
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 02-006 – July 13, 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

The Complainant's spouse has been diagnosed with severe gastroesophageal reflux disease and hypersecretion. Gastroesophageal reflux disease ("GERD") is the movement of the stomach contents back up into the esophagus—the muscular tube that connects the back of the throat to the stomach. Based on this diagnosis, the Complainant's spouse's physician prescribed Nexium 40 mg twice a day.

According to the Respondent, in January 2003 the Respondent's insurance carrier— Blue Cross Blue Shield ("BCBS")— received the Complainant's spouse's prescription for 30 capsules of 40 mg. twice a day. Subsequently, the insurance carrier notified the Complainant that the prescription exceeded pharmacy guidelines according to the drug manufacturer. According to those guidelines, the recommended Nexium dosage for a diagnosis of GERD is 20 or 40 mg once a day for 4 to 8 weeks. The Respondent filled the prescription on an exception basis and notified the Complainant's spouse by letter dated February 7, 2003, that her prescription would be "filled /refilled until BCBS has reached a determination, but . . . [the Complainant's spouse's physician] has not sent all the requested information."

Thereafter, the Respondent refilled the Complainant's spouse's prescription on at least two occasions and sent her follow-up letters dated April 16, 2003, and May 1, 2003, indicating that she would receive reimbursement and that her physician needed to contact BCBS to provide "written literature supporting his prescription . . . that exceeds pharmacy guidelines at BCBS." It further noted that her request for reimbursement would be processed "this time with the understanding that you will ask your physician to forward the correct information to BCBS for review."

By letter dated May 16, 2003, the Complainant's physician responded: "This is to confirm that [the Complainant's spouse] requires Nexium 40 mg twice a day for severe gastroesophageal reflux disease and hypersecretion."

By letter dated July 1, 2003, the Respondent notified the Complainant's spouse that her request for reimbursement for a prescription filled on June 29, 2003, was denied. The Respondent further noted that the Complainant's spouse should contact her "physician about discussing this with [the physician's] provider relations person at BCBS."

Dispute

Is the Respondent required to provide coverage for the Complainant's spouse's prescription for 40 mg of Nexium twice a day?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide coverage for the prescription drug Nexium as prescribed because the Employer Benefit Plan provides coverage for prescription drugs.

Position of the Respondent: The Respondent is not required to provide coverage for the prescription drug Nexium as prescribed because of the following: 1) the prescription exceeds the manufacturer's and BCBS's guidelines for appropriate treatment of the Complainant's spouse's condition; 2) the Complainant's spouse was informed that future coverage would be dependent upon receipt of supporting information from her physician; and 3) the information submitted by the physician was not explanatory nor persuasive to support the higher dosage.

Pertinent Provisions

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

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 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 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 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. (4)(a) of the Employer Benefit Plan states in pertinent part:

(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 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.

Discussion

The Introduction to Article III of the Employer Benefit Plan provides that covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury. 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 the Employer Benefit Plan.

Under Article III. A. (4) (a) of the Employer Benefit Plan, benefits are provided for prescription drugs prescribed by a physician for treatment or control of an illness. With a diagnosis of GERD, the Respondent will provide coverage for the prescription drug Nexium based on the manufacturer's recommended dosage of 20 or 40 mg once a day for 4 to 8 weeks.

The Funds' Medical Director has reviewed the information submitted in this case to request coverage for a Nexium dosage of 40mg twice a day. The Medical Director notes that the carrier, BCBS, has included the manufacturer and Federal Drug Administration ("FDA") maximum

dosage limits in its guidelines for prescription drug coverage of Nexium and that the carrier has a medical appeal process for dosages exceeding these limits. The Medical Director is of the opinion that the physician's letter of May 16, 2003, does not provide adequate medical documentation to override these dosage limits. Therefore, the Respondent is not required to provide benefits for the dosage of 40 mg of Nexium twice a day.

Opinion of the Trustees

Based on the information submitted, the Respondent is not required to provide benefits for the dosage of 40 mg of Nexium twice a day.