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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-283 - August 25, 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 health benefits coverage for home health services under the terms of the Employer Benefit Plan.

### Background Facts

The Employee's spouse received home health care for multiple medical problems including diabetes, cardiac arrhythmias, congestive heart failure, hypertension, a stroke with left side weakness, chronic lung disease and impaired circulation in the lower extremities. Services were provided during two periods of care, November 1, 1984 through March 26, 1985 ("the first period") and May 1, 1985 through April 26, 1986 ("the second period").

The Employee's spouse's physician indicated during the first period of care that she required insulin injections, observation for insulin reactions, urine testing for diabetes, a low salt diabetic diet, assistance with medication and ambulation, range of motion exercises, pulse checks prior to taking heart medication and twice daily vital sign checks. The first period services that are in contention consisted of home health aide care fourteen hours a day, seven days a week. The aides assisted the Employee's spouse with bathing, dressing, meals, toileting, urine testing and taking oral medications. Vital signs were checked by the aides on occasion, but have not been documented regularly. During this period, the Employee's spouse administered her own insulin injections. For several shifts during this period, a licensed practical nurse was assigned to provide the same care usually rendered by the aides. Documentation by the aides during this period indicate that visits were made by a registered nurse to monitor the Employee's spouse's condition and draw blood for laboratory work and by a physical therapist to provide ambulation and gait training on stairs. The visits by the registered nurse and the physical therapist are not in contention.

During the second period of care, the Employee's spouse's condition deteriorated and services were rendered by licensed practical nurses and registered nurses twenty-four hours a day, seven days a week. In addition to the care previously described, she also required a catheter for urinary

incontinence; oxygen; suctioning; injections on an "as needed" basis for pain, fluid retention and respiratory distress; blood sugar testing with a home monitoring device and insulin dose adjustments based on the results; daily insulin injections; observation of vital signs and lung sounds due to cardiac rhythm disturbances and fluid retention in the lungs; measurement of fluid intake and output,; fecal disimpaction; enemas and monitoring for seizure activity. The physician noted several times that the Employee's spouse required continuous skilled nursing care. In addition to the twenty-four hour care provided by registered and licensed practical nurses, the Employee's spouse also received visits by a registered nurse to monitor her condition and draw blood for laboratory work and by a physical therapist for ambulation. These services are not in contention.

Despite repeated requests, the agency did not provide the Employer or its insurance carrier with documentation of the actual care rendered by the nurses during this second period of care. Nurse's notes for services rendered from May 19, 1985 through March 2, 1986 were provided to the Trustees after several requests.

The Employer denied benefits for the services rendered by home health aides during the first period because the services were determined to be custodial in nature. The Employer denied benefits for the twenty-four hour nursing services rendered during the second period because, without the requested documentation of the actual services rendered, the Employer was not able to make a coverage determination.

#### Dispute

Is the Employer responsible for payment of charges related to home health aide services rendered the Employee's wife from November 1, 1984 through March 26, 1985 and for twenty-four hour nursing services from May 1, 1985 through April 26, 1986?

#### Positions of the Parties

Position of the Employee: The Employer is responsible for payment of the charges related to home health aide services and twenty-four hour nursing services rendered the Employee's wife because these services satisfy the requirements of Article III. A. (6)(c) of the Employer Benefit Plan.

Position of the Employer: The Employer is not responsible for payment of the charges for home health aide services rendered the Employee's spouse during the first period of care because the care was custodial in nature. The Employer is not responsible for payment of the charges for twenty-four hour nursing services rendered the Employee's spouse during the second period of care because, despite repeated requests, the home health agency failed to submit the documentation required to make a benefit determination.

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. (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:

7. Private duty nursing. If necessary to preserve life and certified as medically necessary by the attending physician and an Intensive Care Unit is unavailable, benefits are provided for private duty nursing services for up to 72 hours per inpatient hospital admission. In no event will payment be made for

private duty nursing during a period of confinement in the Intensive Care Unit of a hospital.

8. Custodial care, convalescent or rest cures.

### Discussion

Under Article III. A. (6) of the Employer Benefit Plan, benefits are provided for home health services, to include "visits by registered nurses and home health aides" and skilled nursing care. Under Article III. A. (11), benefits are excluded for private duty nursing -- except when provided in an inpatient hospital setting -- and for custodial care.

During the first period in question, home health aides provided unskilled care (e.g., assisting with bathing, dressing, feeding, and taking oral medication) on an essentially full-time basis -- approximately 14 hours per day, seven days a week. Skilled services, such as drawing blood for laboratory work and conducting physical therapy exercises and training were provided by a registered nurse and a physical therapist during this period. Charges for the skilled services are not in contention and therefore are not addressed in this ROD. However, charges for the unskilled care were not covered by the Employer on the grounds that the services provided were custodial in nature. Examination of the home health service agency's notes and records of the first period support this conclusion. Essentially full-time care by a home health aide to assist with activities such as bathing and dressing constitutes custodial care which is not covered under Article III. A. (6) and is specifically excluded under Article III. A. (11). The home health agency services provided during the first period are therefore not covered by the Plan.

During the second period, licensed practical nurses (LPNs) and registered nurses (RNs) provided continuous care (24 hours per day, 7 days a week). The attending physician's orders and the incomplete nursing notes for the period indicate that the actual care rendered by the nurses was a mixture of skilled and unskilled care. The unskilled services were essentially custodial and therefore excluded under Article III. A. (11). While certain skilled nursing services were provided during this period, the charges in dispute are for the continuous care provided by licensed nurses over a one-year period in the Employee's home. Article III. A. (6) provides coverage for skilled nursing care as a home health service. However, home health services, as contemplated by Article III. A. (6), consist of visits by registered nurses and home health aides to provide certain specific services on an intermittent basis. Provision of nursing services on a continuous, around-the-clock basis, as provided here, constitutes private duty nursing. Under Article III. A. (11), private duty nursing is excluded from coverage except when provided in an inpatient hospital. Therefore, the nursing services provided by the home health agency during the second period are not covered by the Plan.

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The Employer is not responsible for coverage of home health aide services provided to the Employee's spouse during the periods November 1, 1984 through March 26, 1985 or for the twenty-four hour nursing services provided from May 1, 1985 through April 26, 1986.