

OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 81-474 - July 30, 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 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 Pensioner's eligibility for health benefits from the Employer and hereby render their opinion on the matter.

Background Facts

The Pensioner was admitted to the skilled section of a nursing care facility on June 17, 1983. He remained in that unit until February 1, 1984, when he was transferred to the intermediate care section of this facility, where he continues to reside.

It appears, from the nursing notes provided, that the Pensioner was initially admitted to the skilled nursing facility in order for him to receive the benefit of their basic goal-oriented rehabilitative services. This was done so that the Pensioner could learn to accomplish basic activities of daily living and to enhance, if possible, his current level of functioning. The Employer has noted that, after the first few months of his confinement, it became questionable whether the Pensioner continued to require skilled nursing care rather than custodial care. His nursing home care was covered by the Employer through November 30, 1983, but, from that point on, the Employer was denied payment of the charges resulting from his nursing care, based on the conclusion that the Pensioner's continued confinement was for custodial care.

During the time the Pensioner was confined in the skilled section of this facility, he required care consisting of assistance in eating, bathing, dressing, turning, transfers, administration of oral medication, routine care required by a semi-incontinent patient, treatment of a small (approximately one quarter of an inch) decubitus ulcer with topical antibiotic ointment and a dressing, and the daily services of a physical therapy aide, presumably to maintain his current level of function.

The patient's original attending physician has stated that the Pensioner was a patient of his at the nursing home, which is a skilled care facility, for the month of December. The patient's current

attending physician states that the Pensioner became a patient on January 1, 1984, and that he was a skilled care patient at that time.

Dispute

Is the Employer responsible for payment of charges resulting from the nursing services received by the Pensioner while confined as a patient in the skilled nursing care unit from December 1, 1983, through January 31, 1984?

Positions of the Parties

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

Position of the Employer: The Employer is not responsible for payment of the charges incurred in the skilled nursing facility from December 1, 1983, through January 31, 1984, because the patient's confinement was for "custodial care" which is specifically excluded under the terms of the Employer's Benefit Plan.

Pertinent Provisions

Article III A.(5)(a) and (b) provide:

III - Benefits

A. Health Benefits

(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, inhalation and speech therapy, either provided or arranged for by the facility;

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

4. medical social services;
5. drugs, immunizations, supplies, appliances, and equipment ordinarily furnished by the facility for the care and treatment of in-patients;
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 laws 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 room or private nursing (unless necessary to preserve life), custodial care, services not usually provided in a skilled nursing facility.

(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, subject to approval from the Plan Administrator.

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.

Discussion

Under Article III A. (5) of the Employer's Benefit Plan, benefits are provided for skilled nursing care only if the nursing care is rendered in a licensed skilled nursing care facility (approved by Federal Medicare), and the level of care required by the patient is skilled. Benefits for custodial care are specifically excluded and no benefits are provided for intermediate care.

The facility in which this patient is confined has a portion of its beds certified as skilled care beds by Federal Medicare.

Required services are considered "skilled" if it is necessary for the beneficiary to receive these 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, gastrostomy tube 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 Pensioner's nursing care needs consisted of assistance in eating, bathing, dressing, turning, transfers, administration of oral medication, routine care required by a semi-incontinent patient, treatment of a small (approximately one quarter inch) decubitus ulcer with topical antibiotic ointment and a dressing, and the daily services of a physical therapy aide presumably to maintain his current level of functioning.

Because these services can be learned and performed by the average non-medical person, they are not considered to be skilled services covered under the benefit plan. In addition, the services the Pensioner received on a regular basis could have been provided, from a practical standpoint, in locations other than a skilled nursing care facility.

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The Funds' medical staff has reviewed the information submitted in this dispute and has concluded that the services the Pensioner received do not constitute skilled nursing care. The medical evidence does not support a conclusion that would justify payment for skilled nursing care. Under the requirements of Article III A.(S) of the Employer's Benefit Plan, the Pensioner does not qualify for payment of the nursing services he received in December 1983 and January 1984.

Opinion of the Trustees

The Employer is not responsible for payment of the nursing services received by the Pensioner during his confinement in the nursing care facility in December 1983 and January 1984.