
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-264 - March 3, 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 level of health benefits provided for obstetrical delivery services under the terms of the Employer Benefit Plan.

Background Facts

The Employee's dependent daughter required obstetrical delivery services. She chose a physician group practice in obstetrics and gynecology which charged \$1,300 for a normal delivery, including pre- and post-natal care. The group has the stated practice of requiring payment by the patient of \$350 of its total charge prior to the delivery and of withholding its services unless such payment is made.

The situation came to the attention of the Employer before the \$350 payment was made. Knowing that the \$1,300 charge would exceed its maximum allowable payment of \$950 for the services, the Employer was of the opinion that the requirement for a \$350 payment from the Employee was, in effect, an effort by the provider to circumvent the Employer's payment allowances program and to ensure that the entire amount charged (\$1,300) would be collected (\$350 from the Employee and \$950 from the Employer). The Employer reminded the Employee of its established procedures for administering the hold harmless provision of the Employer Benefit Plan which had been communicated to all Employees. Under those procedures, Employees were not to pay providers before the delivery of services.

In situations where providers sought to circumvent the Employer's cost management programs by demanding payment from Employees prior to the delivery of service, Employees were instructed to pay the providers the amount demanded and to submit receipts for those payments to the Employer prior to the providers' submission of the entire charge. The Employer would then reimburse its Employees and deduct those amounts from its payments to the providers. The Employee made the \$350 payment to the provider. Although again specifically informed of the

hold harmless procedures, the Employee did not submit to his Employer the receipts for the \$350 cash payments he made.

The Employee's daughter continued to see the provider, and a normal delivery occurred. The provider billed the Employer for \$1,300, and the Employer paid the provider \$950, the amount determined by the Employer to be reasonable. The Employee then billed the Employer for \$350, which the Employer has declined to pay.

Dispute

Is the Employer responsible for reimbursing an Employee for a partial payment made to a provider, if such reimbursement would result in the payment of more than the Employer's maximum allowable amount for the service, when the Employee did not follow the Employer's procedures for handling excessive fee and potential hold harmless situations?

Position of the Parties

Position of the Employee: The Employer is responsible for reimbursing the Employee for the amount-paid by the Employee to the provider as partial payment for covered services.

Position of the Employer: The Employer is not responsible for paying benefits to the Employee in this type of situation because (1) the Employer has already paid benefits up to its maximum allowable amount for the specific service, and (2) the Employee chose not to follow the Employer's clearly stated, publicized procedures for handling provider demands for partial payments, and in doing so, facilitated the provider's efforts to circumvent the Employer's cost management program.

Pertinent Provisions

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) of the Employer Benefit Plan states in part:

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

12. Excessive charges.

Article III. A. (10)(b) of the Employer Benefit Plan states in part:

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

Discussion

Article III. A. (10)(g) of the Employer Benefit Plan provides that the Plan Administrator shall attempt to negotiate with or defend the Employee against providers who seek to collect excessive fees for their services. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with the excessive fee claim. This is known as the Plan's "hold harmless" provision.

Under Article III. A. (10)(b), an Employer is authorized to promulgate rules and regulations necessary to the administration of the Plan. If reasonable and effectively communicated to the Employees, an Employer's rules, including any necessary to the hold harmless program, are binding on the Employees.

In this case, the Employer established and communicated to its Employees procedures for dealing with situations where providers seek payment directly from their patients. The intent of the procedures is to identify any difference over payment amounts between the Employer and the health care provider and to allow the Employer to intervene with the provider on behalf of the Employee, thereby preventing the shifting of costs (in this case, excessive charges) to Employees and thus holding its Employees harmless from excessive fee denials. When an Employee makes partial payment directly to a provider and does not notify the Employer of his out-of-pocket payment prior to the Employer's payment of the claim, the Employer is in the position of either (a) paying the provider the amount billed, up to the maximum allowable amount, and then reimbursing the Employee in full, resulting in payment of excessive charges which are excluded from coverage under Article III.A. (11)(a) 12 of the Plan; or (b) paying the provider the amount billed, up to the maximum allowable amount, and then denying any further payment for the services, including those amounts advanced by the Employee. The Employee then bears the burden of the excessive fee.

The Employer clearly recognized the potential for circumvention of cost management programs by health care providers when they request payment directly from Employees. The Employer sought, in apparent good faith, to thwart such circumvention on the part of providers by implementing procedures aimed at ensuring that the billing/payment relationship was between

the Employer and the provider and that Employees either were not involved in the relationship or were removed from it in circumstances such as these.

The Employee refused to comply with the Employer's procedures in this case and, in effect, acquiesced in the health care provider's efforts to circumvent the payment allowances portion of the Employer's health cost management program. The Employee's action made it impossible for the Employer to fulfill its responsibility to hold him harmless from efforts by the health care provider to collect excessive charges. As required by Article III. A.(10)(g) 2. of the Plan, the rules adopted by the Employer are designed to "hold harmless" an Employee even when he pays up front. As a result of the Employee's action, the provider was able to collect its excessive charges from the Employee, and the Employer had no opportunity to hold the Employee harmless. Therefore the Plan does not require the Employer to reimburse the Employee.

Opinion of the Trustees

Because the Employee did not follow the Employer's clearly established and communicated hold harmless procedures, the Employer is not responsible for paying benefits to the Employee as reimbursement for the Employee's direct payment to the provider.