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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-509 - May 7, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Elliot A. Segal, 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 provision of benefits for inpatient hospital room and board charges under the terms of the Employer Benefit Plan.

### Background Facts

The Employee's spouse was hospitalized from July 2, 1990 through July 9, 1990, and from November 28, 1990 through December 2, 1990. The confinement in July was due to acute symptoms of gastritis, and the confinement in November was due to extensive surgical procedures performed on her left knee. Both hospital admissions were pre-certified by Aetna, the Employer's intermediary for health benefit issues.

Aetna certified six days as medically necessary for the July 2, 1990 through July 9, 1990 confinement. The Employer provided benefits for all inpatient charges certified, but denied the room and board charge for the last day of hospital confinement as not being medically necessary.

Aetna certified three days as medically necessary for the confinement of November 28, 1990 through December 2, 1990. The Employer has denied the room and board charges for December 1 and 2, 1990 since there was no medical documentation to substantiate continued confinement past November 30, 1990 as medically necessary.

In both instances the Employee has signed hold-harmless forms for the unpaid balances; however, the Employer is taking no steps to prevent collection action being taken against the Employee. The Employee requests that the Employer either make the appropriate payment for these charges, or implement the Plan mandated hold-harmless procedures to resolve the unpaid balances.

### Dispute

Is the Employer required to pay the inpatient room and board charges for the Employee's wife on July 9, 1990 and December 1 and 2, 1990?

#### Positions of the Parties

Position of the Employee: The Employer is required to pay the room and board charges because the Employee's spouse's physicians felt it was necessary for her to remain hospitalized.

Position of the Employer: The Employer is not required to pay the room and board charge for services rendered on July 9, 1990 and December 1 and 2, 1990 because the services provided during that period could have been safely and adequately provided on a outpatient basis, and continued hospitalization was not medically necessary.

#### Pertinent Provisions

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

#### ARTICLE III - BENEFITS

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. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional Information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

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

- (1) Inpatient Hospital Benefits
- (f) Semi-private room

When a beneficiary is admitted by a licensed physician (hereinafter "physician") for treatment as an inpatient to an Accredited Hospital (hereinafter "hospital"), benefits will be provided for semi-private room accommodations (Including special diets and

general nursing care) and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

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Article III. A. (10)(g) 3. provides in pertinent part:

3. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problems 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

The Introduction to Article III of the Employer Benefit Plan states that covered services shall be limited to those services that are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care. The Introduction further states that the fact that a level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under the Plan. Article III. A. (1)(a) of the Plan states that if a Beneficiary is admitted to a hospital by a physician, benefits will be provided for room accommodations and medically necessary services provided by a hospital for the diagnosis and treatment of a Beneficiary's condition.

The Employer, in this case, denied benefits for the room and board charges on July 9, 1990 and December 1 and 2, 1990 as not medically necessary. A Funds' medical consultant has reviewed the information submitted in this case, including physician's orders and progress notes from the hospital, and letters from H. Leslie Fowler, MD and William M. Lightfoot, MD, the attending physicians. The consultant has advised that the medical records do not provide any medical reason for continued hospitalization, and the physicians' letters do not provide any additional medical documentation that would justify hospitalization beyond the days certified.

Specifically regarding the confinement of July 2, 1990 to July 9, 1990, the consultant advises that the patient did not require any acute care after July 8, 1990 as her IV's had been removed and she was tolerating liquids. The consultant's opinion was that the patient could have safely been discharged on July 8, 1990. Therefore, the Employer's denial of the room and board charge on July 9, 1990 was justified under the terms of the Employer Benefit Plan.

In regards to the confinement of November 28, 1990 through December 2, 1990, two days, December 1 and 2, 1990, were determined to be ineligible. The consultant has reviewed these records and has advised that the patient could have safely been discharged on December 1, 1990 to receive her physical therapy on an outpatient basis. Therefore, the consultant concluded that the Employer's denial of the room and board charges on December 1 and 2, 1990 was justified under the terms of the Employer Benefit Plan.

Article III. A. (10)(g) 3. of the Employer Benefit Plan states that the Plan Administrator, with the written consent of the Beneficiary, shall hold the Beneficiary harmless from any attempts the provider of service may make to collect charges that are deemed to be excessive, or charges for services not medically necessary. In this case the Beneficiary has signed a Cost Containment Reduction form provided to him by Aetna, the Employer's intermediary, for the room and board charges on July 9, 1990 and December 1 and 2, 1990. However, the Employer has made no attempt to intercede on behalf of the Beneficiary to prevent further collection actions by the providers of service, as is mandated in the Employee Benefit Plan.

The Trustees conclude that the medical necessity has not been established for the hospital confinement dates of July 9, 1990 and December 1 and 2, 1990 and, therefore, the Employer was justified in their denial of these charges. The Employer is required to implement the "hold harmless" provision in the policy, as the charges were denied as not medically necessary, and thus, fall under the protection of the "hold-harmless" provision.

#### Opinion of the Trustees

The Employer is not required to pay the room and board charges incurred by the Employee's spouse on July 9, 1990 and December 1 and 2, 1990. The Employer is, however, required to implement hold-harmless procedures and to hold the Employee harmless in any further attempts by the providers to collect any monies due in connection with these charges.