

**State Health Benefits Commission**

**Meeting Minutes**

**March 13, 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 December 20, 2018.

The meeting of the State Health Benefits Commission of New Jersey was called to order on Wednesday, March 13, 2019 at 10:00 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.

**Roll Call**

**Commissioners:**

**Susanne Culliton**, Chairperson, representing State Treasurer Elizabeth Maher Muoio

**Holly Gaenzle**, representing Commissioner of the Department of Banking and Insurance Marlene Caride

**Dudley Burdge**, Representative for Local Government Employees

**Debra Davis**, Representative for State Government Employees

**Absent:**

**Deirdre Webster-Cobb**, CEO, Civil Service Commission

**Also Present:**

**Mark Cipriano**, New Jersey Division of Pensions and Benefits

**Nicole Ludwig**, New Jersey Division of Pensions and Benefits

**Amy Chung**, Deputy Attorney General

## MEETING MINUTES:

Acting Secretary Nicole Ludwig explained that the meeting minutes are still under review, and will be presented at the next Commission for approval.

Chairperson Culliton made a motion to go into Closed Session, Commissioner Davis seconded the motion; all voted in favor.

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

**Case #03131901:** This appeal was tabled from the January 9, 2019 Commission meeting. The appeal was tabled to allow the Plan Design Committee (PDC) to review the current Fertility Mandate as it relates to iatrogenic Cryopreservation.

Acting Secretary Nicole Ludwig advised that the appeal was presented to the PDC at the January 30, 2019 meeting, a subgroup was formed. On February 27, 2019, as a direct result from the subgroup the PDC passed Resolution 2019-1: CLARIFYING THE PARAMETERS OF INFERTILITY COVERAGE.

From this resolution Acting Secretary Nicole Ludwig read the following:

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Consistent with the intent of N.J.S.A. 52:14-17.29v, treatment of iatrogenic infertility, or situations likely to lead to iatrogenic infertility, shall be covered to the same extent, and with the same conditions of coverage, as other instances of abnormal function of an individual's reproductive system; and
2. The SHBP PDC directs the State Health Benefits Commission, and to the extent necessary the Division of Pensions and Benefits and the Division of Purchase and Property, to take appropriate action with the SHBP carriers to effectuate any necessary change, modification or clarification, to the existing contract and to require that the carriers provide adequate notice to SHBP participants of any required change.

After review of the resolution, Chairperson Culliton made a motion to approve all eligible claims that have been paid pursuant to the PDC resolution. Commissioner Burdge seconded the motion; all voted in favor.

**Case #03131902:** The appeal is in regards to medication that is denied because it is prescribed for off-label use. OptumRx explained that the claim was not actually denied due to the off-label use, but rather was denied because fertility treatment is an excluded service for members over the age of 45. Commissioner Davis made a motion to go into executive session to seek counsel from the DAG. Chairperson Culliton seconded the motion; all voted in favor.

Upon return from Executive Session, Chairperson Culliton made a motion to table the appeal to allow the DAG to review the appeal a little further, since the denial letters never indicated the member was denied due to age. Commissioner Davis seconded the motion; all voted in favor.

At this time the Commission went into Open Session to discuss Office of Administrative Law requests.

### **Office of Administrative Law**

**Case #03131903:** The Commission was presented with the Initial Decision by the OAL Judge. This appeal was transmitted to the Office of Administrative Law (OAL) on April 23, 2015. Administrative Law Judge Cookson issued an Initial Decision on June 19, 2017. On September 27, 2017 the Commission responded to the Initial Decision by asking 5 additional questions. The Initial Decision presented to the Commission today was in response to the September 27, 2017 Commission Response.

Chairperson Culliton made a motion to go into Executive Session to seek counsel from the Deputy Attorney General. Commissioner Davis seconded the motion; all voted in favor.

Upon the return from Executive Session, Chairperson Culliton made a motion to table the appeal. Commissioner Gaenzle seconded the motion; all voted in favor.

The Commission requested that the Board Secretary provide additional documentation regarding this case of, therefore a special Commission meeting will be scheduled in April.

**Case #03131904:** The member presented the request for an OAL appeal. The appeal was presented, and denied at the May 9, 2018 Commission hearing. The member stated that she was informed that she could bring her doctor-present testimony. Chairperson Culliton advised the member that the OAL hearing is not held by the Commission. Acting Secretary Nicole Ludwig advised the OAL appeal is presented to the Commission for determination if the case can be sent to the OAL. Chairperson Culliton advised that if the appeal is sent to the OAL it will be heard in Newark. Chairperson Culliton made a motion to approve the OAL appeal to be sent the Office of Administrative Law. Commissioner Burdge seconded the motion; all voted in favor.

