
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-531 - May 24, 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 health benefits for inpatient preoperative care under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse's scheduled date of surgery for an internal and external hemorrhoidectomy, sphincterotomy, and anoplasty was April 3, 1987. She was admitted to the hospital on April 2, 1987 as recommended by her physician for preoperative care including a CBC, urinalysis, chest x-ray, electrocardiogram, medical consultation, clear liquid supper and bowel evacuation. Upon admission, the Employee and his spouse signed a "Conditions of Admission and Authorization for Treatment" form which provides for assignment of insurance benefits and for guarantee of payment of the hospital account. The form indicates that the patient or responsible party "obligates himself to pay the account of the hospital, and waives all claims of exemption."

The Employer stated that the inpatient preoperative evaluation and treatment could have been performed on an outpatient basis. The Employer denied room and board charges incurred on April 2, 1987, on the basis that the preoperative hospitalization was not medically necessary. The Employer originally agreed to hold the Employee harmless from the provider's attempts to collect the room and board charges incurred on April 2, 1987. The Employer now states that the hospital form signed by the Employee constitutes a "blind assignment" which legally binds the Employee to pay the hospital charges in full with no exception. The Employer claims that because the Employee committed himself to pay the charges in full, it is unable to defend the Employee against any legal action commenced by the provider to collect charges and it can no longer hold the Employee harmless.

Dispute

Whether the Employer should hold the Employee harmless from attempts by the provider to collect room and board charges incurred by the Employee's spouse and denied as not medically necessary.

Positions of the Parties

Position of the Employee: The Employee asks whether the Employer is responsible for payment of the room and board charges incurred by his spouse on April 2, 1987, or whether the Employer must continue to attempt to resolve the matter while holding the Employee harmless from the provider's attempts to collect the charges in dispute.

Position of the Employer: The Employer denied payment of room and board charges stating that they were not medically necessary. The Employer recognizes its responsibility to hold an Employee harmless under the terms of the Employer Benefit Plan; however, in this case, upon investigation, the Employer stated that it cannot hold the Employee harmless from the provider's attempts to collect such charges because the Employee signed an agreement which legally binds him to pay all charges related to the Employee's spouse's hospitalization on April 2, 1987.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

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

- (g) Explanation of Benefits (EOB)

2. 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.

Discussion

The Introduction to the Employer Benefit Plan states that covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury. The Introduction further states that services which are not reasonable and necessary include procedures which can be performed with equal efficiency at a lower level of care. In this case, the Employer determined that preoperative procedures performed during the Employee's spouse's hospitalization on April 2, 1987 could have been performed on an outpatient basis prior to her surgery on April 3, 1987. Accordingly, the Employer denied benefits for room and board charges incurred on April 2, on the basis that hospitalization was not medically necessary prior to the scheduled date of surgery. The decision was reviewed on two separate occasions without any change in the Employer's determination.

Article III. A. (10)(g) 2. provides that "[i]n 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." This is known as the Plan's "hold harmless" provision.

Although the Employer alleges that the Employee agreed to pay the charges in dispute by signing the "Conditions of Admission and Authorization for Treatment" form, the Employee had no role in formulating the terms of the agreement. This type of agreement is considered a contract of adhesion which is generally unenforceable. See, Lloyd v. Service Corporation of Alabama, Inc., 453 So. 2d 735 (1984) (contracts of adhesion generally unenforceable.) Moreover, there is no evidence that the provider has attempted to collect the charges on the basis of this agreement. Inasmuch as benefits were denied in this case based on the Employer's determination that the services in question were not medically necessary, the "hold harmless" provision applies and the Employee should be held harmless by the Employer, as required under Article III. A. (10)(g) 2., while the Employer attempts to resolve the charges in dispute.

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The Employer should implement its hold harmless procedures as required under the provisions of Article III. A. (10)(g) 2. of the Employer Benefit Plan.