OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-291, August 29, 1983

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 the Employee's eligibility for medical benefits from the Employer and hereby render their opinion on the matter.

Background Facts

In 1974, the Employee's spouse was diagnosed as having brain deterioration. She has been an invalid since approximately 1976. A tumor was found and removed from her left breast in 1981. On August 9, 1982, the Employee's spouse was admitted to Bristol Memorial Hospital where she remained until August 27, 1982, when she was transferred to Memorial Hall. On November 7, 1982, Memorial Hall ceased to operate as a medical facility. The Employee's wife was then admitted to the Bristol Health Care Center, on November 9, 1982 where she remained until her death on January 30, 1983. At the time of her death she was age 63 and not eligible for enrollment in the Medicare program.

The Bristol Health Care Center was not participating in the Medicare program at the time of her admission. Subsequently, Medicare certified this facility as a Skilled Nursing Facility under the Health Insurance for the Aged and Disabled Program and establish{d September 29, 1982, as the effective date of their participation.

During her stay in the Bristol Health Center the Employee's spouse required nasogastric tube feeding, sterile dressings of extensive lesions of her left anterior and posterior chest wall, including ongoing skin care and other assorted tasks necessary to maintain a bedfast patient with severe contractures of all extremities. Her attending physician aa well as the staff of this facility have stated that she required skilled nursing care.

Pertinent Regulations

Article III, Section A (5)(a)(b) of the Employer's Benefit Plan provides:

(5) Skilled Nursing Care and Extended Care Units

(a) Skilled Nursing Care Facility

Upon determination by the attending physician that confinement in a licensed skilled nursing care facility* is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

1. skilled nursing care provided by or under the supervision of a registered nurse;

2. room and board;,

3. physical, occupational and speech therapy, either provided or arranged for by the facility;,

4. medical social services;

5. drugs, certain immunizations, supplies, appliances and equipment ordinarily furnished by the facility for the care and treatment of inpatients;,

6. medical services, including services provided by interns or residents in an approved, hospital-run training program, as well as other diagnostic and therapeutic services provided by the hospital; and

7. other health services usually provided by skilled nursing care facilities.

The Plan will not pay for services in a nursing care facility:

1. that is not licensed or approved in accordance with state law or regulations;,

2. unless the service is provided by or under the direct supervision of licensed nursing personnel and under the general direction of a physician in order to achieve the medically desired results.

Exclusions:

Telephone, T.V., radio, visitor's meals, private rooms of private nursing (unless necessary to preserve life), custodial care, services not usually provided in a skilled nursing facility.

*Participating skilled nursing care facility is limited to a skilled nursing care facility which is licensed and approved by Federal Medicare.

(b) Extended Care Units

Benefits are provided for up to two weeks of specialized medical services and daily treatments by licensed personnel in extended care units. When medically necessary, benefits may be provided for a longer period of time.

The Plan will not pay for services in an extended care unit unless, in the case of a Medicare patient, such extended care has prior approval of Medicare.

Exclusions:

1. Services, drugs or other items which are not covered for hospital inpatients;

2. Custodial care.

Position of the Parties

Position of Employee: The Employer is responsible for payment of these charges because the patient required skilled nursing care.

Position of Employer: The Employer is not responsible for payment of the charges incurred in the skilled nursing facility from November 9, 1982 through January 30, 1983 because the patient's confinement was for "custodial care," which is specifically excluded under Article III, Section A (5) of the Benefit Plan.

Discussion

Under Article III. A. (5) of the Employer's Plan, benefits are provided for skilled nursing care only if the patient is confined in a Medicare-approved skilled nursing facility, if the attending physician determines that skilled nursing care is medically necessary, and if the level of care required of the patient is skilled. Benefits for custodial care are specifically excluded.

In this case, the facility became certified by Medicare effective September 29, 1982, and was therefore Medicare-approved during the period in question. In addition, the patient's attending physician has stated that she required "skilled nursing care". The only question, therefore, is whether the patient required skilled nursing care during the period in question.

Required services are considered "skilled" if it is necessary for the beneficiary to receive the services on a regular, daily basis, and if, from a practical standpoint, the services can only be provided during an inpatient stay at a skilled nursing care facility, as opposed to an alternative location. Such services include Levine tube gastrotomy, or intravenous feedings; skin care for widespread skin disorders, extensive decubiti or extensive or weeping lesions; intravenous, intramuscular or subcutaneous medications and/or fluids administered on a regular daily basis and frequent daily nasopharyngeal or tracheostomy tube suctioning.

According to the evidence submitted to the Trustees, the Employee's spouse required nasogastric tube feeding, sterile dressings of extensive lesions of her left anterior and posterior chest wall, including ongoing skin care and other assorted tasks necessary to maintain a bedfast patient with severe contractures of all extremities. This evidence establishes that the spouse required skilled nursing care within the meaning of Article III A (5) of the Employer's Benefit Plan.

The UMWA Health and Retirement Funds medical staff concurs with the physician's opinion and has stated that the evidence is sufficient to justify payment of benefits for skilled nursing care. Therefore, under the requirements of Article III A (5), the patient would qualify for skilled nursing care benefits.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is required to pay for the services rendered to the Employee's spouse from November 9, 1982 (at which time the facility was Medicare-approved) through January 30, 1983, because they constitute skilled nursing care within the meaning of Article III A (5) of the Employer's Plan.