OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-520 - December 10, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee; Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for emergency room treatment under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse suffers from cluster headaches. Following the standing orders of her neurologist, the Employee's spouse went repeatedly to the emergency room of an area hospital for treatment at the onset of her cluster headache episodes. The treatment consisted of intra-muscular injections of Nubain, Phenergan, and Decadron (prescription narcotic, antihistamine/sedative and steroid compounds) for pain management. The neurologist states that his office is not equipped to administer these medications and, therefore, the Employee's spouse must seek treatment at an area hospital emergency room. The neurologist also notes that the patient does not need to be seen by an emergency room physician, but simply needs medication administered quickly.

This case concerns the use of the emergency room on the following dates: March 22, 1991, April 29, 1991, May 8, 1991, May 16, 1991, May 28, 1991, June 7, 1991, June 27, 1991, and August 4, 1991, for a total of eight visits. The total charges for the eight visits is $1,643.65. This total includes eight pharmacy charges totaling $1,274.80, eight emergency room charges totaling $316.80, and one laboratory charge of $52.05. The Employer has denied all these charges, stating that the care was not for emergency treatment rendered within 48 hours following the onset of acute symptoms, and because there was no evidence that the headaches increased in intensity or severity. The Employer has stated that any physician's charges in connection with these dates of service have been paid, but no physician charges are evident in any of the documents submitted for these dates. The Employer noted in its response that between March 1991 and January 1992 the Employee's spouse incurred 42 emergency room charges in connection with her cluster headaches. The Employer further states that, in its

opinion, the procedures could have been performed with equal efficacy at a lower level of care, and has questioned the appropriateness of the heavy and prolonged use of addictive narcotics.

Dispute

Is the Employer required to provide benefits for the emergency room charges incurred by the Employee's spouse for the eight visits during the period March 22, 1991 through August 4, 1991?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's emergency room visits during the period March 22, 1991 through August 4, 1991 because the charges were incurred within 48 hours immediately following the onset of acute medical symptoms, and because the Employee's spouse's neurologist ordered her to seek treatment at the emergency room when she had a cluster headache. Additionally, if the charges are denied because they are excessive or for services that are not medically necessary, the Employee should be held harmless from any attempts by the provider to collect for these charges.

Position of the Employer: The Employer is not required to provide benefits for the emergency room visit charges incurred by the Employee's spouse between March 22, 1991 and August 4, 1991 because the condition being treated was not an acute medical problem for which emergency treatment was being rendered, and because the treatment could have been rendered at a lower level of care with equal efficacy.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states 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.... Services which are not reasonable and necessary shall include, but are not limited to the following: .... procedures which can be performed with equal efficiency at a lower level of care.

Article III.A.(2)(a) of the Employer Benefit Plan states:

(2) Outpatient Hospital Benefits

(a) Emergency Medical and Accident Cases

> _____Benefits are provided for a Beneficiary who receives emergency medical treatment or medical treatment of an injury as the result of an accident, provided such emergency medical treatment is rendered within 48 hours following the onset of acute medical symptoms or the occurrence of the accident.

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

> (g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless
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> 3. The Employer and the UMWA agree that the 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....

Discussion

The Introduction to Article III of the Employer Benefit Plan states that covered services shall be limited to those services which are reasonable and necessary, and which are given at the appropriate level of care. It continues to say that the fact that a physician prescribes a procedure or level of care does not mean that it is medically reasonable or necessary, or that it is covered under the Plan. The Introduction also states that services that are not reasonable and necessary shall include procedures which can be performed with equal efficacy at a lower level of care. Article III.A.(2)(a) provides benefits for emergency medical treatment when it is rendered within 48 hours following the onset of acute medical symptoms.

At issue here are benefits for three sets of charges: eight pharmacy charges totalling $1,274.80; eight emergency room charges totalling $316.80, and one laboratory charge of $52.05.

