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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2977-22**

JEFFREY M. ZIEMBA,

Petitioner-Appellant,

v.

**STATE HEALTH BENEFITS
COMMISSION,**

Respondent-Respondent.

Submitted May 14, 2024 – Decided June 25, 2024

Before Judges Rose and Smith.

On appeal from the State Health Benefits Commission,
Department of Treasury.

Jeffrey M. Ziemba, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent (Sara Gregory, Assistant Attorney General,
of counsel; Alison Keating, Deputy Attorney General,
on the brief).

PER CURIAM

Petitioner appeals from the May 10, 2023 final decision of the State Health Benefits Commission denying his challenge to benefits coverage for two medical procedures he underwent for back pain. We affirm for the following reasons.

In 2022, petitioner Jeffrey M. Ziemba was enrolled in the State Health Benefits Program (SHBP)¹ as a dependent of his wife, Statira K. Ziemba. The Ziembas were enrolled in a tiered network plan, called the OMNIA policy, which was administered by Horizon Blue Cross Blue Shield of New Jersey on behalf of the SHBP. Coverage through the OMNIA policy offered greater benefits for "Tier 1" providers than for "Tier 2" providers. As an example, OMNIA policy holders are responsible for a \$150 copay for outpatient surgery performed at a Tier 1 facility versus paying up to a \$1,500 deductible and then an additional twenty percent coinsurance for outpatient surgery performed at a Tier 2 facility.

Petitioner had been diagnosed with spinal stenosis. Beginning in February 2022, petitioner sought treatment for back pain with Dr. Aakash Thakral, M.D., a member of Princeton Orthopedic Associates and a Tier 1 provider. Dr. Thakral

¹ The SHBP was created by the Legislature in 1961 to provide health benefits coverage to qualified employees, retirees, and dependents of the State. N.J.S.A. 52:14-17.25 to -17.46a.

administered an epidural injection for pain relief in February 2022, and recommended medial branch block injections. Dr. Thakral advised that if these injections were successful in relieving pain, petitioner could consider an ablation procedure to provide longer lasting relief. Dr. Thakral performed ablation procedures only at Penn Medicine in Plainsboro, a Tier 2 facility.

On March 17, 2022, petitioner called Horizon, inquiring about the cost for the ablation procedure at a Tier 2 facility. Horizon informed petitioner it was unable to provide an exact dollar amount in a telephone call but advised that he could request a predetermination of benefits. The record shows petitioner never did so.

On April 14, 2022 and May 26, 2022, petitioner received branch block injections that successfully relieved his pain. Because the branch blockers succeeded, Dr. Thakral scheduled ablations to take place at Penn Medicine's facility in Plainsboro. On June 23, 2022, a representative of Penn Medicine contacted Horizon for pre-authorization for the procedure, and Horizon approved the request as non-urgent and pre-service. Dr. Thakral performed a left nerve ablation on June 28, 2022, and a right nerve ablation on July 12, 2022. Penn Medicine billed Horizon \$9,262 for the June 28 procedure and \$9,731 for

the July 12 procedure. Petitioner was ultimately billed \$2,519.29, representing a \$1,500 deductible and twenty percent coinsurance.

Petitioner contacted Horizon to challenge his bill and request that his procedures be reimbursed as if they were performed at a Tier 1 facility. Horizon denied petitioner's request in a letter dated October 3, 2022. After exhausting Horizon's internal appeal process, petitioner requested an SHBC appeal on November 27, 2022, arguing Dr. Thakral was the only physician offering ablations at the practice group, only offered them at the Tier 2 Penn Medicine facility, and that searching for another Tier 1 specialist, who can perform ablations in a Tier 1 facility, would have resulted in further delay while suffering severe pain. SHBC denied petitioner's appeal during its January 11, 2023 meeting. Petitioner then requested a hearing before the Office of Administrative Law. On March 8, 2023, the SHBC reviewed petitioner's appeal, determined there was no issue of material fact, and denied his request for a hearing.

SHBC issued its final administrative decision on May 10, 2023, finding petitioner was properly billed and the procedures were non-emergent. The SHBC noted the term, "emergency" was defined by the plan as "a medical condition of such severity that a prudent layperson with average knowledge of health and medicine would call for immediate medical attention." The record

showed petitioner underwent the ablation procedures 102 and 116 days after his March 2022 inquiry about the cost of the procedures, and the SHBC used these facts to support its non-emergent finding.

Petitioner appeals the final decision of the SHBC, arguing SHBC's calculation of the elapsed time between his phone call and the procedures did not consider the treatment he received for pain leading up to the ablations. Petitioner also argues SHBC failed to evaluate the evidence according to the "prudent layperson" standard mandated by the guidebook.

Our "review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)).

The appellate court may reverse a decision "if it is arbitrary, capricious, or unreasonable, or if it is not supported by substantial credible evidence in the record as a whole." P.F. on Behalf of B.F. v. New Jersey Div. of Dev. Disabilities, 139 N.J. 522, 529–30 (1995) (citing Dennery v. Bd. of Educ., 131 N.J. 626, 641 (1993)). We defer to an agency's "technical expertise, its superior

knowledge of its subject matter area, and its fact-finding role." Messick v. Bd. of Review, 420 N.J. Super. 321, 325 (App. Div. 2011). However, the appellate court applies "de novo review to an agency's interpretation of a statute or case law." Russo, 206 N.J. at 27 (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

SHBC was created by the New Jersey Health Benefits Program Act, which "establishes a plan for state funding and private administration of a health benefits program" Heaton v. State Health Benefits Comm'n, 264 N.J. Super. 141, 151 (App. Div. 1993); see N.J.S.A. 52:14-17.24 to -45. "The [SHBP] is, in effect, the State of New Jersey acting as a self-insurer." Burley v. Prudential Ins. Co. of Am., 251 N.J. Super. 493, 495 (App. Div. 1991). N.J.S.A. 52:14–17.27 vests the SHBC with the authority to administer and regulate the SHBP. "The [SHBC] must balance its obligations of meeting the health care needs of its members with a fiduciary obligation to make the program cost effective." Murray v. State Health Benefits Comm'n, 337 N.J. Super. 435, 440 (App. Div. 2001). The plan's guidebook "embod[ies] the terms of the [SHBP] as communicated to [its members]." Heaton, 264 N.J. Super. at 144.

The record shows the SHBC's finding that petitioner was reimbursed at the correct rate was supported by substantial credible evidence. The OMNIA

Plan clearly states that members using Tier 2 facilities will be responsible for a \$1,500 deductible and twenty percent coinsurance up to a \$4,500 individual out-of-pocket maximum. Petitioner acknowledges his ablation procedures were performed at a Tier 2 facility. Significantly, the record shows petitioner was aware that the Plainsboro Penn Medicine facility was Tier 2 before the ablations. A plain reading of the language in the guidebook's explanation of benefits shows the facility charge for the ablations was appropriately reimbursed at the Tier 2 level.


Petitioner's argument that the ablations were emergent care is not persuasive. As a threshold matter, petitioner does not identify a policy provision that would permit care by Tier 2 providers to be reimbursed at a Tier 1 rate in cases of emergency. Even if we accept petitioner's argument that emergency care is entitled to reimbursement at a Tier 1 rate, the record amply supports the SHBC's finding that petitioner's ablations were not emergent, defined by the policy as "a medical condition of such severity that a prudent layperson with average knowledge of health and medicine would call for immediate medical attention." (Emphasis added). While we understand petitioner's condition required treatment to reduce his genuine and well-documented pain—which he

obtained prior to the ablations in the form of steroid injections—the ablations themselves were not emergent, as they were scheduled well in advance.²

We conclude the final decision by the SHBC was supported by substantial credible evidence in the record and was not arbitrary, capricious, or unreasonable.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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² SHBC does not dispute the medical necessity of the ablations, and Horizon ultimately approved the procedures as necessary and covered them, albeit under the Tier 2 reimbursement level.