

State Health Benefits Commission

Open Session Minutes

November 20, 2019

Adequate notice of this meeting has been provided through the annual notice of the schedule of regular meetings of the Commission filed with and prominently posted in the offices of the Secretary of State. The 2019 annual meeting schedule was mailed to the Secretary of State, Star Ledger and the Trenton Times on April 12, 2019.

The meeting of the School Employees' Health Benefits Commission of New Jersey was called to order on Wednesday, November 20, 2019 at 10 am. The meeting was held at the Division of Pensions and Benefits, 50 West State Street in Trenton.

The text of Resolution A (Closed Session) and Resolution B (Executive Session) were read in their entirety in the event that the Commission desires, at any point in the meeting, to approve a motion to go into Closed or Executive session.

Acting Secretary Nicole Ludwig took Roll Call and established that a quorum was present.

Commissioners:

Susanne Culliton, representing State Treasurer Elizabeth Maher Muoio

Gail Simon, representing Commissioner of the Department of Banking and Insurance Marlene Caride

Dudley Burdge, Representative for Local Government Employees

Deirdre Webster Cobb, CEO, Civil Service Commission (appearing telephonically)

Debra Davis, Representative for State Government Employees

Also Present:

Cristopher Meyer, Deputy Attorney General

Beth Mitchell, Assistant Attorney General

Amy Chung, Deputy Attorney General

Christin Deacon, Division of Pensions and Benefits

Andrew Lawson, Division of Pensions and Benefits

Nicole Ludwig, Division of Pensions and Benefits

Meeting Minutes

Chairperson Culliton made a motion to approve the May 16, 2019 Open and Executive session meeting minutes. Commissioners Deirdre Webster-Cobb seconded; Minutes were approved 4:1, Commissioner Simon abstained since she was not present for the May 16, 2019 meeting.

Chairperson Culliton made a motion to enter into Closed Session to hear the first appeal case. Commissioner Burdge seconded; all voted in favor. At this time the meeting entered into Closed Session.

The following cases, due to HIPAA regulations, were heard in Closed Session:

Case # 1120201901 Mrs. Ludwig stated the case was tabled at the July Commission. This appeal is for private duty nursing for a dependent on the coverage. She explained that at the last Commission meeting some questions arose regarding the peer-to-peer with the doctors as well as with the IRO conducted by Horizon.

Chairperson Culliton asked Horizon representative Donna Ruotola to explain what has transpired since the appeal was tabled. Ms. Ruotola explained that at the last meeting Horizon received direction from the Commission to contact two of the patient's physicians: Dr. Sullivan and Dr. Maxwell. Arrangements were to be made for a peer-to-peer discussion with Horizon. In the event the outcome wasn't favorable, Horizon was asked to send the case to an IRO again. The Commission requested that Horizon specifically request a pediatric gastroenterologist and a pediatric pulmonologist.

Ms. Ruotola stated that on July 17, 2019, letters were sent to three physicians. Horizon requested that the physicians supply clinical documentation in preparation for peer-to-peer discussions. Within 3 weeks, responses were received from all physicians. Dr. John Napoli and Dr. Goldfarb conducted peer-to-peer discussions with the selected physicians.

At the time Dr. Bethea, of Horizon, explained that on August 15, 2019 the peer-to-peer was held with Dr. Sullivan; on August 16, 2019 with Dr. Maxwell. He explained the outcome of these discussions did not change Horizon's determination that the additional four hours were not medically necessary. He stated that at this point the case was sent to the IRO. Since an IRO cannot allow two different physicians to review the same appeal, the IRO was done by a pediatric gastroenterologist.

While waiting for the IRO to be concluded, Horizon's medical staff made a determination to extend coverage for the eight hours through December 31, 2019. The case came back from the IRO with a determination that the services did not meet medical necessity, however, the approval for the eight hours through December 31, 2019 would be honored.

Dr. Bethea stated that next steps would be to submit a request for continued nursing in December 2019 and then the request would go through the review process at Horizon. If the member were denied, they would have 1st and 2nd level appeal rights through Horizon and could go through an IRO again.

Chairperson Culliton made a motion to enter into Executive Session. Commissioner Webster-Cobb seconded and all except Commissioner Burdge voted in favor. At this time the meeting entered into Executive Session.

