
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-702 - October 31, 1990

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, 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 implementation of hold harmless procedures under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was admitted to a hospital on April 2, 1987 for evaluation and treatment prior to surgery on April 3, 1987. The Employer's insurance carrier denied \$205.00 of the room and board charges for the Employee's spouse's hospitalization. In a letter dated July 13, 1987, the carrier notified the Employee that hospitalization from April 2 to April 3, 1987 was not medically necessary and that his benefit plan excludes benefits for services determined not medically necessary. On August 26, 1987, the Employee received a letter from the hospital stating that if payment of the \$205.00 balance was not received within 10 days, his account would be placed with an attorney or agency for collection. The Employee states that he then began making monthly payments of \$25.00 to the hospital to avoid that action.

On September 15, 1987, the treating physician submitted additional information to the insurance carrier; however, after reviewing that information and the hospital records, the carrier upheld its denial of the \$205.00 charge on September 23, 1987. On October 23, 1987, the Employee filed a request for Resolution of Dispute (ROD) questioning whether the Employer was responsible for payment of the \$205.00 room and board charge or whether the Employer must hold the Employee harmless from the provider's attempts to collect the charges in dispute.

In its response to the ROD, the Employer maintained that the pre-operative hospitalization was not necessary and, consequently, benefits were not payable under the terms of the Employer Benefit Plan. The Employer also recognized its responsibility to hold the Employee harmless under the terms of the Employer Benefit Plan, but stated that it was unable to hold the Employee harmless in this case because the Employee had signed an agreement when his spouse was

admitted to the hospital on April 2, 1987 legally binding him to pay all charges related to her hospitalization. In their decision issued May 24, 1988 (see ROD 84-531, copy enclosed), the Trustees concluded that because the services were denied as not medically necessary and the agreement signed by the Employee was generally unenforceable, the Employer was required under the Employer Benefit Plan to implement its hold harmless procedures. The Employee's representative now asks that the Employer reimburse the Employee for the \$205.00 he paid to the hospital.

The Employer refuses to make reimbursement, stating that such action would result in payment of a medically unnecessary charge which is contradictory to the intent of the hold harmless and cost containment provisions of the Plan. The Employer contends that the Employee, by paying the \$205.00, precluded the insurance carrier from implementing its hold harmless procedures and negotiating or defending any legal action taken against the Employee.

The Employer states that whenever its carrier denies payment of an excessive fee or for services not medically necessary, an Employee is advised to contact the carrier for assistance in the event the provider attempts to collect the charge. The carrier would then instruct the Employee to fill out a Cost Containment Reduction ("CCR") form authorizing the Employer to negotiate with the provider or defend the employee in court. The Employer states that the Employees are told not to pay such charges.

Dispute

Is the Employer required to reimburse the Employee for the \$205.00 charge that he paid the provider for services determined not medically necessary?

Positions of the Parties

Position of the Employee: The Employer should have held the Employee harmless from the provider's attempts to collect the \$205.00 charge for services not medically necessary. Because the Employer did not hold the Employee harmless, the Employee paid the \$205.00, and should be reimbursed for that amount.

Position of the Employer: The Employer's insurance carrier was precluded from negotiating a resolution or defending the Employee in a legal action because the Employee paid the \$205.00 charge to the provider. In addition, the Employer is not required to reimburse the Employee for the \$205.00 paid to the provider because the charge was for a service that was not medically necessary and, as such, is not covered under the Employer Benefit Plan. Payment of such a charge would be contradictory to the intent of the cost containment provisions of the Employer Benefit Plan.

Pertinent Provisions

Article III. A. (10)(g) 3. of the Employer Benefit Plan states:

(10) General Provisions

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

3. 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

Article III. A. (10)(g) 3. 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 charges or charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with such charges. This is known as the Plan's "hold harmless" provision. The issue in this case is whether the Employer is required to reimburse the Employee for a \$205.00 charge paid by the Employee after the Employer had determined that the charge was for services that were not medically necessary, but did not initiate its hold harmless procedures.

The Employer states that, whenever a charge is denied as excessive or not medically necessary, its Employees are advised to contact its insurance carrier for assistance if the provider attempts to collect the charge and they are advised to not pay the denied charge. However, there is no indication that the Employee was so advised in this instance. When the claim in question was denied, the carrier sent a letter of explanation dated July 13, 1987 to the Employee indicating only that no benefits are payable for services not medically necessary and any requests for reconsideration should include additional information concerning medical necessity. After

additional information was provided by the Employee's spouse's doctor, the Employee received a letter dated September 23, 1987 from the carrier indicating that the denial of the room and board charge was maintained. Neither these two letters nor the original EOB indicated that the Employee should contact the carrier to request assistance if the provider attempted to collect the denied amount. Thus, there is no documentation to show that the Employer put its hold harmless procedures into effect in this instance. In fact, after the Employee filed a previous ROD claiming that the denied charge should have been covered, the Employer maintained its denial and further refused to hold the Employee harmless because the Employee had signed an agreement when his spouse was admitted to the hospital to pay all charges related to her hospitalization. Under these circumstances, it is reasonable that the Employee, having received a collection notice, made arrangements to pay the disputed charge in monthly installments.

The Trustees addressed a similar dispute in ROD 88-105 (copy enclosed herein). In that decision, the Trustees concluded that an Employee should be reimbursed for a charge he paid after the Employer had refused to implement its hold harmless procedures on the grounds that the Employee had signed a contract of adhesion. The Employer in this case refused to implement its hold harmless procedures on the same grounds. In addition, payment of the charge by the Employee in this case does not appear to be an effort to circumvent the Employer's hold harmless procedures because there is no indication that such procedures, as described by the Employer, were put into effect. As in the precedent case, absent evidence that the Employer's hold harmless procedures were implemented properly in this particular case, the Trustees conclude that the Employee should be reimbursed for the \$205.00 payment made after the Employer failed to hold him harmless.

Opinion of the Trustees

Under the particular circumstances here, as in the similar circumstances in ROD 88-105, the Employer is required to reimburse the Employee for the \$205.00 payment made after the Employer failed to hold him harmless.