

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

**In the Matter of the Appeal Regarding Denial of Benefit  
Coverage for Emergency Services Provided by Non-Preferred**

**Providers by:**

**DAVID R. ALLEN, Respondent**

**Agency Case No. 2020-0841**

**OAH No. 2020120155**

**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 13, 2021, from Sacramento, California.

Kevin Kreutz, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent David Allen (respondent) represented himself.

Oral and documentary evidence was received, the record closed, and the matter submitted for decision on May 13, 2021.

## **ISSUE**

The sole issue on appeal is whether CalPERS and Anthem Blue Cross appropriately denied additional benefit coverage for services provided to respondent by non-preferred physicians from April 9 through 15, 2019.

## **FACTUAL FINDINGS**

### **Background**

1. CalPERS is the state agency charged with administering the Public Employees' Medical and Hospital Care Act (PEMHCA). (Gov. Code, § 22751 et seq.) PEMHCA authorizes and requires the CalPERS Board of Administration (Board) to provide health benefits for State of California employees, dependents and annuitants, as well as employees and annuitants of contracting public agencies which elect to contract with CalPERS for health benefit coverage. CalPERS insures over 1.4 million people through its numerous health plans.

2. PERS Choice health plan (PERS Choice) is a preferred provider organization (PPO) health care plan offered by CalPERS under PEMHCA. A PPO allows the member to receive the highest payment benefit from a network of preferred providers, but also allows members to utilize out-of-network providers. CalPERS contracts with Anthem Blue Cross (Anthem) to administer PERS Choice medical claims.

3. Respondent is employed by California Department of Corrections and Rehabilitation, Salinas Valley State Prison. By virtue of his employment, he is an active PERS member eligible for PERS health benefits under PEMHCA. At all relevant times, he was enrolled in PERS Choice.

## **Evidence of Coverage**

4. The PERS Choice Evidence of Coverage Booklet (EOC) serves as the contract between the member and CalPERS, and governs which benefits are payable. When respondent elected to receive health benefits under the PERS Choice plan, the EOC became the contract for services between himself and CalPERS.

5. The 2019 EOC, effective January 1 to December 31, 2019, sets forth the conditions of the PERS Choice plan, including those pertaining to benefits, claims and payment of claims. A copy of the EOC is provided to all members to explain their health benefits. As set forth in the EOC, Anthem works with a network of preferred providers throughout the state. These preferred providers participate in the Prudent Buyer Plan, agreeing to accept preset payment amounts for specified services ("allowable amounts") which are typically lower than what other physicians or hospitals charge for similar services. In exchange for accepting these allowable amounts, preferred providers received referrals from Anthem's in-network list of providers and hospitals. Factors in determining the allowable amount include geographical location, type of provider, and amounts charged by similar providers in the area.

6. Non-preferred providers are providers who have not agreed to participate in the Prudent Buyer Plan. They are not listed on Anthem's network of providers, and are not limited to accepting the maximum allowable amount by Anthem. The EOC cautions that preferred hospitals, also called in-network hospitals, may contract with doctors who do not participate in the Prudent Buyer Plan, or are not preferred providers.

7. When covered medical services are provided by a preferred provider, the member's maximum coinsurance (co-pay) is \$3,000 per member (\$6,000 per family) in

a calendar year. After this maximum is met, the member is not required to pay a co-pay for the remainder of that calendar year if the covered medical services are provided by a preferred provider.

8. Under the 2019 EOC, Anthem pays non-preferred providers 60 percent of the allowable amount for that particular covered service. The non-preferred provider may then bill the member the difference between the allowable amount and the billed charges. For emergency services received from either a preferred provider or a non-preferred provider, Anthem pays 80 percent of the allowable amount. The member is responsible for paying the remaining 20 percent, unless the member has satisfied the maximum co-pay for that calendar year. When emergency services are provided by a non-preferred provider, in addition to 20 percent of the allowable amount, the member is responsible for all charges in excess of the allowable amount plus all charges for non-covered services. The 2019 EOC cautions members that preferred hospitals may use non-preferred providers at their discretion.

### **April 7, 2019 Accident**

9. On the evening of April 7, 2019, respondent sustained serious injuries when his motorcycle struck a cow that had entered his lane. Respondent was thrown from his motorcycle, landing in an open field next to the road. A bystander witnessed the accident and called 911. When emergency medical personnel arrived on the scene, respondent was conscious but incapacitated. Respondent was transported to Natividad Hospital in Salinas, a PERS Choice preferred facility, where he was admitted to the intensive care unit (ICU). Over the course of the next several days, respondent received emergency medical services by Boris Borazjani, M.D., and Richard Moore, M.D., both non-preferred providers under the PERS Choice health plan.

## Payment of Claims

10. On May 30, 2019, Anthem processed Claim No. 2019137CA1921 for emergency services provided to respondent by Dr. Borazjani from April 9 through 12, 2019 (totaling \$2,991), and Claim No. 2019137CA5537 for emergency services provided to respondent by Dr. Moore from April 13 through 15, 2019 (totaling \$678). As respondent had satisfied the \$3,000 maximum co-pay for the calendar year, Anthem paid both claims at 100 percent of the allowable amounts under PERS Choice. The allowable amount for Dr. Borazjani's services totaled \$992.98; the allowable amount for Dr. Moore's services totaled \$345. Anthem advised respondent he was responsible for the remainder amounts of \$1,998.02 and \$333, respectively.

11. On July 12, 2019, respondent filed appeals with Anthem,<sup>1</sup> contesting the payments to Drs. Borazjani and Moore. Specifically, respondent requested Anthem reprocess the claims and pay the amounts in excess of the allowable amounts, since respondent was admitted to a preferred hospital due to an emergency. Anthem acknowledged receipt of the appeals on July 12 and 16, 2019, respectively. By letter dated September 17, 2019, Anthem issued its Final Adverse Benefits Determination in which it upheld its previous coverage decision. Specifically, the letter explained:

After careful review of your request, [it was] determined that the claims noted above have been processed correctly, in accordance to your benefits. According to your health plan benefits, covered services provided by Non-Preferred Providers who are part of the Preferred Hospital or Outpatient Hospital Setting staff are paid at 80% of the

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<sup>1</sup> Respondent's wife, Mary Allen, filed the appeals on respondent's behalf.

Allowable Amount. As a result, there will be no adjustments done on these claims. [¶] . . . [¶]

## **Administrative Review by CalPERS**

12. The Anthem letter further informed respondent of his right to request an administrative review by CalPERS should he dispute Anthem's findings. By letter dated October 14, 2019, respondent appealed Anthem's final determination to CalPERS and requested an administrative review. CalPERS acknowledged receipt of the appeal on October 24, 2019, and requested respondent submit any additional information by November 8, 2019. On October 24, 2019, CalPERS also requested information from Anthem regarding its review of respondent's appeal of the claims payments to Drs. Borazjani and Moore. Anthem provided the requested information on October 30, 2019.

13. On November 21, 2019, Anthem adjusted Claim No. 2019137CA5537 for services provided by Dr. Moore, allowing the same allowable amount for his services which were similar to those provided by Dr. Borazjani.<sup>2</sup> As a result, Anthem paid a total of \$423 to Dr. Moore, reducing respondent's liability for Dr. Moore's services to \$255.

14. By letter dated December 13, 2019, CalPERS notified respondent of its determination that Anthem had correctly processed the claims for Drs. Borazjani and

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<sup>2</sup> Anthem originally processed the claim using Dr. Moore's zip code, which resulted in a lower allowable amount than that for Dr. Borazjani, whose zip code was the same as Navidad Hospital. Anthem reprocessed the claim for Dr. Moore using the hospital's zip code, resulting in a higher allowable amount.

Moore. The letter explained that Anthem had paid 100 percent of the allowable amount for both claims, and that the PERS Choice health plan did not allow for payment of emergency services higher than 100 percent of the allowable amount, or in excess of the plan's benefits or maximums. The letter further informed respondent of his right to appeal CalPERS' determination.

15. On January 10, 2020, respondent timely appealed CalPERS's determination and requested an administrative hearing. On November 19, 2020, Kimberly A. Malm, Chief, Strategic Health Operations Division, CalPERS, made and thereafter filed the instant Statement of Issues in her official capacity. This hearing followed.

16. As of the date of hearing, neither Drs. Borazjani nor Moore had billed respondent for any excess amount not paid by Anthem.

## **Analysis**

17. It is undisputed that respondent received necessary emergency medical services at Natividad Hospital, a preferred facility under the PERS Choice health plan. It is also undisputed that respondent received services from Drs. Borazjani and Moore, both non-preferred providers.

18. Respondent argues that because he was at a preferred facility, he reasonably assumed the physicians treating him were also preferred providers covered by his health plan. He also asserted he had no choice regarding the physicians who provided him medical treatment and had no knowledge whether or not they were covered by his health plan.



19. Respondent's arguments must fail as they are unsupported by the law. The PERS Choice EOC is an enforceable contract under which Anthem determines the maximum allowable amount for covered medical services. (*Orthopedics Specialists of Southern Ca. v. Ca. Public Employees' Retirement System* (2014) 228 Cal.App.4th 644, 648.) Here, Anthem paid 100 percent of the maximum allowable amount to non-preferred providers, Drs. Borazjani and Moore, for emergency services provided to respondent. There is no provision in the EOC which allows Anthem to pay a sum in excess of the maximum allowable amount. Although respondent was unaware Drs. Borazjani and Moore were out-of-network, the EOC informs PERS Choice members that preferred facilities may employ non-preferred providers, and that the member is responsible for any amount in excess of the maximum allowable amount. Thus, he had constructive knowledge of this possibility and liability.

20. When all of the evidence is considered as a whole, respondent's appeal must be denied.

## **LEGAL CONCLUSIONS**

1. Respondent has the burden of establishing the services provided to him by non-preferred physicians from April 9 to 15, 2019, are within the scope of the coverage provided by the PERS Choice health plan. (*Dyer v. Northbrook Property and Casualty Ins. Co.* (1989) 210 Cal.App.3d 1540, 1547; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. Under Government Code sections 22794 and 22796, the CalPERS Board is granted all powers reasonably necessary to carry out and enforce the provisions of the

PEMHCA, and to adopt necessary rules and regulations pertaining to the scope, content and standards for its health benefit plans.

3. As set forth in the Factual Findings as a whole, and particularly Factual Findings 17 through 20, respondent failed to meet his burden of demonstrating that Anthem must pay

4. Respondent did not meet his burden of demonstrating that Anthem must pay additional benefit coverage to Drs. Borazjani and Moore for services provided from April 9 through 15, 2019. The amounts charged by these non-preferred providers exceeded the maximum allowable amounts for similar services under the PERS Choice EOC. Accordingly, CalPERS's determination that Anthem appropriately denied additional benefit coverage under the terms of the EOC must be affirmed, and respondent's appeal therefrom denied.

## **ORDER**

CalPERS's determination that Anthem appropriately denied additional benefit coverage to respondent David Allen is AFFIRMED. Respondent's appeal of CalPERS's determination is DENIED.

DATE: June 16, 2021



TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings