

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

**In the Matter of the Denial of the  
Home Health Care Services of:**

**SANDRA Y. DEGOLYER,**

**Respondent.**

**Agency No. 2023-0123 (Statement of Issues)**

**OAH No. 2023061033**

**PROPOSED DECISION**

Erlinda Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 21, 2024, and November 19, 2024.

Preet Kaur, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Sandra Y. DeGolyer (respondent), now deceased, was represented by her adult son, John DeGolyer (Mr. DeGolyer). Respondent died on April 29, 2023, while this appeal was pending. CalPERS stipulated to Mr. DeGolyer's standing to continue pursuing respondent's appeal.

Testimony and documentary evidence was received. The record closed and the matter was submitted for decision on November 19, 2024.

## **FACTUAL FINDINGS**

### **Long-Term Care Program**

1. CalPERS is the state agency charged with administering the Public Employees' Long-Term Care Act (Act), Government Code section 21660 et seq.

2. Pursuant to the Act, CalPERS established the Long-Term Care Program (LTC Program), which is an optional long-term care insurance program for public employees, retirees, and their family members. CalPERS retained Long-Term Care Group, Inc. (LTCG), a third-party administrator, to administer and manage the LTC Program. LTCG's company name changed to Illumifin approximately two years ago. However, this Proposed Decision shall refer to the company as LTCG.

3. At all relevant times, the LTC Program offered two enrollment options: the Comprehensive Plan and the Nursing Home/Assisted Living Facility Only Plan (Facilities Plan). The Comprehensive Plan covered expenses for services received in the home or at a facility. The Facilities Plan, however, only covered expenses for services received in nursing homes or residential care facilities, as defined in the plan's Evidence of Coverage (EOC). (See Exh. 30.) The monthly premium for the Comprehensive Plan, which had a greater scope of coverage, was double the monthly premium for the Facilities Plan.

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## **Respondent's Facilities Plan**

4. On June 26, 2001, Mr. DeGolyer purchased a Facilities Plan for respondent, who was 69 years old at the time. (Exh. 5.) The premiums were paid by an automatic payroll deduction through Mr. DeGolyer's public employer. (*Id.*, p. A32.) At the time Mr. DeGolyer purchased the Facilities Plan for respondent in 2001, the premium was \$85 per month. In 2022, the monthly premium for respondent's Facilities Plan was \$552.58. (Exh. 27, p. A242.)

5. The EOC outlines the terms and conditions for the benefits payable under respondent's Facilities Plan. (Exh. 30.) Respondent's Facilities Plan covered eligible expenses incurred only while respondent was a resident in a Residential Care Facility or an inpatient in a Nursing Home.

### **NURSING HOME BENEFIT**

6. The EOC defines "Nursing Home" as "a facility or distinctly separate part of a hospital or other institution which is appropriately licensed to engage primarily in providing nursing care to inpatients under a planned program supervised by a Physician." (Exh. 30, p. A257.) Under the EOC definition, a Nursing Home "provides 24-hour a day nursing care" by a registered nurse, licensed practical nurse or licensed vocational nurse under the supervision of a registered nurse or physician; "[m]aintains a daily medical record of each inpatient; and [p]rovides nursing care at skilled, intermediate or custodial levels." (*Ibid.*) The EOC definition further states that "Nursing Home does not mean a hospital or clinic, a community living center, or a place that provides residential or retirement care only." (*Ibid.*)

7. The EOC states that the covered expenses for nursing home care are room and board; ancillary services; and/or patient supplies. Excluded from coverage

are charges for the insured person's comfort and convenience, such as televisions, telephones, beauty care, and entertainment. (Exh. 30, p. A263.)