Upon return from Executive Session, Chairperson Culliton clarified with Ms. Ruotola that the issue for this meeting was for four PDN hours, as eight PDN hours had already been approved through December 2019 by Horizon. The parent clarified that child was currently receiving the four hours in question from Medicaid, they added and that Medicaid had given approval for a total of 12 hours. Dr. John Napoli stated that when a case is reviewed through Horizon it is reviewed for medical necessity, whereas Medicaid does not review for medical necessity rather the review is based on benefits.

At this time, Commissioner Deirdre Webster-Cobb made a motion to enter into Executive Session. Commissioner Burdge seconded and all voted in favor.

Upon return to Closed Session, Commissioner Webster-Cobb made a motion to extend the approval of four PDN hours to January 31, 2020. Commissioner Burdge seconded; all voted in favor.

Case #1120201902: This case was tabled from the July Commission, and was in regards to retiree health benefits eligibility. Acting secretary Nicole Ludwig stated that on September 17, 2019 she spoke with two Rutgers representatives. One of the reps had confirmed they met with the member on January 6, 2017. The rep advised Mrs. Ludwig that they went over health benefits and retiree wellness with the member.

Mrs. Ludwig stated that according to the rep's notes what was considered standard practice, when a member has 25 years of service, the HR department would provide a first estimate along with full benefits package, including fact sheets 11 and 86.

The member was re-hired for a one-year term and was advised that when one year was up, the member would be laid off again.

According to the Rutgers HR rep., the member stated several times that they did not wish to retire.

The member introduced themselves and their attorney. At this time, the attorney for the member spoke and gave a brief overview of this case, stating that the member was appealing the decision described in the August 16, 2019 letter from the Division. The letter indicated that the member would not be eligible for state health benefits in retirement. The attorney went over the facts of the case.

Commissioner Burdge made a motion to enter into Executive session. Commissioner Davis seconded; all voted in favor.

Upon return to closed session Chairperson Culliton made motion to deny the appeal, based on the rules and regulations of the SHBP state that there cannot be a gap in health benefits coverage between active coverage and retired coverage. Commissioner Deirdre Webster-Cobb seconded; all voted in favor.

Case # 1120201903 DAG Meyer stated that he was the litigating attorney on this case and that AAG Mitchell would provide the legal counsel on this case. DAG Meyer explained the settlement proposal, stating the issue was that there were six months of treatment for the member. He stated the first six weeks were covered at the PHP level, the member attempted to be admitted at a residential treatment level and was denied, and then was admitted for approximately six weeks of partial hospitalization treatment. At this time Magellan denied treatment claiming it was not medically necessary. The member continued to receive personal hospitalization treatment from the provider without authorization from the carrier. The member stepped down to the next level of IOP treatment in April. At this time the carrier coverage resumed for approximately the next 6-8 weeks, however, no claims were submitted. DAG Meyers stated that he spoke with Horizon and that this appeal was based on the denial of an authorization, not a denial of a claim.

Chairperson Culliton made a motion to authorize DAG Meyer to pose a counter offer in the amount of \$22,950 but giving the authority to go up to the requested amount of \$33,150. Commissioner Webster-Cobb seconded; all voted in favor.

Case # 1120201904 DAG Meyer stated that this case related to the patient's residential treatment at Avalon Hills, and requested additional time to present the response. Chairperson Culliton made a motion to table this case. Commissioner Davis seconded; all voted in favor.

Case #1120201905: Acting Secretary Nicole Ludwig advised the commission the scheduled FAD is still under review, and will be presented at the next meeting.

Case # 1120201906: The member explained the appeal, stating that they were an employee of the Judiciary for 25.5 years and were abruptly terminated from employment. The member said that they were given a letter of termination as an "at-will" employee and a Cobra form. The member stated that they could not afford to take the Cobra coverage. The member did get coverage from the Healthcare Marketplace, but was not given any information from their employer about the need to have continuous coverage. The member advised that they applied for retirement effective September 1.

The member stated that they called the Division of Pensions and Benefits repeatedly and was never told about continuous coverage. At the end of August they received an email from the Division, containing an application for benefits and several other forms. The member stated that they completed all the forms and submitted everything to DPB. The member stated that there was only an 18-day lapse between when the Marketplace coverage terminated and their retirement date began.

