
OPINION OF TRUSTEES

In Re

Complainant: Employees and Pensioners
Respondent: Employer
ROD Case No: 02-003 – September 14, 2005

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 the Employer Benefit Plan.

Background Facts

Effective October 2, 2002, the Respondent implemented a prescription drug program that requires the following: 1) that a beneficiary use generic drugs unless the beneficiary's physician submits written justification to the Respondent's Plan Administrator to establish medical necessity for a brand name drug; and 2) the use of a mail-order pharmacy to purchase all long-term drugs. Long-term drugs are medications used to treat chronic conditions such as high blood pressure, high cholesterol and hormone replacement. No co-payment is applied to long-term drugs purchased through the mail order program. However, if a beneficiary purchases a long-term drug at the retail pharmacy, the beneficiary will be responsible for the entire cost of the drug. Short-term medications, such as antibiotics, can be purchased at the retail pharmacy and a \$5.00 co-payment will apply.

The Respondent's program was communicated to Employees and Pensioners in September 2001 through meetings, letters to retirees, and memoranda to Employees.

The Complainants claim that the Respondent's mail order program, which requires a beneficiary to pay the entire cost of a long-term drug when purchased at a retail pharmacy, is inconsistent with the terms of 2002 National Bituminous Coal Wage Agreement ("Wage Agreement") and the 2002 Employer Benefit Plan.

Dispute

Is the Respondent's long-term prescription mail order program consistent with the provisions of the Wage Agreement and the Employer Benefit Plan?

Positions of the Parties

Position of the Complainants: The Respondent's long-term prescription mail order program is not in accordance with the provisions of the Wage Agreement or the Employer Benefit Plan.

Position of the Respondent: The Respondent's long-term prescription mail order program is in accordance with the provisions of the Wage Agreement and the Employer Benefit Plan because of the following: 1) Article XX of the Wage Agreement and Article IV of the Employer Benefit Plan allow the Respondent to implement cost containment initiatives that offer the same level of benefit at no increased cost; and 2) the mail-order program represents a cost savings to employees because employees do not have to pay a co-payment.

Pertinent Provisions

Article XX (12) of the 2002 Wage agreement provides 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.

* * *

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

Drug Fee Schedule
(Prescription Drugs)

(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).

The initial amount dispensed shall not exceed a 30 day supply. Any original prescription may be refilled for up to six months as directed by the attending physician. The first such refill may be for an amount up to, but no more than, a 60 day supply. The second such refill may be for an amount up to, but no more than, a 90 day supply. Benefits for refills beyond the initial six months require a new prescription by the attending physician. Prescriptions filled by the Plan's mail order provider, if any, are not subject to the limits on quantity set forth in this paragraph.

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 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.

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. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments and deductibles. . . .

* * *

Co-payments for covered Health Benefits are established below. Co-payments for services or supplies subject to a deductible only apply after the deductible has been met in full for the year.

Participating Provider Lists (PPL's) implemented by the Employer pursuant to Article IV may include participating hospitals, physicians, pharmacies and other providers. The Plan payment for hospital and related benefits provided from a non-PPL source will be limited to 90% of the amount that would have been paid by the Plan if the benefits had been provided by a provider on a PPL (or actual charges, if less). . . .

* * *

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

In PPL: \$5.00 per prescription*

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.

Deductibles for covered Health Benefits refer to the first portion of covered benefits that must be paid by a Beneficiary during a calendar year before any amounts will be paid by the Plan. The first \$750 of all covered medical expenses incurred by any covered family member will be counted toward satisfying the deductible. Vision care and prescription drug expenses are not subject to the deductible. . . .

* * *

*Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be

each 30 days (or fraction thereof) supply.

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

Article IV A. provides the following:

Article IV Managed Care, Cost Containment

A. (1) The Employer may adopt Participating Provider Lists (PPL's) of physicians, hospitals, pharmacies and other providers, subject to the requirements set forth in C., below.

(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

As stated in 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 Plan states that the "Employer may implement certain other managed care and cost containment rules which may apply to benefits provided by both 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."

Article III A. (10) (b) authorizes an Employer to promulgate rules and regulations to implement and administer the Plan. The Trustees have determined in prior RODs (see RODs 81-697 and 84-042) that such rules and regulations are binding if they are reasonable and have been effectively communicated to the Beneficiaries.

Based on the information submitted by the Respondent, the program appears to have been effectively communicated to its beneficiaries. Accordingly, what is at issue here is whether the Respondent's pharmacy program results in a reduction of benefits or increase in costs, and whether the program is reasonable.

The first initiative under the Respondent's program requires the use of generic drugs unless a beneficiary's physician submits written justification to the Respondent's Plan Administrator to establish medical necessity for a brand name drug over a generic drug. In ROD 93-079, the Trustees addressed this same issue and found that "the Employer's requirement that physicians provide a statement to the Plan Administrator justifying the use of a brand name over a generic drug is reasonable and consistent with the provisions of the 1993 Coal Wage Agreement and the 1993 Employer Benefit Plan; provided, however, the Employer does not impose rules that arbitrarily hinder or deny a Beneficiary reasonable and timely access to required medications. In the point-of-sale environment where drugs are secured by the Beneficiary, the rules should not be unnecessarily cumbersome or restrictive." Thus, the Respondent's rule concerning generic drugs is reasonable provided that the rule does not arbitrarily hinder or deny a Beneficiary reasonable and timely access to required medications.

The second initiative under the Respondent's program addresses the purchase of long-term drugs. If the beneficiary purchases a long-term drug from the mail-order pharmacy, no co-payment is required and the drug is a benefit covered under the Respondent's Employer Benefit Plan. If a beneficiary purchases the same long-term drug from a retail pharmacy, the drug is not a covered benefit, and the beneficiary is required to pay the entire cost of the prescription drug.

Benefits coverage for prescription drugs, which includes long-term drugs, is provided under Article III A. (4) of the Employer Benefit Plan. According to Article III A. (8) of the Employer Benefit Plan, prescription drugs purchased from a PPL pharmacy requires a \$5.00 co-payment and drugs purchased from a non-PPL pharmacy requires a \$10.00 co-payment. Thus, whether the drug is purchased from a PPL or non-PPL pharmacy, the Employer Benefit Plan provides coverage for prescription drugs purchased at a retail pharmacy. The Respondent's program fails to provide benefits coverage for long-term prescription drugs purchased at a retail pharmacy and therefore is inconsistent with the terms of the Wage Agreement and the Employer Benefit Plan.

Opinion of the Trustees

The Respondent's generic drug program is consistent with the prescription drug coverage and cost containment provisions of the 2002 Wage Agreement and the 2002 Employer Benefit Plan, provided the Employer does not impose rules that arbitrarily hinder or deny a Beneficiary reasonable and timely access to required medications. However, the Respondent's long-term drug mail order program is inconsistent with the provisions of the Wage Agreement and the Employer Benefit Plan.