### **RESIDENTIAL CARE FACILITY BENEFIT**

8. The EOC defines "Residential Care Facility (also called Assisted Living Facility)" to mean "a licensed facility engaged primarily in providing ongoing care and related services that meets all of the following criteria:

- it provides 24-hour a day care and services sufficient to support needs resulting from inability to perform Activities of Daily Living or Severe Cognitive Impairment;
- it has an awake, trained and ready-to-respond employee on duty in the facility at all times to provide care;
- it provides three (3) meals a day and accommodates special dietary needs;
- it has written contractual arrangements or otherwise ensures that residents receive the medical care services of a Physician or nurse in case of an emergency; and
- it has appropriate methods and procedures to assist residents in self-administration of prescribed medications."

(Exh. 30, p. A258.)

9. The EOC states that the covered expenses for residential facility care are room and board; ancillary services; and/or patient supplies. Excluded from coverage

are charges for the insured person's comfort and convenience, such as televisions, telephones, beauty care, and entertainment. (Exh. 30, p. A264.)

### **ALTERNATIVE CARE PAYMENT PROVISION**

10. The EOC for respondent's Facilities Plan includes an Alternative Care Payment Provision (ACPP). (Exh. 30, p. A273.) Under the ACPP, the CalPERS LTC Program reserved the right to authorize benefits for providers, treatments, or services not otherwise specified in the EOC, or when conditions specified in the EOC are not otherwise met, if CalPERS determines that the provider, treatment or service:

- is cost-effective;
- is appropriate to Your needs;
- is consistent with general standards of care;
- provides You with an equal or greater quality of care; and
- meets all requirements for Qualified Long-Term Care Services under federal law.

(Exh. 30, p. A273.)

11. The ACPP provides that the CalPERS LTC Program also "reserve[d] the right to decline to authorize alternative benefits and services." (*Ibid.*)

### **Request for Benefits Under Facilities Plan**

12. In December 2020, communications ensued between Mr. DeGolyer and LTCG regarding Mr. DeGolyer's request for benefits under respondent's Facilities Plan. (See Exhs. 14-17.)

13. By letter dated January 1, 2021, LTCG notified Mr. DeGolyer that respondent's benefit eligibility was approved from December 22, 2020, through February 14, 2021, provided she continued to meet the eligibility requirements during that time. (Exh. 18.) The January 1, 2021 letter further stated that any eligible expenses incurred on or after February 15, 2021, would not be reimbursed or applied to the Deductible Period unless a reassessment of respondent's eligibility for benefits was completed and she was determined to continue to qualify for benefits. (*Ibid.*)

14. In the ensuing months, Mr. DeGolyer attempted to locate a qualifying nursing home or residential care facility, in respondent's area, with availability and the ability to provide the level of care respondent required. At the time, respondent was living at her home in New York state.

15. By letter dated November 15, 2021, LTCG provided Mr. DeGolyer with a list of potentially covered facilities or agencies in respondent's area, based on the requirements of respondent's Facilities Plan. (Exh. 19.) The letter stated respondent was not required to select one of the providers on the list, and the list should not be considered a recommendation or endorsement for any given provider. (*Ibid.*) The letter requested Mr. DeGolyer contact LTCG once a provider for respondent's long-term care services was chosen so that LTCG could determine the provider's eligibility under respondent's long-term care coverage. (*Ibid.*)

16. In December 2021, Mr. DeGolyer made a claim under the Facilities Plan for coverage of services respondent received in her home. In a letter to CalPERS, Mr. DeGolyer wrote, in part:

I purchased a lifetime, Assisted Living or Skilled Nursing policy from CalPERS for my mom some 20 years ago. Now

she is 89 and living at home under a New York state licensed and mandatory, Managed Long Term Care [MLTC] program. [¶ . . . ¶]

When I submitted the paperwork to pay the providers, I was told that she physically has to be in Assisted Living or Skilled Nursing Facility licensed by the state in order to pay for her care.

She currently is in a state licensed program, called the MLTC which is designed to provide a level of one-on-one care that is superior to the care provided in assisted living or skilled care, the program is supervised by licensed agents of the state of New York, designed as a cost effective and higher quality of care that is equivalent to Skilled Nursing. And it is mandated by New York State law.

