
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-260 - July 1, 1987

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 ("UMWA") 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 benefits for anesthesia services under the terms of the Employer Benefit Plan.

Background Facts

In January 1985, the Employee's spouse underwent surgery for which anesthesia was required. The anesthesia was administered by a physician (i.e., an anesthesiologist) and a nurse anesthetist, who was an employee of the hospital. The anesthesiologist performed the initial administration until the patient reached the optimum level of anesthesia. The nurse anesthetist then continued the administration of anesthesia, under supervision of the anesthesiologist, to maintain the patient at the optimum level of anesthesia throughout the surgery. The hospital billed for the nurse anesthetist under the category of anesthesia services, and the Employer's insurance carrier paid benefits in full for those services. The anesthesiologist billed for his services, and the Employer's insurance carrier paid a portion of the amount billed. The insurance carrier characterized its payment as being for the anesthesiologist's supervision of the nurse anesthetist. The remaining amount was denied as being an excessive charge for anesthesia supervision.

After being billed for the balance of the anesthesiologist's charges, the Employee appealed the denial. The Employer's insurance carrier responded that the balance of the amount charged was not covered because the amount charged was for complete administration of anesthesia but the actual service rendered by the anesthesiologist was the supervision, rather than the administration, of anesthesia. Subsequently, the Employer argued that none of the anesthesiologist's charges were covered because the anesthesia was administered by the nurse anesthetist and not the anesthesiologist, and therefore the Plan's hold harmless provisions did not apply to the anesthesiologist's charges.

Dispute

Is the Employer responsible for payment of the anesthesiologist's full charges for anesthesia services provided to the Employee's spouse?

Positions of the Parties

Position of the Employee: The Employee contends that the anesthesia services should be covered under Article III. A. (3)(d) of the Plan because the anesthesia was administered by the anesthesiologist. The Employee also contends that the balance of the bill should be treated as an excessive fee denial subject to the Plan's hold harmless provisions.

Position of the Employer: The Employer contends that the anesthesia was administered by the nurse anesthetist and not the anesthesiologist; therefore, the anesthesiologist's charges are not a covered benefit under the Plan and the excessive fee issue is not relevant.

Pertinent Provisions

Article III. A. (3)(d) of the Employer Benefit Plan states:

(3) Physicians' Services and Other Primary Care

(d) Anesthesia Services

Benefits are provided for the administration of anesthetics provided either in or out of the hospital in surgical or obstetrical cases, when administered and billed by a physician, other than the operating surgeon or his assistant, who is not an employee of, nor compensated by, a hospital, laboratory or other institution.

Article III. A. (3)(o) 4. of the Employer Benefit Plan states:

4. Benefits are provided for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician.

Article III. A. (10)(g) 2. of the Employer Benefit Plan states:

The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on

a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Article III. A. (11)(a) 12. of the Employer Benefit Plan states:

(11) General Exclusions

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

12. Excessive charges.

Discussion

Article III. A. (3)(d) of the Plan states that benefits are provided for anesthesia services when administered and billed by a physician. The Plan further states in Article III. A. (3)(o) 4. that benefits are provided for "physician extender services" -- i.e., medical treatment administered by certified or licensed health professionals when such services are rendered under the direct supervision of a physician.

The Employer argues that since the anesthesiologist did not administer the anesthesia during the entire operation, but instead supervised a nurse anesthetist who actually administered the anesthesia, none of the anesthesiologist's charges are covered by the Plan, and the payment was made in error for a non-covered benefit. However, the employment of nurse anesthetists is quite common and is recognized and accepted by the American Academy of Anesthesiology and most third party health benefit payors. They do not serve in lieu of anesthesiologists; rather, they assist anesthesiologists by continuing to administer anesthesia after the anesthesiologist induces the patient, maintaining the patient at the optimum level of anesthesia as determined by the anesthesiologist. The nurse anesthetist is appropriately considered a physician extender under Article III. A. (3)(o) 4. of the Plan.

The common practice among third party payors in such situations is to limit payment to the anesthesiologist to a portion of the amount which would have been paid had he performed all of the anesthesia services himself without a nurse anesthetist. This practice was followed by the Employer's insurance carrier in its initial processing and payment of a portion of the anesthesiologist's bill. The Employer may properly consider the balance of the anesthesiologist's bill as an excessive fee which is excluded from coverage under Article III. A. (11)(a) 12. of the Plan. The Employer is therefore responsible under Article III. A. (10)(g) 2. of the Plan to hold the Employee harmless from the anesthesiologist's efforts to collect the amount denied.

The Employer is responsible for providing benefits for the portion of the anesthesiologist's services which is determined to be reasonable and customary given the use of the services of a physician extender. The Employee should be held harmless from attempts to collect the remainder of the physician's charges.