
OPINION OF TRUSTEES

In Re

Complainant: Pensioners
Respondent: Employer
ROD Case No: 02-0051

Trustees: Michael H. Holland, Marty D. Hudson, Michael McKown, and Joseph R. Reschini

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

Background Facts

The Respondent contacted the Funds in May 2016 regarding its intention to change health plans for its retirees. The Respondent also contacted the UMWA International office as well as two UMWA Representatives to advise them of the planned change of health plans. As a result of the discussions with the UMWA International Office and the UMWA Representatives, it was determined that the Respondent should hold in person meetings with the affected retirees. These meetings occurred in June 2016. In attendance at one of these meetings was a UMWA Representative and an International UMWA representative from Region I. During the period from May 2016 through August 2016, numerous emails and telephone conversations were conducted between the Respondent and the Union.

The Respondent notified all Pensioners by letters dated May 27, 2016 and June 1, 2016, that all Retirees and Eligible Dependents who are Medicare eligible will be enrolled in a new health insurance plan effective July 1, 2016. The Respondent advised its retirees that with the change to its new health plan, co-payments would start over as of July 1, 2016, but that the company would reimburse retirees their full co-payment if they had already met the prescription drug or office visit co-payment out of pocket maximum for the year (\$50.00 co-payment RX; \$100 office visit). This was a one-time situation due to the fact that the plan changed mid-year.

A ROD was filed on August 22, 2016, alleging that the Respondent unilaterally adopted a Medicare Plan for its Medicare eligible retirees who retired under the 1998 NBCWA or the 2001 NBCWA. Specifically, the ROD alleges that this plan “incorporates a mandatory formulary program that excludes coverage entirely for non-preferred drugs.” Further the ROD asserted that any changes to the plan must be made with the agreement of the UMWA.

On September 2, 2016, a retiree under the 1998 NBCWA experienced an issue with a non-covered prescription medication. The retiree's spouse's prescription drug was denied coverage because one of the substances in the compound was not an FDA approved substance. The Respondent's prescription drug insurer advised the retiree that the medication contained a non-FDA approved substance. The matter was resolved to the satisfaction of the retiree's spouse by obtaining a prescription that was FDA compliant.

In a six-page letter dated September 22, 2016, the Respondent responded the allegations asserted in the RODS. The Respondent set forth a time line of communications between the Respondent and the UMWA. The first communication was on May 18, 2016, where the Respondent contacted the UMWA via the telephone to discuss changes to the health plan. This was followed by emails to and from the Respondent's representatives to the UMWA. The communications detailed in the September 22, 2016 letter include specific references to communications between the Respondent and the UMWA regarding the drug formulary. The Respondent requested that the ROD be rescinded asserting that there was no unilateral action and it contended that during the course of the communications, in person, via email, and telephonic, the Respondent was not advised by the UMWA that their formulary was not in compliance.

Subsequent to the September 2016, letter, the Respondent has submitted its 2016 Drug Formulary and Medicare Excluded RX Kit Insert (Rider). These documents have been reviewed by Funds' Staff for compliance with the Employer Plan.

Dispute

Is the subject formulary drug program's content and implementation consistent with the terms of the Employer Plan?

Did Respondent obtain certification from the Pharmacy Review Board as required by the Employer Plan?

Positions of the Parties

Position of the Complainants: The Respondent's formulary drug program is in violation of the terms of the Employer Plan. The Respondent has not provided information regarding whether its formulary program strictly adheres to the formulary adopted by the Employer Plan. The Respondent cannot unilaterally make changes to the formulary.

Position of the Respondent: The Respondent did not act unilaterally in making changes to its formulary program, as it had numerous discussions via telephone, email and in person with representatives of the UMWA regarding its planned changes to its health plan. With respect to the prescription drug formulary, Respondent is making every attempt to comply with the drug formulary requirements of the Employer Plan.

Pertinent Provisions

Article IV. A. (1) of the Employer Benefit Plan state, in pertinent part:

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 for in C., below. The Employer may implement a formulary list of preferred drug products (PDP), subject to the requirements set forth in D., below.

Section D of the Employer Plan describes the method for implementation of a third party

Pharmacy Expert to review the PDP. Article IV.D. goes on to state that:

3. The Pharmacy Expert will participate on a Pharmacy Review Board composed of one member appointed by the UMWA, one member appointed by the Employer, and the Pharmacy Expert. The Pharmacy Review Board will certify the PDP. Any PDP that is currently in use by the Employer must be certified.

Discussion

Pursuant to the Employer Plan, an Employer may implement a formulary drug program. Further, under certain conditions, the employer may change its formulary if it requests that the UMWA initiate a Pharmacy Review Board to certify that the formulary meets the requirements as outlined in the Employer Plan.

Under the Employer Plan certification must be sought from the Pharmacy Review Board prior to implementing any changes to the employer's formulary. Here the Respondent's intent to modify its health plan drug formulary was the subject of ongoing discussions with the UMWA, and it is apparent from the record that there was substantial effort of the Respondent to obtain the agreement with the UMWA. However, no agreement was reached, and it does not appear that Respondent requested a review of its formulary/PDP by the Pharmacy Review Board and did not receive certification of its formulary.

Opinion of the Trustees

The Respondent's formulary is inconsistent with the prescription drug coverage and cost containment provisions of the Employer Plan and it did not request that the Pharmacy Review Board certify its changes to its formulary. It is therefore not within the Respondent's authority to implement such a formulary. It should be noted that this outcome does not rule out the possibility of the Respondent coming into compliance with the drug formulary requirements, as the Respondent has represented its intention to make further efforts to bring its plan into compliance.