The fact that the program is state licensed, state administered and designed to decrease the load on skilled nursing facilities in New York and provides better care to ensure better end of life quality, more than meets the requirements of the Calpers Long term care program.

My mom, Sandra DeGolyer, is in a state licensed, state administered, closely monitored care program; the building in which the care is provided should make little difference, particularly in this time of Covid.

(Exh. 20.)



17. In a letter dated February 3, 2022, LTCG responded to Mr. DeGolyer that it had "completed the review of your request received on December 23, 2021 regarding the review of the Managed Long Term Care Plan for individuals eligible under Medicaid and Medicare. The care provided by this program is home and community-based care and adult day care. Benefits are not available under your Evidence of Coverage for home care or adult day care. [¶] Your Evidence of Coverage provides benefits for each day you [i.e., respondent] are confined in a Residential Care Facility or Skilled Nursing Facility....." (Exh. 21.)

18. On February 17, 2022, Mr. DeGolyer submitted a Notice of Claim Appeal to appeal LTCG's decision. (Exh. 22.)

19. On March 2, 2022, Mr. DeGolyer sent an email to LTCG with documentation to support a claim under the ACPP of respondent's Facilities Plan. (Exh. 23.) He included a letter from a facility that it had no beds available, and documentation regarding the January payroll for services provided to respondent in her home.

20. By letter dated March 25, 2022, LTCG notified Mr. DeGolyer it had completed its review of his request for reconsideration and it was upholding its decision made on February 3, 2022, to deny home care services under the ACPP of respondent's Facilities Plan. (Exh. 24.) The letter explained the basis for upholding the denial, which included that the Facilities Plan limited coverage to eligible long-term care expenses for services incurred while respondent was confined in an eligible nursing home or residential care facility.

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21. On May 20, 2022, Mr. DeGolyer filed a Notice of Claim Appeal, to appeal LTCG's denial of the request for reconsideration. (Exh. 25.) In a letter dated June 14, 2022, LTCG acknowledged receipt of Mr. DeGolyer's request for an appeal. (Exh. 26.)

22. CalPERS conducted an Administrative Review of LTCG's decision. By letter dated September 15, 2022, CalPERS notified Mr. DeGolyer of its decision to uphold LTCG's denial of coverage. (Exh. 3.) On November 8, 2022, Mr. DeGolyer requested a hearing to appeal CalPERS's Administrative Review decision. (Exh. 4.)

23. On June 26, 2023, CalPERS filed the Statement of Issues. (Exh. 1.) As stated in the Statement of Issues: "This appeal is limited to the issue of whether [the] LTC Program appropriately denied the use of [the] ACPP to reimburse home health care services incurred by respondent [Sandra] DeGolyer in accordance with the terms and conditions of the Facilities Plan EOC." (Exh. 1, p. A15.)

## **CalPERS' Evidence and Contentions**

24. CalPERS presented testimony by Angela Forsell and Jason Yorek, who are both employed by LTCG (now known as Illumifin).

### **TESTIMONY OF MS. FORSELL**

25. Ms. Forsell worked for LTCG for 22 years as Vice President of Clinical Services. She now works as a part-time consultant for LTCG. Her duties include testifying in hearings such as this regarding claims decisions made, and reconsideration and appeals of claims decisions. Ms. Forsell received her bachelor's degree from Kent State. She has over 45 years of experience in the insurance business. She spent 25 years in management positions in all lines of insurance coverage except property, and the remainder of her career in medical coverage with LTCG.

26. Ms. Forsell was involved in the claims decisions regarding respondent. Ms. Forsell testified that Mr. DeGolyer purchased a Facilities Plan, which does not cover expenses incurred for home care services. At the time of purchase, Mr. DeGolyer had the option to purchase a Comprehensive Plan or a Facilities Plan. Mr. DeGolyer selected the Facilities Plan. Ms. Forsell explained the premium for the Comprehensive Plan is twice as much as the Facilities Plan. In 2001, when Mr. DeGolyer purchased the Facilities Plan for respondent, the monthly premium for the Facilities Plan was \$85 and \$170 for the Comprehensive Plan.

