OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-411 - March 26, 1984

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

Pursuant to Article IX of the United Mine Workers or 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 provision of health benefits coverage for the spouse of an Employee by the Employer under the terms of the Employer's Benefit Plan where the spouse is also covered by a health maintenance organization (HMO) provided through her employer, and hereby render their opinion on the matter.

Background Facts

The Complainant's spouse has been enrolled in a health maintenance organization (HMO) provided through her employer since January 1, 1982. The spouse received some health services from physicians designated by the HMO, and, in addition, she received health services normally covered under the HMO plan from non-participating hospitals and physicians. Because the Complainant did inform the Respondent of his spouse's enrollment in the HMO, the charges incurred in the non-participating hospitals for treatment by non-participating physicians were paid by the Respondent's insurance carrier in the amount of $417.41. Upon discovery of the spouse's HMO coverage, the Respondent's insurance, carrier determined that the $417.71 payment constituted an overpayment and requested reimbursement. The Complainant's Representative contends that the $417.41 payment should not be considered to be an overpayment because it represents charges for covered services under the Employers Benefit Plan that were not paid by another party.

Photocopies of health services claim forms submitted by the Respondent show that the Complainant's spouse indicated that she had no health coverage other than that provided by the Employer's Benefit Plan during the period January 1, 1982, through July 1983.

Dispute

Is the Respondent responsible for the payment of health benefits charges incurred by the Complainant's spouse for services from non-participating providers after she enrolled in the HMO?

Positions of the Parties

Position of the Complainant: The 1981 Agreement provides Employees with the freedom to choose their health services providers, a freedom which is not available under HMO coverage. Non-duplication does not apply because the services provided were outside the scope of the HMO coverage, but were covered under the Employer's Benefit Plan. Therefore, the $417.41 is not an overpayment and is not subject to recovery.

Additionally, the Complainant contends that, under the language of Article III A. (10)(a), a beneficiary's election of HMO coverage in lieu of the health benefits coverage under the Employer's Benefit Plan is only binding provided "that all Beneficiaries in a family shall be governed by a HMO election."

Position of the Respondent: The actions taken were in accordance with the terms of the Coal Wage Agreement and the Employer's Benefit Plan, and the $417.41 represents an overpayment.

Pertinent References

Article I (1), (2), (4) and (6) of the Employer's Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

(1) "Employer" means (coal company).

(2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, as amended from time to time and any successor agreement..,

(4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

(6) "Beneficiary" shall mean any person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.

Article II A. (1) and D. (1) of the Employer's Benefit Plan provide:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

(1) is actively at work* for the Employer on the effective date of the Wage Agreement.

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II:

(1) A spouse who is living with or being supported.by an eligible Employee or Pensioner.

Article III A. (10)(a) and (f) (1), (2)(i), (3) and (4) of the Employer's Benefit Plan provide:

Article III - Benefits

A. Health Benefits

(10) General Provisions

(a) HMO Election

Any Beneficiary as described in Article II, sections A, B, C, and E may elect coverage by a certified health maintenance organization (HMO) in lieu of the health benefits provided under this Plan, in accordance with Federal or State laws governing HMO's; provided, however, that all Beneficiaries in a family shall be governed by an HMO election.

*Actively at work includes an Employee of the Employer who was actively at work on March 26, 1981, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

* * *

(f) Non-Duplication

The Health benefits provided under this Plan are subject to a non-duplication provision as follows:

1. Benefits will be reduced by benefits provided under any other group plan, including a plan of another Employer signatory to the Wage Agreement, if the other plan:

(i) does not include a coordination of benefits or non-duplication provision, or (ii) includes a coordination of benefits or non-duplication provision and is the primary plan as compared to this Plan.

2. In determining whether this Plan or another group plan is primary, the following criteria will be applied:

(i) The Plan covering the patient other than as a dependent will be the primary plan.