Acting Secretary Ludwig stated that the member had called into the DPB Call Center several times. During these calls purchasing time was discussed as well as filing for retirement. During a call on March 11, 2019 the member was advised they would have to apply for coverage through Cobra and that their account would stay open for two years from the last date of any contributions. Commissioner Simon made a request for the recording of the March 11 call. Mrs. Ludwig stated that she would put in the request.

Chairperson Culliton asked the member to please step out of the meeting while the Commissioners waited to receive the recorded calls to review. The Commission moved on to the next case.

Case # 1120201907 The attorney for the provider introduced themselves and stated that they were present on behalf of the Plastic Surgery Center , as well the authorized delegated representative and assignee of a State Health Benefits member. The attorney wanted to clarify the reason for being present today and stated it was their understanding that the issue at hand was limited to whether the Plastic Surgery Center, as a medical provider, had standing to present or submit an appeal to the Commission. Chairperson Culliton replied that yes, this was correct. The attorney stated they maintained the position that the correspondence dated August 22, 2019, received by their office on September 30, 2019, constituted a final determination for purposes of the appeal that's was currently before the appellate division.

The attorney stated that when the Plastic Surgery Center submitted a timely appeal back on July 23, 2019, their office had initially received correspondence indicating that they did not have standing to pursue the appeal. The appeal needed to come directly from the member. The attorney continued, that on September 30, 2019 their office received a letter dated August 22, 2019, indicating that all appeals must be submitted directly to the member's carrier and the Commission will only accept Commission-appealed requests directly from the member or their legal representative. Also, that the Commission did not recognize an assignment of benefits as legal representation of the member.

Chairperson Culliton confirmed this case was about an out-of-network benefit and there was no contractual relationship between the State Health Benefit Commission and the attorney's client. Chairperson Culliton continued that with this being said, the Commission's position had usually been that an out-of-network provider could not come in and argue the merits of the case or the benefit structure of the case. The attorney stated that New Jersey courts stated otherwise.

Chairperson Culliton made a motion to enter into Executive session. Commissioner Davis seconded; all voted in favor.

Upon return from Executive Session, Chairperson Culliton made a motion to deny the request for "standing" in this case. Commissioners Burdge seconded the motion; all voted in favor.

Case # 1120201908 DAG Amy Chung presented the plaintiff's counter proposal to the Commission's proposal, was before the Commission. The Commission agreed to extend the timeframe for people to submit claims from three months to six months. The Commission rejected allowing people who had not paid their co-share to do so now and also rejected the plaintiff's request for attorneys' fees. The plaintiffs had requested that Horizon help members

come up with the information to support their claims for reimbursement today. Ms. Chung continued that during a call with Horizon back in August, the cost of doing the postcards for all members was revealed and it would be approximately \$60,000. DAG Meyer stated that the figure should be more in the range of \$50,000. DAG Chung stated that the question remained as to what Horizon would be willing to do to support open claims. Chris Lowry from Horizon stated that the cost to do a postcard for the roughly 67,000 impacted members would be about \$50,000.

Chairperson Culliton made a motion to authorize Horizon to go back to plaintiffs with the counter offer. Commissioner Simon seconded; all voted in favor.

Case 1120201906 (cont.) After review of the case, and the call Commissioner Burdge made a motion that the Commission's understanding of the rules and the statute is that the member had to have continuous coverage in The State Health Benefit plan. Recognizing that, Commissioner Burdge stated that the offer up for consideration was that the member pay Cobra retroactively. Commissioner Davis seconded the motion and all voted in favor.

Chairperson Culliton made a motion to go into Open session to hear Worker's Compensation cases. Commissioner Davis seconded and all voted in favor.

Case #1120201909: Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Davis seconded the motion; all voted in favor.

Case #1120201910: Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Webster Conn seconded the motion; all voted in favor.

Case #1120201911: Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Davis seconded the motion; all voted in favor.

Case #1120201912: Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Davis seconded the motion; all voted in favor.

Case #1120201912: Culliton made a motion to approve the Final Administrative Determination. Commissioner Simon seconded and all voted in favor.

Chairperson Culliton made a motion to adjourn. Commissioner Davis seconded. All voted in favor and the meeting was adjourned at 2:29 pm.

Respectfully submitted,



Nicole Ludwig