27. Ms. Forsell testified that LTCG's February 3, 2022 letter notified respondent of the denial of her request for coverage for home care services. (Exh. 21.) Under the Facilities Plan, respondent's benefits were limited to facility-based services. Respondent purchased coverage for nursing home and residential care facilities only but was requesting coverage for home-based care.

28. Ms. Forsell testified regarding Mr. DeGolyer's emails sent in March 2022. (Exh. 23.) She noted Mr. DeGolyer sent emails from representatives of three long-term care facilities to support his claim there were no long-term care facilities available for respondent. Mr. DeGolyer also provided a PayPal statement that reflected amounts he paid in January 2022 for respondent's home care, a total of \$4,534. Mr. DeGolyer claimed the three long-term care facilities did not have beds available. Ms. Forsell testified that LTCG had no reason to dispute Mr. DeGolyer's claims about the three facilities. Ms. Forsell also testified that LTCG did its own research to see if any beds were available.

29. Ms. Forsell testified the March 25, 2022 letter (Exhibit 24) informed respondent that LTCG upheld the denial of her claim because she did not purchase home care coverage. LTCG contacted facilities in her area that had beds available for

her. Respondent appealed LTCG's upholding the denial of her claim. Ms. Forsell testified that CalPERS makes the decision at the appeal level. LTCG's role is to receive the appeal request, prepare the complete claim file, review all documents, and provide a written recommendation to CalPERS.

30. On September 15, 2022, CalPERS decided to uphold LTCG's denial of respondent's claim. The basis for CalPERS' decision is set forth in its letter to respondent dated September 15, 2022. (Exh. 3.) The letter explained the reason why the ACPP did not apply to respondent's claim for home care services, as follows:

The services [respondent] is receiving are Home Health Care Services, which is not a covered benefit under this Agreement [i.e., the EOC]. The ACPP is not designed or intended to create and add other coverages for which [respondent] could have applied for and has not paid premiums for. The premium that was calculated for [respondent] was based on the benefits outlined in her Agreement.

A policy that includes Home Health Care Services would have calculated a higher premium at the time of her application, as those policies are a broader type of coverage. While the ACPP allows for insurer-acceptable deviations (e.g. authorizing assisted living facilities that do not meet the bed requirements) to qualify a covered provider type under the coverage category, a provider category that is not covered under the coverage category cannot be allowed.

(Exh. 3, p. A24.)

31. Ms. Forsell testified if CalPERS opted to provide benefits under the ACPP for respondent's home care services, LTCG would reimburse Medicaid, not Mr. DeGolyer. Ms. Forsell testified there is a daily maximum limit for nursing home care (\$150 per day) and for assisted living care (\$75 per day) under the Facilities Plan.

32. Ms. Forsell testified that a person who signs up for a Facilities Plan may request to change to a Comprehensive Plan. (See Exh. 30, pp. A259-A260.) LTCG considers a change from a Facilities Plan to a Comprehensive Plan to be an increase in coverage, because it expands coverage to include expenses incurred in non-facility settings, such as the home, which then increases the monthly premium. The change from a Facilities Plan to a Comprehensive Plan requires an application and underwriting. LTCG applies the CalPERS underwriting guidelines to review the application. If the applicant qualifies, the additional coverage is granted and the premium increases. By seeking coverage for home care services, and having a Facilities Plan, respondent was requesting an increase in coverage. To obtain that coverage, she was required to go through the underwriting process and file an application.

