
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 07-0050 – February 23, 2011

Trustees: Micheal W. Buckner, Daniel L. Fassio, Morris D. Feibusch, and
Michael H. Holland.

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

Respondent notified all Beneficiaries by letter dated April 28, 2009, that a formulary drug plan would go into effect August 1, 2009. The letter explained that both Beneficiaries and their physicians would be notified in cases where a prescribed drug was moving from formulary to non-formulary status. A letter dated June 28, 2009, included a list of drugs and their designation as formulary or non-formulary.

Respondent charges Complainant a \$5.00 co-payment for a 30-day supply of Enbrel that Complainant receives through the mail. Respondent charges the Complainant's spouse a \$15.00 non-PDP surcharge for a 90-day supply of Tikosyn that Complainant's spouse receives through the mail. Both drugs are on the UMWA Drug List that accompanied the letter dated June 28, 2009, as well as the current formulary drug list dated August 2010. Both drugs are indicated as brand name drugs and neither drug has a generic substitute.

Dispute

May Respondent impose a \$5.00 co-payment on a 30-day supply of Enbrel and a \$15.00 non-PDP surcharge on a 90-day supply of Tikosyn?

Positions of the Parties

Position of the Complainant: The drugs are being received through the mail and are, therefore, mail order drugs, for which there is no associated co-payment.

Position of the Respondent: Enbrel is an expensive specialty drug obtained through a specialty pharmacy because retail pharmacies do not normally stock the drug. Because the prescription is obtained in a 30-day supply from the specialty pharmacy, it is not a true mail order drug and the \$5.00 co-payment is applicable. Tikosyn is a non-formulary drug. A non-formulary surcharge of \$7.50 for the first refill and a non-formulary surcharge of \$15.00 for subsequent refills are applied to prescriptions for non-formulary drugs, unless the prescription is approved through the appeal process.

Pertinent Provisions

Article III.A(4)(a)-(c) 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 a nonoccupational) accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth in (3)(e).

* * *

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
3. The current price paid to participating pharmacies in any prescription drug program established by the Employer.

(b) Benefits Excluded

Benefits shall not be provided under subsection (4)(a) for the following:

1. Medications dispensed in a hospital (including take-home drugs), skilled nursing facility or physician's office. (See Article III A (1)(a) and (5)(a) for benefits provided for drugs and medications during inpatient confinement in a hospital skilled nursing facility.)
2. Birth control prescriptions.
3. Prescriptions dispensed by other than a licensed pharmacist.
4. Any medication not specifically provided for in (a) above.

(c) List of Preferred Drug Products (PDP)

1. Benefits are subject to the requirements of a PDP that has been certified by the Pharmacy Review Board as required in Article IV. Beneficiaries may file an appeal to request that they be permitted to use a non-PDP drug and not pay a surcharge. If a Beneficiary fills a prescription for a non-PDP drug, a communication will be sent to both the physician and the individual outlining the appeal process and the surcharge for additional purchases. If no appeal is received within 30 days, the next refill of the drug will be subject to a \$7.50 surcharge, and each following refill of that drug will be subject to a \$15 surcharge. If an appeal is filed, surcharges are suspended for 60 days, or until the date of the resolution of the appeal, if later.

Article III.A(8) states in pertinent part:

(8) Co-Payments and Deductible

* * *

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

Non-PDP surcharge:	Initial Prescription:	None
	First Refill:	\$7.50
	Second and Subsequent Refills:	\$15

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

Discussion

Article III.A(8) of the Employer Benefit Plan permits Employers to impose a \$5.00 co-payment on 30-day supplies of non-mail order prescription drugs that are listed on the Employers' formularies. That same provision prohibits Employers from imposing co-payments on mail order prescription drugs.

The attachment to Respondent's letter dated June 28, 2009, indicates that Enbrel is on Respondent's formulary. The Funds' Senior Manager of Pharmacy Programs has advised that Enbrel is a specialty drug that oftentimes must be mailed from a specialty pharmacy but is not a mail order drug. Consequently, Respondent may impose a \$5.00 co-payment on each 30-day supply of Enbrel that Complainant receives.

Article III.A(4)(c) of the Employer Benefit Plan permits Employers to impose a \$15 surcharge on second and subsequent refills of prescription drugs that are not preferred drug products (PDPs), in addition to the co-payment.

The attachment to Respondent's letter dated June 28, 2009, and the current formulary drug list dated August 10, 2010, indicate that Tikosyn is on Respondent's formulary and is, therefore, a preferred drug product. The Funds' Senior Manager of Pharmacy Programs has advised that Tikosyn is a specialty drug available only through one distributor and that, although it is mailed, it is not a mail order drug. However, the Respondent has acknowledged that the Complainant is not being charged a co-payment for Tikosyn, only a non-formulary surcharge. Respondent may not impose a non-PDP surcharge on Tikosyn because it appears on the Respondent's formulary drug list.

Opinion of the Trustees

The Respondent may charge a \$5.00 co-payment for each 30-day supply of Enbrel that Complainant receives. The Respondent may not require a surcharge for each supply of Tikosyn that Complainant's spouse receives.