

---

## OPINION OF TRUSTEES

---

### In Re

Complainant: Employees, Pensioners, and Surviving Spouses  
Respondent: Employer  
ROD Case No: 02-002- June 21, 2006

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of Employer Benefit Plan.

### Background Facts

The Respondent notified all Employees and Pensioners by letter dated May 15, 2002, that the Respondent was implementing a formulary prescription drug program effective July 1, 2002.

In general, a “formulary” is a list of prescription drugs, grouped by therapeutic class, that a health plan prefers and, in some cases, requires doctors to prescribe drugs listed in the formulary. A therapeutic class puts drugs into groups according to the disease that the drug treats or the effect that the drug has on the body.

According to the literature submitted by the Respondent, the formulary drug program is identical to the provision of benefits under Article III A. (8) of the Employer Benefit Plan with the following exception: If a beneficiary purchases a non-formulary brand name drug when a generic version of the drug is not available, the beneficiary is required to pay a \$5.00 co-payment plus \$15.00 surcharge. Under the formulary program, the beneficiary may appeal and his or her physician may request a review to have the non-formulary brand name drug designated as medically necessary. If medical necessity is established, the beneficiary does not pay the \$15.00 surcharge.

A representative for the Complainant states that the Respondent’s program is not consistent with the terms of the Employer Benefit Plan because it requires payments for prescription drugs above the levels established by the Wage Agreement and Employer Benefit Plan.

### Dispute

Is the formulary drug program implemented by the Respondent consistent with the terms of the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent's formulary drug program is in violation of the terms of the Employer Benefit Plan because it increases the co-payment allowed for prescription drugs.

Position of the Respondent: The Respondent's formulary drug program is not in violation of the terms of the Wage Agreement and Employer Benefit Plan for the following reasons:

- 1) The Plan does not require that all medical services and prescription drugs be covered.
- 2) In some cases, more expensive non-formulary drugs may not be medically necessary, appropriate, reasonable, or cost effective.
- 3) The formulary drugs provide a therapeutic benefit that is as effective as non-formulary drugs in the treatment of the disease or illness for which they were developed.
- 4) The formulary drug program does not reduce benefits or increase the costs of prescription drugs for beneficiaries who use the program.
- 5) The appeal process allows the beneficiary to establish medical necessity and thus be exempt from the \$15.00 surcharge.
- 6) The implementation of a formulary drug program is consistent with the managed care and cost containment philosophies of the Wage Agreement and the Employer Benefit Plan.

Pertinent Provisions

Article XX (12) of the 2002 Wage Agreement states in pertinent part:

(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.

The Introduction to Article III of the 2002 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. . . .

Article III A. (4) (a) of the 2002 Employer Benefit Plan states:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth in (3) (e).

\* \* \*

Reasonable charges for prescription drugs or insulin are covered benefits. Reasonable charges will consist of the lesser of:

- (1) The amount actually billed per prescription or refill,
- (2) The price of the applicable generic substitution drug, if AB or better-rated, approved by the federal Food and Drug Administration; or, in the event the prescribing physician determines that the use of a brand name drug is medically necessary, the price of such brand name drug; or
- (3) The current price paid to participating pharmacies in any prescription drug program established by the Employer.

However, in no event will a Beneficiary be responsible to pay more for a single prescription than the appropriate co-payment set forth in this Plan, plus any difference between the price of the generic and the brand name drug, where applicable.

Article III A. (8) of the Employer Benefit Plan provides in pertinent part:

(8) Co-Payments and Deductibles

Effective January 1, 2002, the benefits provided in this Plan shall be subject to the co-payments and deductibles set forth below and such co-payments and deductibles shall be the responsibility of the Beneficiary. . . .

\* \* \*

Prescription Drugs (Co-pays do not apply to out-of-pocket maximum):

In PPL: \$5.00 per prescription\*<sup>1</sup>

Non-PPL: \$10.00 per prescription\*

Mail Order: No co-payment

Brand name where a generic equivalent is available:

In addition to the co-payment, the Beneficiary is responsible for the additional cost of the brand name drug over the cost of the generic substitute. A generic drug will not be considered "available" unless it has been approved by the federal Food and Drug Administration. In addition, if the prescribing physician determines that use of a brand name drug is medically necessary, the generic drug will not be considered "available," and there will be no additional payment by the Beneficiary for the use of the brand name drug.

\* \* \*

Article III A. (10) (b) of the 2002 Employer Benefit Plan states 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

---

\*<sup>1</sup> Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan. . . .

\* \* \*

Article IV. A. (2) of the 2002 Employer Benefit Plan state, in pertinent part:

Article IV. Managed Care, Cost Containment

A. (2) In addition, the Employer may implement certain other managed care and cost containment rules, which may apply to benefits provided both by PPL providers and by non-PPL sources, but which (except for the deductibles and co-payments specifically provided for in the Plan) will not result in a reduction of benefits or additional costs for covered services provided under the Plan.

\* \* \*

Discussion

According to Article XX (12) of the 2002 Wage Agreement, the parties to the Agreement are committed to fully support appropriate programs designed to control costs and to provide quality health care at reasonable costs. Article IV. A. (2) of the Employer Benefit Plan states that the “Employer may implement certain other managed care and cost containment rules. . . . which (except for the deductibles and co-payments specifically provided for in the Plan) will not result in a reduction of benefits or additional costs for covered services provided under the Plan.”

Article III A. (4) of the Employer Benefit Plan provides benefits coverage for prescription drugs. Article III A. (8) of the Employer Benefit Plan addresses the co-payments applied to prescription drugs. According to the latter provision, a beneficiary pays a \$5.00 co-payment for a generic drug if the prescription is filled at a PPL (Participating Provider List) retail pharmacy. If a beneficiary purchases a brand name drug when a generic is available, the beneficiary pays a \$5.00 co-payment at a PPL pharmacy plus the difference between the generic and the brand name drug. However, the beneficiary pays only \$5.00 for the brand name drug if the beneficiary establishes that the brand-name drug is medically necessary (See ROD 93-079).

Article III A. (8) of the Employer Benefit Plan allows beneficiaries to obtain prescription drugs for a specified co-payment amount. However, the Respondent’s plan requires that a beneficiary pay the specified co-payment and a \$15.00 surcharge if the beneficiary purchases a non-formulary brand name drug when no generic is available.

In ROD 98-013, an arbitrator decided the issue of whether an Employer had the authority to implement a program that applies a surcharge if a beneficiary purchases a non-formulary brand name drug when no generic is available. The arbitrator determined that “The Employer’s imposition of a mandatory formulary drug program is inconsistent with the prescription drug coverage and cost containment provision of the Employer Benefit Plan, and therefore is not within the Employer’s authority to implement under the National Bituminous Coal Wage Agreement and the Employer Benefit Plan.”

Opinion of the Trustees

The Employer’s imposition of a mandatory formulary drug program is inconsistent with the prescription drug coverage and cost containment provision of the Employer Benefit Plan, and therefore is not within the Employer’s authority to implement under the National Bituminous Coal Wage Agreement and the Employer Benefit Plan.