
OPINION OF THE TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-096 - July 24, 1986

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 provision of health benefits coverage for home health services under the terms of the Employer Benefit Plan.

Background Facts

The Employee's wife has been receiving home health services for care related to a progressive neurological disease, amyotrophic lateral sclerosis. Medical treatment includes the administration of vitamin B-12 injections by the home health nurse to slow the degenerative process and of oral medications to stabilize the patient's potassium level. Blood samples are drawn by the home health nurse on a periodic, regular basis to test the levels of potassium and other chemicals. The muscular weakness associated with the disease causes her to have minimal arm movement, no voluntary leg movement, slow slurred speech and difficulty breathing and swallowing, thus necessitating complete assistance with mobility, personal care (e.g., bathing and dressing) and feeding.

The Employer has agreed to pay for all services rendered from March 25 1985 to August 9, 1985. It acknowledges that some services during this period were denied in error and has stated that appropriate adjustments will be made. However, the Employer contends that services rendered after August 9, 1985 were primarily custodial in nature and that benefits will be provided only for those nursing visits which are medically necessary to administer Vitamin B12 injections and to draw blood for laboratory work.

Dispute

Is the Employer responsible for payment of charges related to home health services rendered the Employee's wife after August 9, 1985?

Position of the Parties

Position of the Employee: The Employer is responsible for payment of the charges related to home health services rendered the Employee's wife because these services satisfy the requirements of Article III. A. (6) (a) of the Employer Benefit Plan.

Position of the Employer: The Employer is responsible for all services rendered between March 25, 1985 and August 9, 1985 but, after that date, only for medically necessary nursing services, such as administering vitamin B-12 injections and drawing blood samples. Other services rendered after August 9, 1985 are custodial in nature and as such are not covered under the Employer Benefit Plan.

Pertinent Provisions

Article III. A. (6) of the Employer Benefit Plan states in part:

(6) Home Health Services & Equipment

(a) General Provisions

Benefits are provided for home health services, including nursing visits by registered nurses and home health aides, and various kinds of rehabilitation therapy, subject to the following conditions and approval of the Plan Administrator.

1. The Beneficiary must be under the care of a physician.
2. The Beneficiary's medical condition must require skilled nursing care, physical therapy, or speech therapy at least once in a 60-day period.
3. The physician must initiate a treatment plan and specify a diagnosis, the Beneficiary's functional limitations and the type and frequency of skilled services to be rendered.
4. The Beneficiary must be confined to his home. The services must be provided by a certified home health agency.

(c) Skilled Nursing

Benefits are provided for skilled nursing care rendered by a registered nurse as a home health service when a Beneficiary's condition has not stabilized and a physician concludes that the Beneficiary must be carefully evaluated and observed by a registered nurse. The Plan Administrator may request an evaluation visit to the Beneficiary's home.

Article III. A (7) states in part:

(b) Physical Therapy

Benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. Such therapy must be prescribed and supervised by a physician and administered by a licensed therapist. The physical therapy treatment must be justified on the basis of diagnosis, medical recommendation and attainment of maximum restoration.

(c) Speech Therapy

Benefits are provided for speech therapy rendered by a qualified licensed speech therapist if the Beneficiary is a stroke patient or has had conditions including ruptured aneurysm, brain tumors or autism and needs special instruction to restore technique of sound and phonate, and needs direction in letter and word exercises in order to express basic needs. Benefits are also provided for speech therapy for child Beneficiaries with speech impediment from a qualified speech therapist provided that the child cannot receive speech therapy through the public schools.

Article III. A. (11) (a) states in part:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

8. Custodial care, convalescent or rest cures.

The introduction to Article III of the Employer Benefit Plan states:

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Discussion

The Employer has agreed to pay for all home health services rendered the Employee's spouse by the home health agency from March 25, 1985 to August 9, 1985, the date after which, according to the Employer, some of the visits in the treatment plan no longer met the requirements for skilled nursing. Therefore, this dispute involves only those services provided after August 9, 1985. Because the level of care may change from time to time depending upon the patient's condition, the Trustees will address only the home health services rendered from August 9, 1985 to March 3, 1986, the last date for which information concerning the patient's care and condition was provided.

Under Article III.A. (6) (a) and (c) of the Employer Benefit Plan, benefits are provided for skilled nursing visits in the home setting. Custodial care is specifically excluded from coverage under Article III.A. (11) (a) (8).

In general, skilled nursing care is considered to encompass those services that are reasonable and necessary for the treatment of an illness or injury and which must be performed by or under the direct supervision of a licensed nurse if the safety of the patient is to be assured and the medically desired result is to be achieved. Custodial care is a lower level of care, and constitutes those services that assist an individual to meet the activities of daily living (i.e., personal care, feeding, toileting, etc.).

When reviewing a specific case to determine whether coverage should be provided for home health care services it is Funds practice to consider: (a) whether the services received are skilled or custodial in nature, and (b) whether the actual services meet the criteria of reasonableness and necessity as outlined in the appropriate benefit plan. Within the context, some of the nursing services rendered the Employee's spouse after August 9, 1985 meet the criteria outlined in the general provisions for home health services in Article III. A. (6) (a) of the Employer Benefit Plan. However, not all of the visits satisfy requirements for establishing the medical necessity of skilled nursing, and some of the visits are clearly custodial in nature.

Included in the records submitted with this case is correspondence from the attending physician indicating that the patient requires physical therapy, breathing treatments, and speech therapy. The physical therapy consists of passive exercises administered by the visiting nurse and the family. The breathing treatments consist of exercises administered by the family. In both cases, the services of a medical professional (i.e., a licensed nurse or physical therapist) would be covered when instructing the family how to administer the exercises; however, on an ongoing basis, these exercises can be and are administered by members of the family and therefore are not considered to be skilled care. According to the medical records in the case, the only speech therapy which was provided consisted of two visits in March 1985 when the patient was taught to use a language board for communication. The Employer's insurance carrier paid for those two visits. No speech therapy was provided or billed during the period in dispute (i.e., August 9, 1985 through March 3, 1986).

According to the medical records in the case, the care provided during the skilled nursing visits during the period from August 9, 1985 through March 3, 1986 consisted of the following: (a) administering vitamin B-12 injections, (b) drawing blood samples for laboratory work, (c)

administering passive physical exercise, (d) reinforcing instructions previously given to the family for physical exercise and daily care such as personal hygiene and feeding, and (e) observing and monitoring the patient's condition. Items (a) and (b) are considered skilled care because a trained medical professional is necessary for drawing blood and administering injections. Items (c) and (d) would be considered skilled care only insofar as visits were needed to give initial instructions to members of the family, and would not be covered on an ongoing basis. Item (e) would be covered only insofar as observation and monitoring were indicated by a high probability of significant change occurring, thereby requiring modification in the treatment plan. In this case, the patient's condition has not shown significant change for well over six months. The major method of monitoring is--and has been for several months--the administration of laboratory tests and interpretation of the results of those tests by the attending physician. Skilled nursing visits at the high levels of frequency exhibited in this case (i.e., as high as 15 hours per week) do not appear to provide the physician with additional information and therefore are not reasonable and necessary for purposes of monitoring and observation.

After August 9, 1985, the only services that (a) were performed for the direct treatment of the Employee's spouse's illness and (b) could have been safely performed only by a licensed nurse, were the intramuscular injections of vitamin B-12 and the drawing of blood for laboratory work. Visits made for these purposes are therefore covered under the Employer Benefit Plan. Visits which did not include an intramuscular injection or blood drawing were custodial in nature and, as such, are not covered under the Employer Benefit Plan.

Opinion of the Trustees

For the period August 9, 1985 to March 3, 1986, the Employer is responsible for the payment of benefits for the skilled nursing care required for the intramuscular injection of Vitamin B12 and drawing blood for laboratory work, but not for nursing visits which constitute custodial care.