
OPINION OF THE TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 197, May 28, 1981

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning copayments for B-12 injections and hereby render their opinion on the matter.

Background Facts

The Employee is an active mineworker eligible for health benefits under the Employer's Plan. The Employee's spouse suffers from pernicious anemia, the treatment of which requires B-12 injections once a month. Each injection is administered by a nurse in the physician's office and costs \$7.80. There is no charge by the physician for an office visit. The Employer is taking a \$7.50 copayment for each injection.

Dispute

Are B-12 injections for treatment of pernicious anemia subject to copayment?

Positions of Parties

Employee: B-12 injections should not be subject to copayment. 1978 Contract Q&A #46 provides that allergy desensitization therapy is not subject to copayment because it is routine in nature and administered by a non-physician. Similarly, B-12 injection therapy should not be subject to copayment because it is also routine in nature and administered by a non-physician.

Employer: B-12 injections are subject to copayment. 1978 Contract Q&As #1, 12 and 111 support the position that services rendered by a physician extender such as a nurse, are subject to copayment. In reference to Q&A #46, B-12 injections for the treatment of pernicious anemia are not routine in nature, nor are they preventive.

Applicable Regulations

- 1978 Contract Q&A #1, approved by the Trustees on April 18, 1978, provides as follows:

Subject: Benefits Subject to Copayment

Question: What benefits are subject to copayment under the 1978 Coal Wage Agreement?

Answer:

1. Physician visits (or consultation provided by nurse or other person acting under physician's supervision, including osteopathic physicians as well as M.D.'s) for the following:
 - a. Inhospital care, separately billed
 - b. Home, office & clinic care
 - c. Emergency treatment
 - d. Medical consultation
 - e. Specialist care
 - f. Podiatrist (primary care only)
 - g. Laboratory tests & x-rays
 - h. Radiation and Chemotherapy
 - i. Primary medical care - miscellaneous
 - j. Pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery
 - k. Outpatient Mental Health, Alcoholism and Drug Addictions

- 1978 Contract Q&A #12, approved by the Trustees on April 3, 1978, provides as follows:

Subject: Definition of "Physician Visit"

Question: It is not uncommon for a patient to visit a physician's office and not see the physician. For example, the patient may see a nurse or "physician extender" for B/P check, injection, etc. If the patient is not seen by the physician, is the non-physician visit in the physician's office subject to copayment?

Answer

Yes. The following definition of "visit" should be used where the visit is otherwise covered:

"A face-to-face consultation for examination, diagnosis, treatment or advice. It is a visit if the consultation described above is provided by a physician or by a nurse or other person acting under the physician's supervision. The term "Physician" includes osteopathic physicians as well as M.D.s, but it does not include chiropractors."

- 1978 Contract Q&A #46, approved by the Trustees on June 19, 1978, provides as follows:

Subject: Allergy Desensitization Therapy

Question: 1. Are allergy desensitization injections subject to copayment?
2. Are allergens for injections a covered benefit?

Answer:

1. & 2. Allergy desensitization therapy is subject to copayment when such therapy involves visits to a physician for examination, diagnosis, treatment or advice. Ongoing administration of allergy desensitization therapy, including injections in a series for desensitization and costs of materials (e.g., allergens for desensitization), which is routine in nature and administered by a non-physician, is not subject to copayment.

- 1978 Contract Q&A #111, approved by the Trustees on October 22, 1979, provides as follows:

Subject: Copayment for Blood Pressure Checks

Question: Are blood pressure checks subject to copayment when performed by a physician extender?

Answer:

Yes. Blood pressure checks and other services rendered by a physician extender are subject to copayment, provided such services are performed 1) under a physician's supervision and 2) as part of a "physician visit", i.e., face-to-face consultation for examination, diagnosis, treatment or advice.

- 1978 Contract Q&A #39, approved by the Trustees on April 27, 1978, provides as follows:

Subject: Copayment for Chemo-, Radiation, Physical and Speech Therapy

Question: Are chemotherapy, radiation therapy, physical therapy and speech therapy subject to copayment?

Answer:

Visits to a physician for examination, diagnosis, treatment or advice are subject to copayment.

Actual administration of therapy which is usually routine in nature and generally administered by a non-physician is not subject to copayment.

- Article III, Section A. 8. of the Employer's Plan provides as follows:

"Copayments

"Certain benefits provided in this Plan shall be subject to the copayments set forth below and such co-payments 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. Beneficiaries and providers shall provide such information as the Plan Administrator may require to effectively administer these co-payments, or such Beneficiaries or providers shall not be eligible for benefits or payments under this Plan. Any over-payments made to a provider who overcharges the Plan in lieu of collecting the applicable co-payment from a participant or beneficiary shall be repaid to the Plan Administrator by such provider.

"For purposes of this paragraph (8), the working group shall be deemed to be Beneficiaries who are described in Article II A and C(3) and their eligible dependents. The non-working group shall be deemed to be Beneficiaries who are described in Article II B, C(1), C(2) and E and their eligible dependents.

"Co-Payments for Health Benefits are established as follows:

Benefit

Co-Payment

"(a) Physician services as an Working Group — outpatient as set forth in sec- \$7.50 per visit up to a tion A(2) and the benefits set maximum of \$150 per cal- forth in section A(3), para- endar year per family. graph (c) but only for pre- and post-natal visits if the physi- Non-Working Group - \$5 cian charges separately for per visit up to a max- such visits in addition to the imum of \$100 per calen- charge for delivery, and para- dar year per family. graphs (g) through (m), para- graph (n) except inpatient sur- gery, paragraph (o) and sec- tion A(7) and paragraph (1).	
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"(b) Prescription Drugs and in- \$5 per prescription up to a \$50
sulin as set forth in section maximum per calendar year per
A(4) and take-home drugs family. For purposes of this
following a hospital co-payment provision, a prescript-
confinement." ion shall be deemed to be each 30 days (or
fraction thereof) supply."

Discussion

The issue raised by the Employee concerning B-12 injections are not specifically addressed by either Article III, Section A 8 of the Employer's Plan or any of the 1978 Contract Q&As. Nevertheless, 1978 Contract Q&A Nos.1, 12 and 111 provide that physician visits, including face-to-face encounters with a nurse are subject to copayment. According to 1978 Contract Q&A 46, however, the ongoing administration of allergy desensitization therapy, including injections in a series for desensitization and costs of materials, which is routine in nature and administered by a nonphysician, is not subject to copayment. Similarly, 1978 Contract Q&A 39 states that the actual administration of chemo-, radiation, physical and speech therapy, which is usually routine in nature and administered by a nonphysician, is not subject to copayment.

Here the Employee's spouse has not been charged for a physician's office visit. She has been charged for the ongoing administration of B-12 injections, which are performed by a nurse on a routine basis. Contrary to the Employer's assertion, treatment for pernicious anemia is preventive. Therefore, the reasoning of 1978 Contract Q&As 46 and 39 applies here, and the B-12 injections should not be subject to copayment.

Opinion of the Trustees

The Trustees are of the opinion that the B-12 injections for treatment of pernicious anemia are not subject to copayment.