**Case #03131905:** The Commission was presented the member's appeal to have the case heard in the Office of Administrative Law. The appeal for enrollment into Chapter 330 was heard and denied at the January Commission meeting. Chairperson Culliton recused herself from the case.

Commissioner Davis made a motion to go into Executive Session to seek advice from the Deputy Attorney General.

Upon return Commissioner Burdge made a motion to deny the OAL request. Commissioner Davis seconded the motion; all voted in favor.

**Case #03131906:** The appeal is for an OAL hearing from the January 9, 2019 meeting. The original appeal was for surviving spouse health benefits. Chairperson Culliton made a motion to deny the OAL request, and instructed the Acting Secretary to compose an FAD. Commissioner Davis seconded the motion; all voted in favor.

#### **Settlement Proposals:**

**Case #03131907:** Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Burdge seconded the motion; all voted in favor.

**Case #03131908:** Chairperson Culliton made a motion to authorize Equian to settle the matter as presented. Commissioner Davis seconded the motion; all voted in favor.

Commissioner Culliton made a motion to go into Closed Session to hear member's appeals. Commissioner Burdge seconded the motion; all voted in favor.

#### **Closed Session Appeals:**

**Case #03131909:** The appeal is in regards to out-of-network charges for inpatient hospital services performed on May 16, 2017. The appeal is being presented by the member's parent. To ensure that the Commission was in compliance with HIPAA, member was called and authorized consent for the parent to speak on their behalf.

The parent explained that there was an understanding, and a decision to seek services from a provider who was out-of-network. They explained that the appeal is not for an in-network approval, but rather the appeal is in regards to the Fair Health Index which was used on the day the services were rendered for both the surgeon as well as the co-surgeon.

Mrs. Ruotola explained the claims were submitted in May 2017, and paid in accordance with the Fair Health Index. Commissioner Burdge asked if a pre-determination was requested in this case. Mrs. Ruotola advised there was a pre-authorization; but not a pre-determination.

The parent asked where the guidebooks stated a pre-determination should be requested. Chairperson Culliton advised that it is outlined on page 29 of the guidebook.

The parent went on to explain that the doctor advised them that a different member had the same surgery by the same team of doctors; but that claim was paid at a higher level. Mrs. Ruotola explained

that due to HIPAA regulations, she cannot review or discuss the other member's claims. Chairperson Culliton asked if the other person was in the same plan. The member confirmed that they were.

Chairperson Culliton made a motion to go into Executive session to seek counsel from the Attorney General.

Upon return Commissioner Burdge made a motion to deny the claim based on the fact that the claims were processed according to the provisions of the plan. Commissioner Davis seconded the motion; all voted in favor.

**Case #03131910:** This appeal is in regards to retiree eligibility for a member who does not have Medicare Part A. Acting Secretary Nicole Ludwig explained the member's location had not paid into Social Security. Therefore, the member has been advised by Medicare that they do not qualify for Medicare Part A. She explained the member had been covered under Newark City's private plan until August 1, 2017 at which time Newark came to SHBP.

Chairperson Culliton made a motion to go into Executive session to seek advice from Deputy Attorney General. Commissioner Davis seconded the motion; all voted in favor.

Upon return to closed session, Commissioner Davis made a motion to deny the claim based on the provisions of the plan. Chairperson Culliton seconded the motion. The motion passed 3:1 (Commissioner Burdge voted nay.)

**Case #03131911:** This is an appeal of NJAC 52:14-7.28B which states a member must waive active coverage, or pension contributions would be withheld at the 1.5% rate. The member is requesting the reimbursement of premiums paid from July 2017 through December 22, 2017; totaling \$561.25. The member states the Human Resources department did not advise that a waiver must be filed.

Commissioner Burdge made a motion to go into Executive session to seek advice from Deputy Attorney General. Commissioner Davis seconded the motion; all voted in favor.

Upon return to closed session, Chairperson Culliton made a motion to deny the claim based on NJAC 52:14-7.28B. Commissioner Gaenzle seconded the motion. The motion passed 3:1 (Commissioner Davis voted nay.)

Commissioner Burdge made a motion to ask the Division of Pensions & Benefits to develop a plan to help prevent situations like this from occurring.

Adjournment:

There being no further business, Commissioner Davis made a motion to adjourn. Commissioner Burdge seconded the motion; all voted in favor. The meeting adjourned at 1:53pm.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Ludwig". The signature is written in a cursive, flowing style.

Nicole Ludwig  
Acting Secretary State Health Benefit Commission