33. Ms. Forsell testified the ACPP is a discretionary benefit. (Exh. 30, p. A273.) Only CalPERS can approve or deny coverage under the ACPP. The EOC lists five criteria that must be met for CalPERS, at its discretion, to apply the ACPP. (See Finding 10, above.) LTCG, on behalf of CalPERS, evaluates requests made under the ACPP. However, only CalPERS can determine when to make exceptions to the EOC using the ACPP.

34. Ms. Forsell testified that, in her 24 years working for LTCG, she has never seen a case where the ACPP was used to make an exception under a Facilities Plan.

She described two examples of exceptions that would be approved under a facility-only ACPP. Ms. Forsell described the first example as occurring in remote parts of the United States where nursing homes and residential care facilities do not exist. In that case, a facility-only plan might include a Critical Access Hospital (CAH) and Medicare will consider a bed in a CAH to meet the definition of a nursing home. The second example relates to the number of beds in a facility. The definitions for nursing home or assisted living might have a number of beds requirement. If a facility meets all criteria for a nursing home except it does not have the required number of beds, an exception can be made under the ACPP.

### **TESTIMONY OF MR. YOREK**

35. Mr. Yorek testified in place of Ms. Forsell at the November 19, 2024 hearing due to Ms. Forsell's unavailability. Mr. Yorek became a nurse upon receiving his associate's degree in 2001. He received a bachelor's degree in 2009 and a master's degree in 2017, in nursing. He has provided direct patient care in acute care and long-term care settings, and also worked in hospitals.

36. Mr. Yorek has worked for LTCG for 17 years. His current position is Senior Claims Initiative Specialist. He works on claims related to the CalPERS LTC Program. He is familiar with this appeal, having reviewed the exhibits and the transcript of the March 21, 2024 hearing, and also having spoken to Ms. Forsell about the case. Mr. Yorek testified he was part of the LTCG committee that denied respondent's claim at issue. The committee was led by the LTCG Medical Director, who is a medical doctor.

37. Mr. Yorek testified the location of services is problematic for respondent's claim at issue. The Facilities Plan specifically excludes services provided in the home. Mr. Yorek testified that, even if all five criteria of the ACPP listed in the EOC

were met, that did not mean LTCG would approve respondent's claim for home care services. Mr. Yorek explained LTCG looks at the Facilities Plan as a whole. The Facilities Plan does not cover expenses for services provided in the home; it only covers facility care. LTCG views the five criteria of the ACPP in the context of facility care. Mr. Yorek is aware of no cases where the ACPP in a Facilities Plan was used to provide coverage for home care services. Mr. Yorek testified that in his experience working on cases involving the CalPERS LTC Program, he has not seen benefits provided for home care services under a Facilities Plan.

38. Mr. Yorek testified he had not seen the ACPP used in the two examples described in Ms. Forsell's testimony. Mr. Yorek testified he has seen the ACPP used in cases where the participant resides in a facility that does not meet the eligibility criteria of their plan. Benefits are provided because no other facility can meet the participant's needs. Mr. Yorek noted that, although there was a reported inability to locate a facility for respondent, LTCG subsequently was able to find eligible facilities that could accept respondent into their facility.

### **CALPERS' CONTENTIONS**

39. CalPERS contends Mr. DeGolyer's request for reimbursement for respondent's home care services is seeking a benefit only available under the Comprehensive Plan. If he had purchased a Comprehensive Plan in 2001, that would cover expenses incurred for home care and facilities care. A Comprehensive Plan is more expensive and has a higher monthly premium than a Facilities Plan. CalPERS contends Mr. DeGolyer wants an exception so he can receive the benefits of a Comprehensive Plan, which he did not purchase. He asks to be taken out of a Facilities Plan and placed in a Comprehensive Plan, which is not allowed under the EOC.

40. CalPERS contends it cannot reimburse Mr. DeGolyer directly for expenses he paid for respondent's home care. At most, CalPERS could only reimburse the Medicare plan in New York state where respondent resided. Any such reimbursement is subject to a maximum daily amount.

