
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-484 - June 10, 1988

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 medical services under the terms of the Employer Benefit Plan.

Background Facts

The Employee was treated by a physician who sought payment from his patients directly, rather than billing third-party payors. The Employee paid the physician's charges in full at the time the services were rendered and submitted a claim to the Employer's insurance carrier for reimbursement. The Employer's insurance carrier reduced the payment to the usual and customary amount for the services rendered. The Employee contends that the insurance carrier should recover from the physician, on the Employee's behalf, the amount that he paid over the usual and customary charge.

The Employer states that it has communicated in writing to its Employees that paying the bill when charges are incurred waives their right to protection under the hold harmless provisions of the Employer Benefit Plan. It submitted a copy of a company newspaper article dated May 1985 as proof of the written communication. According to a company spokesman, the newspaper is circulated to all hourly employees at their work site and is used regularly to update them on matters of importance.

Dispute

Is the Employer responsible for recovering from the provider, on behalf of the Employee, excessive charges paid by the Employee?

Positions of the Parties

Position of the Employee: The Employer is responsible for recovering from the provider, on behalf of the Employee, excessive charges paid by the Employee at the time services were rendered.

Position of the Employer: The Employer is not responsible for recovering from the provider, on behalf of the Employee, excessive charges paid by the Employee at the time services were rendered because in making such payments, the Employee waived his right to protection against excessive charges.

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 if 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 a rule that if a physician requires payment in full at the time of service and they comply, they will have no recourse in collecting amounts denied by the Employer as excessive charges. The purpose of such a rule is to prevent the shifting of costs (in this case, excessive charges) to Employees, by allowing the Employer to (1) identify any disagreement between the Employer and the health care provider over payment amounts, (2) to intervene with the provider on behalf of the Employee when a provider's charges are identified as excessive and (3) to hold the Employee harmless from a provider's attempts to collect such charges. While the purpose of the rule is not in question, its reasonableness must be considered. It is a common practice among health care providers to require payment at the time of service. A beneficiary is in no position to refuse payment when he needs medical service from a particular provider. In some rural communities there is not a wide choice of providers of speciality care, thus a rule prohibiting hold harmless protection for all up-front payments is not reasonable. The first time a beneficiary encounters a request for up-front payments from a provider, it is reasonable for him to pay the bill and request reimbursement in full. Thereafter, it would not be unreasonable to establish procedures which encourage an Employee to seek care from providers who accept the Employee's health card.

Opinion of the Trustees

The Employer is responsible for reimbursing the Employee for his full expenses. The Employer may make an appropriate adjustment with the provider to ensure that no excessive fees have been paid.