
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-105 - February 7, 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 level of health benefits provided for medical services under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was treated at a medical clinic on October 14, 1987. Prior to that treatment, her provider had required her to sign a Statement of Financial Responsibility ("SFR"), in which she assumed direct responsibility for all charges for medical services, regardless of insurance coverage. The Respondent's insurance carrier paid the usual and customary fee for the service on October 14, 1987, and included a message on the Explanation of Benefits ("EOB"), dated October 23, 1987, recommending that the Employee not pay the remainder of the fee.

The provider was asked by the insurance carrier in a letter dated February 16, 1988 to accept the usual and customary payment as payment in full. The provider would not accept that payment as payment in full, and he billed the Employee for the remaining \$20.00. By letter dated March 9, 1988, the carrier informed the Employee it could do nothing more to hold him harmless because his spouse had signed the SFR. On June 22, 1988, the Employee signed and submitted a form requesting assistance from the Employer's insurance carrier in resolving the matter. The Employee continued to receive balance bills from the provider and on September 2, 1988, paid the fee to maintain good relations with his spouse's physician. The Employee's representative asks that the Employee be reimbursed \$20.00.

Dispute

Is the Employer required to reimburse the Employee for the \$20.00 excessive charge that he paid the provider?

Positions of the Parties

Position of the Employee: The Employer should reimburse the Employee for the \$20.00 that he paid to the provider.

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 became legally bound to pay the entire amount charged by the provider when his spouse signed the SFR. In addition, the Employer is not required to reimburse the Employee for the additional \$20.00 paid to the provider because this would result in the payment of excessive charges, which are specifically excluded under Article III. A. (11)(a)12. 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.

Article III. A. (11)(a)12. of the Employer Benefit Plan 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:
12. Excessive charges.

Discussion

Article III. A. (10)(g) of the Employer Benefit Plan provides that the Plan Administrator shall attempt to negotiate with or defend a Beneficiary against providers who seek to collect excessive fees for their services. Whether the Plan Administrator negotiates a resolution or defends a legal action, the Beneficiary is not responsible for any expenses in connection with the excessive fee claim. This Is known as the Plan's "hold harmless" provision.

The Employer states that it was precluded from negotiating a resolution or defending the Employee in a legal action because the Employee's spouse had signed the SFR which legally bound the Employee to pay the amount charged. However, the Employee had no role in formulating the terms of this agreement. In fact, this type of agreement is considered a contract of adhesion and, as such, is generally unenforceable. See Lloyd v. Service Corporation of Alabama, Inc. 453 So. 2d 735 (1984). In ROD 84-531 (copy enclosed herein), issued May 24, 1988, the Trustees ruled that an Employer may not refuse to hold an Employee harmless because that Employee has signed a contract of adhesion. Accordingly, when the Employee in this case requested the hold harmless defense on June 22, 1988, the Employer should not have declined on the grounds stated to put its procedures Into effect.

In this situation, the Employee received no further response from the Employer's insurance carrier after he requested assistance on June 22, 1988. Moreover, the March 9, 1988 letter from the carrier had informed the Employee that the carrier could not provide any further assistance. The Employee therefore paid the bill in question on September 2, 1988. He does not appear to have circumvented the Employer's hold harmless procedures; rather, he seems to have tried to comply with them fully by notifying the Employer of continued balance billing. The Trustees find that the Employee should be reimbursed for the \$20.00 payment made after the Employer refused to implement its hold harmless procedures.

The Employer also contends that it is not required to reimburse the Employee for the additional \$20.00 paid to the provider because this would result in the payment of excessive charges, which are specifically excluded under Article III. A (11)(a) 12. of the Employer Benefit Plan. However, the \$20.00 payment does not represent the payment of excessive charges, but instead represents the Employer's liability to the Employee for its failure to hold that Employee harmless.

Opinion of the Trustees

The Employer is required to reimburse the Employee for the \$20.00 payment made after the Employer refused to hold him harmless.