### **Respondent's Evidence and Contentions**

41. At hearing, Mr. DeGolyer claimed the difference in premium in 2001 for a Facilities Plan and a Comprehensive Plan was about \$30. Mr. DeGolyer testified if he knew then what he knows now, he would have selected the Comprehensive Plan instead of the Facilities Plan for respondent. Mr. DeGolyer claimed the difference between plans was not explained to him by CalPERS. He feels CalPERS has no justification to deny coverage for respondent's home care services or to refuse to apply the ACPP to respondent's case.

42. Mr. DeGolyer believes the ACPP should be used to allow reimbursement of respondent's home care services. He contends the home care services provided to respondent meet the criteria for application of the ACPP. He contends respondent's services provided pursuant to the New York MLTC program equates to the level of skilled nursing care. Mr. DeGolyer contends the COVID-19 pandemic was an extraordinary event that made it dangerous to place respondent in a nursing home or residential care facility. In New York, nursing homes and other communal settings had high rates of COVID-19 infections and deaths. Mr. DeGolyer contends it was safer for respondent to receive care in her home.

43. Mr. DeGolyer denies he was seeking to place respondent on a Comprehensive Plan. He was not looking for home care aides. He was looking for skilled nursing care to be delivered to respondent in her home. Skilled nursing care



was available from the New York state-licensed program, i.e., the MLTC. Mr. DeGolyer contends there were no facilities available to provide care for respondent. Mr. DeGolyer contends placing respondent in a facility during the Covid pandemic would have amounted to a death sentence. He contends that placing respondent in a facility during Covid would expose her to a hazard. Mr. DeGolyer contends he arranged and paid for nursing staff and aides to provide care for respondent in her home that was safe and equal to the level of skilled nursing care.

44. Mr. DeGolyer noted the monthly premium for respondent's Facilities Plan increased over the years, and he paid them. Mr. DeGolyer contends he tried to work with the Facilities Plan, but there were no facilities available in the rural area in New York where respondent lived. Mr. DeGolyer contends the ACPP should have been applied to respondent because the COVID-19 pandemic justified an exception.

### **Analysis of Evidence**

45. The evidence established that LTCCG correctly applied the terms and conditions of the EOC in determining the home care services received by respondent were not reimbursable. Respondent's Facilities Plan did not cover services received in the home. Coverage was limited to expenses incurred while a resident in a Residential Care Facility or an inpatient in a Nursing Home.

46. The evidence established that LTCCG correctly denied Mr. DeGolyer's request to reimburse for respondent's home care services under the ACPP of the Facilities Plan. Allowing reimbursement for home care services under the ACPP would provide respondent with a benefit she did not contract for. The Facilities Plan was half the cost of the Comprehensive Plan, which provided a greater scope of coverage. If respondent sought coverage for home care services, she should have selected a

Comprehensive Plan. Although respondent paid the monthly premiums for the Facilities Plan, she is now seeking the coverage of a Comprehensive Plan without having paid the premiums for that level of coverage.

## **LEGAL CONCLUSIONS**

1. The party asserting the affirmative in an administrative hearing has the burden of proof going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) Therefore, respondent has the burden to prove by a preponderance of the evidence that she was eligible to be reimbursed for home care services under the ACPP of her Facilities Plan.

2. Government Code section 21663, subdivision (a), provides: "The board may enter into contracts with long-term care insurance carriers, pursuant to Section 21661, and with entities offering services relating to the administration of long-term care plans, without compliance with any provisions of law relating to competitive bidding.

3. Based on Factual Findings 1 through 40, 45, and 46, CalPERS correctly applied the terms and conditions of the Facilities Plan EOC and appropriately denied the use of the ACPP to reimburse for the cost of home health care services incurred by respondent. Therefore, CalPERS' decision to deny respondent's claim must be affirmed.

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## ORDER

Respondent's appeal is denied. CalPERS' determination is affirmed.

DATE: 12/19/2024

*Erlinda Shrenger*

ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings