
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 84-635 - November 16, 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 home health care services under the terms of the Employer Benefit Plan.

Background Facts

The Pensioner, now deceased, was hospitalized from January 13 through January 20, 1986 because of lung cancer and acute respiratory obstruction. Upon discharge, the Pensioner was confined to his home where he lived alone. The Pensioner's physician has stated that it was medically necessary for the Pensioner to receive home health care due to the progression of his disease.

The Pensioner received 83 visits by registered nurses and 2 visits by a home health aide between January 21, 1986 and June 30, 1986, before he relocated to live with his son. The nurses provided respiratory therapy, consisting of medicated aerosol treatments, chest vibration to loosen secretions, irrigation and cleansing of the tracheal opening (stoma) followed by suctioning and deep coughing; monitored his respiratory, cardiac and nutrition status; and drew blood for laboratory tests. The nurses also instructed the Pensioner in the use of his oxygen and medications and the care of his medical equipment. The home health aide provided assistance with his personal care during 2 visits in June 1986. Medicare provided coverage for 17 of the 83 nursing visits and denied coverage for the remaining visits. The Pensioner's daughter asks whether the Employer is responsible for providing benefits for the remainder of the home health care services rendered to the Pensioner and the supplies used in his care from January 21, 1986 through June 30, 1986.

The Employer states that the services and supplies provided by the home health care agency are not covered because the care was essentially custodial in nature. The Employer states that it would provide benefits for a small portion of the services which it had determined were covered medical services, if the provider would itemize the charges for such services.

Dispute

Is the Employer responsible for providing benefits for the home health care services rendered to the Pensioner and for supplies used in his care from January 21, 1986 through June 30, 1986?

Positions of the Parties:

Position of the Pensioner: The Employer is responsible for providing benefits for the home health care services rendered to the Pensioner and for supplies used in his care from January 21, 1986 through June 30, 1986, because such services and supplies were medically necessary.

Position of the Employer: The Employer is not responsible for providing benefits for the Pensioner's home health care services nor for supplies used in his care from January 21, 1986 through June 30, 1986, because the care was custodial in nature.

Pertinent Provisions

Article III. A. (6)(a), (c) and (d) of the Employer Benefit Plan state:

(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.

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

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:

3. Services furnished by any governmental agency, including benefits provided under Medicaid, Federal Medicare and Federal and State Black Lung Legislation for which a beneficiary is eligible or upon proper application would be eligible.

1981 Contract Q&A 81-38 states in part:

Subject: Medical Equipment and Supplies

References: Amended 1950 & 1974 Benefit Plans & Trusts, Article III, Sections A (6) and (e), and A (7) (a) and (d)

Question:

What medical equipment and supplies are covered under the Plan?

Answer:

A. Under the Home Health Services and Equipment provision, benefits are provided for the rental and, where appropriate as determined by the Plan Administrator, purchase of medical equipment and supplies (including items essential to the effective use of the equipment) suitable for home use when determined to be medically necessary by a physician. These supplies and equipment include, but are not limited to, the following:

. . .

2. Medical supplies necessary to maintain homebound or bedridden Beneficiaries. Examples of covered supplies are enema supplies, disposable sheets and pads (also called "Chux" or "blue pads"), supplies for home management of open or draining wounds, heating pads (for therapeutic use only) and insulin needles and syringes.

Discussion

Under Article III. A. (6) of the Employer Benefit Plan, benefits are provided for home health services, including visits by registered nurses and home health aides and skilled nursing care, subject to the approval of the Plan Administrator. Q&A 81-38, which interprets portions of Article III. A. of the Plan, states that benefits are provided for medical supplies necessary to maintain homebound or bedridden beneficiaries. Article III. A. (11)(a) 3. of the Plan excludes benefits for services furnished by any governmental agency for which a beneficiary is eligible, including benefits provided under Medicare.

In reviewing a specific case to determine whether coverage should be provided, one considers whether the home health services received in a particular case are skilled or custodial in nature and whether the services meet the criteria for reasonableness and necessity as outlined in the appropriate benefit plan. In general, skilled nursing care is covered under the plan if the services are reasonable and necessary for the treatment of an illness and must be performed by or under the direct supervision of a licensed nurse if the safety of the patient is to be assured and the medically desired result is to be achieved. A Funds' medical consultant has reviewed this case and advised that skilled nursing services were rendered on five visits from January 22, 1986 through January 26, 1986, when the patient and family were undergoing teaching and training necessary for the patient's stoma care and pulmonary treatment. The consultant advised that the skills of a licensed nurse were required to detect improper technique and to recommend appropriate corrections. The consultant stated that it was also medically necessary for a licensed nurse to reinforce the teaching and observe the treatments for proper technique on a once-a-week basis during February 1986. According to the consultant, because venipuncture services must be performed by a trained medical professional, the visits made by a registered nurse on February 17, February 26, and March 27, 1986 for the drawing of blood for laboratory work constitute skilled nursing care, consistent with Article III. A. (6)(c) of the Employer Benefit Plan.

The medical consultant advised that the frequency of the visits by the registered nurses was not necessary to provide the skilled services required by the patient in this case. Therefore, the visits other than those cited above, did not constitute medically necessary skilled nursing care and, as such, are not covered under the Employer Benefit Plan.

Home health aide services are provided as an adjunct to skilled nursing services. Since skilled nursing services were not reasonable and necessary during June 1986, when the home health aide visits were made, the home health aide visits are also not covered under the Plan.

Q&A #81-38, which interprets portions of Article III. A. of the Employer Benefit Plan, reflects that coverage is provided for medical supplies necessary to maintain homebound or bedridden beneficiaries. Because the home health care agency provided services to the Pensioner when he was homebound, the supplies the nurses used for his care are covered benefits under the Plan.

Opinion of Trustees

The Employer is responsible for providing benefits for the home health care services rendered to the Pensioner on January 22, 1986 through January 26, 1986, February 17 and 26, 1986, March 27, 1986 and on one visit per week in February 1986, to the extent such visits were not covered by the Federal Medicare program. The Employer is also responsible for providing benefits for the supplies that were medically necessary for the Pensioner's care between January 21, 1986 and June 30, 1986. The Employer Is not responsible for providing benefits for the home health aide visits.