OPINION OF TRUSTEES

In Re

Complainants: Employees and Pensioners
Respondent: Employer
ROD Case No: 88-253 - July 30, 1991

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee, Thomas H. Saggau, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the Employer's implementation of hospital preadmission review and second surgical opinion programs under the terms of the Employer Benefit Plan.

Background Facts

In a letter sent to all Employees on October 2, 1989, the Employer announced that it would implement two new cost containment programs on January 2, 1990. Proview Plus ("Proview") is a hospital pre-admission and continued stay review program conducted by the Respondent's insurance carrier to determine the medical necessity of inpatient care prior to a beneficiary's admission, to recommend an assigned length of stay, and to later determine if any additional days of hospitalization are required. Managed Second Surgical Opinion ("MSSO") is a service conducted by the Respondent's insurance carrier to provide second or third opinions from qualified physicians before beneficiaries undergo certain elective surgical procedures.

On January 5, 1990, the Employer notified its Employees and Pensioners that certain procedural changes were necessary for more efficient administration of the health benefits plan and proper management of the new cost containment programs. The beneficiaries were advised that, effective February 1, 1990, they must participate in the Proview and MSSO programs in order to be covered under the hold harmless provision of the Plan. The notice provided to beneficiaries states that if a beneficiary does not utilize these programs, any charges that are determined to be excessive or medically unnecessary will not be paid and the Plan Administrator will not hold the beneficiary harmless from attempts by a provider to collect such charges. The notice states that the beneficiary would be responsible for any unpaid amounts.

On January 12, 1990, all Employees were asked to submit any questions about the programs and administrative changes to the Employer. The most common questions were discussed at weekly meetings between Employees and supervisors and written responses to these questions were posted on bulletin boards at the worksites. In addition, all beneficiaries were provided new health cards and Summary Plan Description updates which contain instructions on how to use Proview and MSSO. The Employer also sent notices to medical providers describing the programs, their effective dates, and the procedures to be followed.

The Complainants object to the Proview and MSSO programs, as implemented by the Employer, arguing that the Employer does not have the right to require beneficiaries to participate in such programs and cannot refuse to provide hold harmless protection to beneficiaries who do not participate.

Dispute

Can the Employer encourage participation in its hospital pre-admission review and second surgical opinion programs by refusing to provide hold harmless protection to beneficiaries who do not participate?

Positions of the Parties

Position of the Complainant: The Employer does not have the right to require beneficiaries to participate in the Proview and MSSO programs and cannot refuse to provide hold harmless protection to beneficiaries who do not participate.

Position of the Employer: Participation in the Proview and MSSO programs implemented by the Employer is considered optional because there is no automatic reduction of benefits if the programs are not used. The Employer's rule that it will not provide hold harmless protection when the programs are not used is binding upon the beneficiaries because: (1) the programs and the rule have been adequately and effectively communicated to beneficiaries; (2) compliance with the Proview and MSSO programs does not create undue hardship for beneficiaries; (3) it is reasonable for beneficiaries to bear liability for non-covered charges which could have been avoided by the use of Proview and MSSO; and (4) the rule is supported by previous opinions of the Trustees.

Pertinent Provisions

Article XX (12) of the 1988 Wage Agreement provides:

> (12) Health Care Cost Containment:
>
> The Union and the Employers recognize that rapidly escalating health care costs, including the costs of medically unnecessary services and Inappropriate

> treatment, have a detrimental impact on the health benefit program. The Union and the Employers agree that a solution to this mutual problem requires the cooperation of both parties, at all levels, to control costs and to work with the health care community to provide quality health care at reasonable costs. The Union and the Employers are, therefore, committed to fully support appropriate programs designed to accomplish this objective. This statement of purpose in no way implies a reduction of benefits or additional costs for covered services provided miners, pensioners and their families.
>
> In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Trustees, the Plan Administrator or their agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Trustees, the Plan Administrator or their agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Trustees, the Plan Administrator or their agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

The Introduction to Article III of the Employer Benefit Plan provides in pertinent part:

> Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan.

Article III. A. (1) (a) of the Employer Benefit Plan provides in pertinent part:

> (1) Inpatient Hospital Benefits
>
> (a) Semi-private room
>
> When a Beneficiary is admitted... for treatment as an inpatient to an accredited hospital..., benefits will be provided for semi-private room accommodations... and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

Article III. A. (3) (a) of the Employer Benefit Plan provides in pertinent part:

(3) Physicians' Services and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedures (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

Article III. A. (10) (b) and (g) of the Employer Benefit Plan provide in pertinent part:

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

(g) Explanation of Benefits (EOB). Cost Containment and Hold Harmless

2. (i) Regarding health care cost containment, designed to control health care costs and to improve the quality of care without any reduction of plan coverage or benefits, the Trustees of the UMWA Health and Retirement Funds are authorized to establish programs of optional in-patient hospital pre-admission and length of stay review, optional second surgical opinions, and case management and quality care programs and are to establish industry-wide reasonable and customary schedules for reimbursement of medical services at the 85th percentile (except when actual charges are less), and other cost containment programs that result in no loss or reduction of benefits to participants. The Trustees are authorized to take steps to contain prescription drug costs, including but not limited to, paying only the current average wholesale price, encouraging the use of generic drugs instead of brand name drugs where medically appropriate, and encouraging the use of mail order drug programs when advantageous.

(ii) The Trustees shall make available to the Plan Administrator any special cost containment arrangements that they make with outside vendors and/or providers. Further, the Plan Administrator may "piggyback" the cost containment programs adopted by the Trustees.

(iii) Disputes shall continue to be resolved in accordance with Article XX (e) (6) of the Wage Agreement.

(iv) It is expressly understood that nothing contained in this Section shall diminish or alter any rights currently held by the Employer in the administration of this Plan.

(v) Consistent with Article XX (12) of the 1984 and 1988 Wage Agreements, this Section in no way authorizes or implies a reduction of benefits or additional costs for covered services provided or relieves the Employer of any obligation set forth in Article XX of the Wage Agreement.

...

3. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Discussion

Under Article III. A. (1) and (3) of the Employer Benefit Plan, benefits are provided for hospital admissions and surgery. Those admissions must, however, be medically necessary, appropriate and reasonable, as stated in the Introduction to Article III of the Plan. In addition, Plan Administrators are authorized under Article III. A. (10) (b) to promulgate rules and regulations to administer the Plan. In Article XX (12) of the Wage Agreement, the Union and Employers recognize the detrimental effect of escalating health care costs and agree to support appropriate programs designed to provide quality care at reasonable cost. And, in Article XX (12) of the

Wage Agreement and Article III. A. (10)(g) 3. of the Plan, the Employers agreed to establish Hold Harmless programs to ensure that the burden of cost containment efforts is not shifted to beneficiaries.

Medically necessary hospital admissions and surgery are covered by the Employer Benefit Plan. Conversely, admissions and surgery which are not medically necessary are not covered. Employers are authorized under Article III. A. (10) (b) to implement procedures to ensure that the hospitalizations and surgery for which they pay benefits are medically necessary.

With respect to cost containment programs, Article III. A. (10)(g) 2.(v) provides that the Plan "in no way authorizes or implies a reduction of benefits or additional costs for covered services provided or relieves the Employer of any obligation set forth in Article XX of the Wage Agreement." The beneficiaries in this case have not agreed to waive their right to be held harmless as set forth in Article XX of the Wage Agreement and Article III. A. (10)(g) 3. of the Employer Benefit Plan. Thus, the Employer may not unilaterally, through the rules of a cost containment program, refuse to hold beneficiaries harmless from providers' attempts to collect excessive charges or fees for services not medically necessary.

The Trustees conclude that while the Employer may implement the cost containment programs described above, it may not penalize a beneficiary for failing to use the programs by refusing to hold the beneficiary harmless. The Trustees' decisions in RODs 84-264 and 88-076 do not counsel otherwise. Those RODs did not address an Employee's attempt to condition its hold harmless obligation on the Employee's participation in cost containment programs. Instead, those RODs established the Employee's obligation to comply with reasonable hold harmless procedures designed to allow the Employer to effectively negotiate and/or defend litigation relating to a provider claim.

Opinion of the Trustees

The Proview and MSSO programs established by the Employer are consistent with the cost containment objectives of the Wage Agreement and the Employer Benefit Plan. However, the Employer's rule denying hold harmless protection to beneficiaries who do not use the Proview and MSSO programs is not within the scope of the Employer's authority under Article III. A. (10) (b) and may not therefore be enforced.