

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Vahe Simonian (Respondent) is the beneficiary of a long-term care (LTC) insurance policy administered for CalPERS by a third-party insurer, Long Term Care Group, Inc. (LTCG). The scope of his benefits is set forth in the 2000 CalPERS Comprehensive Plan Long Term Care Evidence of Coverage (EOC). Respondent was found eligible for long term in-home care services, so long as those services are completed by an approved provider.

Under the LTC Act, 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 LTCG.

Respondent needs increasing assistance with activities of daily living, such as bathing, dressing, toileting, continence and transferring. Since 2011 or 2012, he has received in-home care services from Patrick Matibag (Matibag). Matibag owns a company called PatrickXavierPT, LLC (PXPT) which is a home care organization licensed by the Department of Social Services since August 25, 2016. Since 2016, services have been provided by Matibag and other caregivers at PXPT.

At all times relevant, Respondent has been found eligible for long term in-home care services. The issue is whether PXPT and/or Matibag can be approved as the home care provider for those services.

On August 16, 2017, LTCG sent Respondent a letter informing him that he would be reimbursed for covered services only to the extent they are included in the approved Plan of Care. Respondent was also notified that the home care agency must provide proof of licensure; that Respondent or the provider must submit documentation including the provider's bills or invoices, and daily visit notes showing services provided each day; and that the caregiver documentation was subject to verification to ensure accuracy. Matibag was initially approved to provide home care services to Respondent.

On September 5, 2019, LTCG performed an in-home assessment of Respondent as part of regular business. On that day Jan Conception was present as caregiver through PXPT, and Matibag was not present. During the assessment, LTCG sought verification and supporting information for the caregiver documentation PXPT provided.

On September 19, 2019, LTCG informed Respondent that in order to receive reimbursement for services:

[A] caregiver timesheet or detailed invoice and daily visit notes (DVN's) must be submitted by you or your caregiver for all dates of services. This required documentation must be completed at the time care is provided, and be signed

and dated by both your caregiver and you or your legal representative. The signatures attest to the accuracy of the information. A new timesheet must be completed for each week of care. Timesheets and DVN's should be completed accurately each day, reflecting all services provided and specific hours and days worked. Your timesheets and DVN's should not be copied from one day to another.

In October 2019, LTCCG reevaluated the eligibility of PXPT as an approved provider. To approve reimbursement, the EOC provides that LTCCG must confirm that the caregiver is the agency's employee, is a registered home health aide, and the caregiver must complete a DVN to document the services provided each day.

On November 8, 2019, LTCCG requested supporting documentation for services provided, including payroll records, account ledgers, the last 6 months of on-site assessments, caregiver's scheduled hours, DVN's signed by the caregiver, and a copy of the agreement between PXPT and Respondent listing contracted rates for services

Later in November 2019, PXPT provided some documents, including Respondent's checks paid directly to Patrick Matibag personally (not PXPT), unsigned DVN's listing Matibag as the only caregiver, invoices for "caregiving services" with no further detail, Matibag's narrative of his schedule, an undated home care agreement between PXPT and Respondent, and notes from a PXPT employee, Anne, which stated payroll records for Matibag were not available because he does not submit timesheets, that Matibag has "a different monetary agreement" with Respondent, that Matibag has an "independent contract" with Respondent, and that Respondent pays for more than the items covered by LTC insurance.

From October 2019 through January 2020, LTCCG attempted to resolve these discrepancies in the documentation provided by PXPT. LTCCG had multiple conversations with "Anne" at PXPT, with Respondent and Respondent's wife, and attempted to call Respondent's son without response.

On February 12, 2020, LTCCG informed Respondent that PXPT was no longer an approved provider, and explained the reasons for the determination:

- DVN's showed Matibag as the caregiver, but Matibag was not an employee of PXPT; rather he was an Independent Provider paid directly by Respondent;
- No payroll records were provided for Matibag or any PXPT employee giving caregiver services to Respondent;
- There were numerous significant discrepancies between the reported and billed hours of care;
- No documentation was submitted showing care giving services provided by anyone other than Matibag, despite the fact that other caregivers were providing services (such as Jan Conception at the September 2019 assessment);
- The PXPT invoices charged Respondent \$200/day, but the home care agreement with PXPT stated he would be charged \$500/day;

- The canceled checks show payments to Matibag personally, not PXPT;
- The amounts Respondent paid were substantially greater than the billed amounts on the PXPT invoices;
- Matibag stated that other caregivers provide services when he is unavailable, but there is no record or documentation for any other caregivers.

Respondent was given 30 days to put eligible services in place, and was sent a list of approved home health agencies in his area.

Respondent requested reconsideration twice. LTCG denied both his requests, and again sent him a list of approved home health care agencies in his area.

On September 24, 2020, LTCG informed Respondent that his claim was closed because he did not have approved services in place and was not incurring covered expenses. Respondent again requested reconsideration, which was denied.

On July 9, 2021, Respondent submitted a second-level appeal to CalPERS.

On September 14, 2021, CalPERS LTC Program notified Respondent that it had reviewed the matter and found that LTCG had appropriately denied approval of PXPT as an approved home health agency and Matibag as an Independent Provider under the EOC. The letter gave appeal rights.

On November 4, 2021, Respondent appealed the LTC Program's determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two days of hearing were held on September 19 and November 10, 2022. Respondent was represented by counsel at the hearing.

At the hearing, CalPERS presented evidence in support of its determination through witness testimony and documents. Representatives from CalPERS and LTCG testified at the hearing regarding the reasons behind denial of reimbursement for home health care services, reconsideration, and appeal processes. CalPERS' evidence showed that while Respondent meets personal eligibility for services, the documentation provided by PXPT was insufficient to credibly establish the services provided, caregivers used, and expenses incurred.

Matibag testified at hearing that he personally provided care to Respondent, and some of his employees also provided care. He could not recall any specifics of what documentation was provided to support care services provided. When shown different invoices from PXPT to Respondent, with different formats and amounts for the same time period, Matibag was unable to explain the differences. He also had no explanation for why the home care agreement was undated, why the invoices did not correspond to the amounts received from Respondent, or why Respondent's checks were made out to him personally rather than PXPT.

Respondent's son, Gary Simonian, testified regarding the decline in Respondent's physical abilities and increasing need for services. He also reported that Respondent did not understand the letters he received from LTCG or CalPERS. Gary admitted that he received phone calls from a person wanting to talk about his parent's home care services but did not return the calls because he thought it was a scam. He did recall one conversation with a LTCG representative who voiced a concern that Respondent may be a victim of fraud and might be overpaying for services rendered.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden to prove that PXPT and/or Matibag should have been approved as providers and that Respondent is entitled to be reimbursed for services. Respondent failed to meet his burden, and his appeal was properly denied. The ALJ concluded that the Board has authority to establish eligibility criteria for enrollment, define the scope of covered benefits, and define criteria to receive benefits. For Respondent, those criteria are set forth in the 2000 EOC. LTCG and CalPERS correctly applied the terms and conditions of the 2000 EOC and made the correct determination that Respondent was not eligible to be reimbursed for services provided to him after March 12, 2020. The ALJ found the evidence and testimony provided by LTCG and CalPERS to be credible and persuasive, including the many reasons why LTCG re-evaluated PXPT's provider eligibility and why the information received during the review process was insufficient to substantiate Respondent's reimbursement claims under the EOC.

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

April 18, 2023

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