
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-039 - February 14, 1989

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 coverage for home health aide services under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse has advanced multiple sclerosis and is confined to a wheelchair. The muscular weakness associated with the disease causes her to have minimal arm movement, vision problems, incontinence and difficulty swallowing, thus necessitating complete assistance with mobility, personal care and feeding. The Employee's spouse's physician has noted on several occasions that, while skilled nursing care is not required, the Employee's spouse requires the assistance of nurses' aides twenty-four hours a day.

The Employer provided benefits for home care services for the Employee's spouse from September 24, 1987 until March 14, 1988. The Employer provided such benefits under its case management program in order to avoid hospitalization expenses. The Employer did not make a determination that the services were covered under Article III. A. (6) of the Employer Benefit Plan. The Employer notified the Employee on March 9, 1988 that benefits for the home care services would be terminated on March 14, 1988.

From March 14, 1988 through May 16, 1988, the Employee's spouse received home health aide services twenty-four hours a day, seven days a week. The aides provided assistance with bathing, dressing, positioning, cooking, feeding, massaging, bowel and bladder management, skin care, oral medication administration and routine range of motion exercises. Licensed nurses performed periodic, unbilled visits to supervise the care furnished by the aides. Documentation of the visits by licensed personnel was not provided, and agency representatives were not able to

specify the frequency of such visits. The Employer denied benefits for the services rendered by the home health aides from March 14, 1988 through May 16, 1988.

Dispute

Is the Employer required to provide benefits for home health aide services rendered to the Employee's spouse from March 14, 1988 through May 16, 1988?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the home health aide services rendered to the Employee's spouse from March 14, 1988 through May 16, 1988, because they were medically necessary.

Position of the Employer: The Employer is not required to provide benefits for the Employee's spouse's home health aide services from March 14, 1988 through May 16, 1988, because the care was custodial in nature.

Pertinent Provisions

Article III. A. (6) of the Employer Benefit Plan states in pertinent part:

(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. Article III. A. (11)(a) 8. of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

8. Custodial care, convalescent or rest cures.

Discussion

Article III. A. (6) of the Employer Benefit Plan provides that benefits for home health services, including visits by registered nurses and home health aides, are provided under certain circumstances. Benefits are not provided, for example, unless the Beneficiary's medical condition requires skilled nursing care, physical therapy or speech therapy at least once in a 60-day period. In addition, Article III. A. (11) (a) 8. of the Plan provides that benefits are excluded for custodial care.

Skilled nursing care is generally considered to encompass those services that are reasonable and necessary for the treatment of an illness or injury and which 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. Custodial care is a lower level of care and constitutes services that assist an individual to meet the activities of daily living (i.e., personal care, feeding, toileting, etc.).

The Employee's spouse suffers from advanced multiple sclerosis. She is confined to a wheelchair and has minimal arm movement, vision problems, incontinence, and difficulty swallowing. However, there is no evidence that her medical condition requires skilled nursing care as opposed to custodial care.

The care received by the Employee's spouse was provided by unlicensed nurses' aides. The tasks performed by the nurses' aides could have been performed by the average lay person with a reasonable amount of instruction and did not require the skills of licensed personnel. The care provided the Employee's spouse was clearly custodial in nature; she did not receive or require skilled nursing care during the period in question. Consequently, the home health aide care is not a covered benefit under the Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for the home health aide services rendered to the Employee's spouse from March 14, 1988 through May 16, 1988.

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