A Funds' medical consultant has reviewed this file to include letters from the neurologist, and has noted that most of the visits in question occurred prior to 8:00 p.m. on weekdays. It is the consultant's opinion that, since the Employee's spouse's physician stated that no medical examination was necessary -- just the administration of the prescribed medications -- that the physician could have arranged for the treatment to be administered in a walk-in clinic, another physician's office, or other outpatient setting. The spouse's physician stated that he was unable to administer these medications in his office. The consultant concluded that since the Employee's spouse did not need to be evaluated by a physician while a patient in the emergency room, this would negate the use of the emergency department during regular business hours. In the opinion of the consultant, the use of the emergency room for all but the after office-hours visits was not medically necessary, since the equivalent treatment could have been administered at a lower level without compromising the care of the patient.

Funds' staff have checked the number and availability of appropriate health care sites in the beneficiary's area, Tuscaloosa, AL. Sites offering this kind of service after normal hours are limited to one or two, but the record shows the beneficiary has made substantial use of other doctors' offices in the recent past. Of the emergency room visits in question, half occurred during normal business hours on weekdays, when physicians' offices are open. Therefore, the Trustees conclude that the Employee's spouse's use of the emergency room during normal business hours was not medically necessary, and charges for the use of the emergency room at those times are not an eligible benefit under the terms of the Employer Benefit Plan.

The Employee has raised the issue of hold harmless, covered in Article III.A.(10)(g) 3. of the Plan. The Plan states that hold harmless can apply in cases where there are excessive charges or charges for services that are not medically necessary. In ROD 88-486 (copy enclosed herein), the Trustees concluded that the application of hold harmless to an emergency room visit could be appropriate when the patient had been instructed to use the ER by a physician. In this case, the use of the emergency room setting during normal business hours for the treatment was not medically necessary for the service rendered, even though the patient's neurologist had instructed the spouse to use the ER. Therefore, the Trustees conclude that the Employer is required to hold the Employee harmless against any attempts made by the provider to collect for these charges. The Employer is required to provide benefits for the use of the emergency room during those times when physicians' offices and clinics are not generally available.

Since the pharmacy charges and the laboratory charge would have been incurred regardless of the setting, the Employer is required to provide benefits for these.

The Employer has questioned the appropriateness of the treatment regimen and raised the possibility that the treatment, especially in its provision of different analgesic medications on a regular and frequent basis, might induce substance dependence in, and therefore be harmful to, the patient. In ROD 81-553 (copy enclosed herein) the Trustees decided that, before an Employer can deny benefits as inappropriate or medically unnecessary, the Employer must demonstrate that it has applied reasonable procedures for determining whether certain treatments are medically inappropriate. In ROD 81-553 the Employer obtained an independent opinion from a neurologist. When the neurologist's opinion conflicted with the attending physician's opinion, the Employer sought a second independent opinion from the state's Peer Review Organization. The Trustees concluded in that case that the Employer had applied reasonable procedures which established that the services in question were not medically necessary or appropriate.

In this case, the Employer has obtained two concurring opinions from its insurance carrier regarding the Employee's spouse's treatment. The carrier's medical director agreed that the emergency room was an inappropriate and medically unnecessary place to deliver addicting narcotics for a chronic, previously diagnosed condition. The carrier's utilization review committee concurred, noting that, "there should be more appropriate attempts to treat this condition on a chronic basis without the use of addicting narcotics. This is a chronic recurring

problem; injecting narcotics for this condition leaves a high likelihood of developing an addiction to the narcotics."

The Employer has secured two additional opinions. Consistent with ROD 81-553, however, the Trustees find that at least one opinion must come from an independent source, such as an independent medical consultant or state peer review panel.

Opinion of the Trustees

The Employer is required to provide benefits for the pharmacy and laboratory charges incurred in the Employee's spouse's eight emergency room visits during the period from March 22, 1991 through August 4, 1991. The Employer is not required to provide benefits for the emergency room charges incurred in those visits that took place during normal business hours. The Employer is required to provide benefits for those emergency room charges incurred for visits during the period which fell after normal weekday business hours. The Employer is required to hold the Employee harmless for those normal-business-hours emergency room visit charges since the ineligible charges involved use of a site considered not medically necessary. In order to consider the treatment regimen inappropriate and ineligible for benefits, the Employer must obtain at least one concurring opinion from an independent source, such as a medical consultant or state peer review panel, in addition to its regular review procedures.