3. As used herein, "group plan" means (i) any plan covering the individuals as members of a group and providing hospital or medical care benefits or services through group insurance or a group prepayment arrangement, or (ii) any plan covering individuals as employees of an employer and providing such benefits or services whether on an insured, prepayment or uninsured basis.

4. If it is determined that benefits under this Plan should have been reduced because of benefits provided under another group plan, the Plan Administrator shall have the right to recover any payment already made which is in excess of the Plan's liability. Similarly, whenever benefits which are payable under the Plan have been provided under another group plan, the Plan Administrator may make reimbursement directly to the insurance company or other organization providing benefits under the other plan.

In addition to the aforementioned Plan provisions, Question and Answer H-4 (81) provides:

Subject: HEALTH BENEFITS; Dependents; Employed Spouse

Reference:(5OB) IIC, IID; (74B) IIC, IID

Question:

If an eligible spouse of a participant is employed, is the spouse eligible for health benefits as a dependent of the participant?

Answer:

Yes. Assuming the spouse is living with or receiving more than one-half of the spouse's support from the participant, an employed spouse is eligible for health benefits regardless of the earnings from employment. If such spouse is covered by another group health plan, however, benefits payable by the Funds would be subject to the coordination of benefits provisions of the NBCWA.

The surviving spouse of a participant, however, is not eligible for health benefits during any month in which the surviving spouse is regularly employed at an earnings rate equivalent to at least $500 per month.

Discussion

The Complainant's Representative points out that Article III A. (10)(a) of the Employer's Benefit Plan provides that a Beneficiary may elect coverage by a health maintenance organization (HMO) in lieu of coverage provided by the Employer Plan but implies that the election of an HMO is binding only if all Beneficiaries in a family are governed by the HMO election. This portion of the Plan deals with the binding nature of an Employee's election of this type of coverage for his entire family if he so chooses. As such, it neither precludes his spouse's individual privilege to elect coverage by an HMO provided through her employer nor does it negate any other provision of the Plan with respect to the Plan's ability to coordinate such benefits coverage if HMO coverage is selected.

In addition, the Complainant's Representative claims that "the Wage Agreement provides that Employees have freedom of choice of physicians, subject to Article III... and HMO does not provide for freedom of choice." However, instead of depriving an individual of the freedom of choice, selection of an HMO represents a conscious choice of a delivery system designed to control costs and to address quality issues through a closed, managed approach. Selection of an HMO as an alternative to a fee for service health care delivery system requires that an enrolle agree to use the services of the HMO to the extent such services are available from the participating provider network.

In this case the Complainant's spouse incurred health services charges, which were billed to and paid for by the Respondent's insurance carrier, during a period when she was covered by an HMO provided through her employer. Although she did not always use the hospital or physicians designated by her HMO, the HMO would have provided these services had she used the designated facilities. Article III A.(10)(f) states that the Plan covering the patient other than

as a dependent will be primary and provides that benefits will be reduced when those benefits are provided under another group plan. It therefore precludes coverage of services to the Complainant's spouse under the Employer's Benefit Plan even though the terms of her HMO enrollment would relieve the HMO or responsibility to pay for unauthorized health services provided by a non-designated provider.

Finally the Complainant's Representative contends that the Non-Duplication clause should not be applied in this situation and that the $417.41 should not be considered an overpayment inasmuch as the charges were for a covered benefit. For the reasons stated above, the Employer's Benefit Plan is not the primary plan because the Complainant's spouse was covered by the group medical plan provided through her employer when she incurred the health services expenses. Inasmuch as Article III A.(10)(f) 4. provide for recovery of payments made in excess of the Plan's liability where benefits should have been reduced because of benefits provided under another group plan, the Respondent may request reimbursement for payments made subject to this provision.

Opinion of the Trustees

The Respondent is not responsible for the payment of health services charges which were incurred by the Complainant's spouse during the period she was eligible for health benefits coverage by the HMO provided through her employer.