondent argues that the ALJ failed to consider the evidence she presented, and argues she obtained the necessary authorization for coverage under the EOC. Respondent is incorrect. The ALJ reviewed her evidence and found that because MPMG/Scripps is Respondent's network medical group, Respondent had no right to have the facility costs covered for University Surgery Center unless she obtained authorization for those services. The ALJ found that neither UHC nor MPMG/Scripps authorized the use of University Surgery Center. The ALJ found that Respondent failed to prove that University Surgery Center is an in-service provider for MPMG/Scripps. Instead, UHC, DMHC, and CalPERS all determined that University Surgery Center was not an in-network provider for MPMG/Scripps. The ALJ found the evidence to be uncontroverted that neither UHC nor MPMG/Scripps authorized a referral to the University Surgery Center. Further, the ALJ found that Respondent failed to prove that her surgery was performed pursuant to an emergency or as an urgent matter.

Finally, Respondent argues that the language of the EOC is ambiguous. Respondent is mistaken. The EOC clearly establishes that Respondent had no right to benefits to pay for University Surgery Center services unless she obtained authorization. Respondent admitted during the hearing that she did not receive authorization for surgery at University Surgery Center. Respondent repeatedly argued to the ALJ that she had obtained the proper authorization and had been misled. The ALJ found the evidence was "overwhelming" that Respondent was not misled.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the April 16, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration.

June 12, 2024

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