

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-504 - January 19, 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 provision of benefits for prescription drugs under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse has hypoglycemia (low blood sugar) and weighs 89 1/2 pounds. Because she cannot tolerate high protein-low carbohydrate, bulky foods, her physician has prescribed a nutritional formula, Ensure Plus, to be taken between meals three times a day as a diet supplement. Ensure Plus is sold over the counter and does not require a prescription.

The Employer has denied coverage for the nutritional supplement because a prescription is not required in order to purchase the diet supplement.

Dispute

Is the Employer responsible for the provision of prescription drug benefits for the Employee's spouse's diet supplement?

Positions of the Parties

Position of the Employee: The Employer is responsible for the provision of prescription drug benefits for the Employee's spouse's diet supplement because it is medically necessary for the treatment of her hypoglycemia.

Position of the Employer: The Employer is not responsible for providing prescription drug benefits for the Employee's spouse's diet supplement because a prescription is not required in order to purchase the diet supplement.

#### Pertinent Provisions

Article III. A. (4)(a) and (b) of the Employer Benefit Plan state in part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident...

(b) Benefits Excluded

Benefits shall not be provided under paragraph (4)(a) for the following:

4. Any medication not specifically provided for in (a) above.

#### Discussion

Under Article III. A. (4) of the Employer Benefit Plan, benefits are provided only for those drugs which, by Federal or State law, require a prescription. Medication that can be obtained over the counter without a prescription is excluded from coverage. The Trustees have previously concluded in Resolutions of Dispute 81-561, 84-098 and 84-502 (copies enclosed herein) that benefits are not provided under the Employer Benefit Plan for nutritional supplements which do not require a prescription. In this case, although the Ensure Plus needed by the Employee's spouse was prescribed by a physician, no prescription is required for purchase. Therefore, benefits are not provided for this supplement under the Employer Benefit Plan.

#### Opinion of the Trustees

The Employer is not responsible for the provision of benefits for the diet supplement Ensure Plus.