
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-164 - May 16, 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 provision of health benefits for services rendered in a skilled nursing care facility under the terms of the Employer Benefit Plan.

Background Facts

On March 5, 1988, the Employee suffered an aneurysm and on March 10, 1988, underwent surgery to repair the aneurysm. On March 15, 1988, he suffered a stroke. As a result of his illness, the Employee has hemiparesis on his right side, is fed through a gastrostomy tube and has cognitive deficits. Subsequent to his hospitalization, the Employee was admitted to the skilled nursing units of two different skilled nursing care facilities. The Employer provided benefits for the hospitalization and the care he received at the two skilled nursing care facilities.

On July 18, 1988, he was transferred to the sub-acute rehabilitation unit of a third skilled nursing care facility, where he was a resident from July 18, 1988 through March 24, 1989, except for a brief hospitalization for surgery from September 20, 1988 through September 30, 1988. The Employer provided coverage for the skilled nursing facility services and hospitalization through September 30, 1988. The care required by the Employee in the facility during the period in dispute consisted of a five-week course of intravenous antibiotic therapy, gastrostomy tube feedings, administration of medication through the gastrostomy tube, assistance with bathing, dressing, transfers and ambulation, monitoring of vital signs, his respiratory status and his skin condition, routine care required by an incontinent patient and physical, speech and occupational therapies.

The Employer provided coverage for the charges incurred for the period from July 18, 1988 through September 20, 1988, when he was transferred to a hospital for surgery. The Employer denied coverage for nursing care rendered from October 1, 1988, when he was returned to the

facility, through March 24, 1989, because the care was custodial in nature. The Employer also denied coverage for the occupational therapy rendered from October 1, 1988 through March 24, 1989 and for the speech and physical therapy rendered from January 1, 1989 through March 24, 1989, because it determined that these services were at a maintenance level.

The Employee was discharged home on March 24, 1989 with around-the-clock home nursing care. The Employee's spouse asks whether the Employer is required to pay for the care the Employee's spouse received on the sub-acute rehabilitation unit from October 1, 1988 through March 24, 1989.

Dispute

Is the Employer required to provide benefits for the care the Employee received in a skilled nursing care facility from October 1, 1988 through March 24, 1989?

Positions of the Parties

Position of the Employee: The Employee's spouse asks whether the Employer is required to provide benefits for the care the Employee received in a skilled nursing care facility from October 1, 1988 through March 24, 1989.

Position of the Employer: The Employer is not required to pay for the nursing care the Employee received in the skilled nursing care facility from October 1, 1988 through March 24, 1989 because the care was custodial in nature. The Employer is not required to pay for the occupational therapy rendered from October 1, 1988 through March 24, 1989, nor for the speech and physical therapies rendered from January 1, 1989 through March 24, 1989, as these services were provided at a maintenance level.

Pertinent Provisions

Article III. A. (5) (a) of the Employer Benefit Plan states:

(5) Skilled Nursing Care and Extended Care Units

(a) Skilled Nursing Care Facility

Upon determination by the attending physician that confinement in a licensed skilled nursing care facility* is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

1. skilled nursing care provided by or under the supervision of a registered nurse;

* Skilled nursing care facility is limited to a skilled nursing care facility which is licensed and approved by Federal Medicare.

2. room and board;
3. physical, occupational, inhalation and speech therapy, either provided or arranged for by the facility;
4. medical social services;
5. drugs, immunizations, supplies, appliances, and equipment ordinarily furnished by the facility for the care and treatment of inpatients;
6. medical services, including services provided by interns or residents in an approved, hospital-run training program, as well as other diagnostic and therapeutic services provided by the hospital; and
7. other health services usually provided by skilled nursing care facilities.

The Plan will not pay for services in a nursing care facility:

1. that is not licensed or approved in accordance with state laws or regulations;
2. unless the service is provided by or under the direct supervision of licensed nursing personnel and under the general direction of a physician in order to achieve the medically desired results.

Exclusions:

Telephone, T.V., radio, visitor's meals, private room or private nursing (unless necessary to preserve life), custodial care, services not usually provided in a skilled nursing facility.

Discussion

Under Article III. A. (5)(a) of the Employer Benefit Plan, benefits are provided for care in a skilled nursing care facility only if the facility is a licensed skilled nursing care facility that is approved under the Federal Medicare program and only if skilled care is required by the patient. Benefits for custodial care are specifically excluded. The facility to which the Employee was admitted is licensed by Medicare as a skilled nursing care facility.

Confinement in a skilled nursing facility is appropriate if it is necessary for the patient to receive skilled services on essentially a daily basis, and if, from a practical standpoint, the services can only be provided during an inpatient stay at a skilled nursing care facility as opposed to an alternative location. Skilled nursing care is generally considered to encompass those services

that are reasonable and necessary for the treatment of an illness or injury and that must be performed by or under the direct supervision of specially qualified personnel, such as a licensed nurse or physical therapist, if the safety of the patient is to be assured and the medically desired result is to be achieved.

According to the information submitted to the Funds, the Employee received intravenous antibiotic therapy for the treatment of an epidural abscess (an abscess on the membrane lining the brain), during the period from October 1, 1988 through November 4, 1988. The antibiotic was discontinued after a CT (computerized tomography) scan showed that the abscess was resolved. The administration of intravenous antibiotics is a service that by its inherent complexity meets the definition of a skilled service. A Funds' medical consultant has reviewed the information submitted in this file and advised that the patient required skilled nursing services on a daily basis from October 1, 1988 through November 4, 1988 for the treatment of the abscess, and that such services were appropriately provided on an inpatient basis in a skilled nursing care facility.

The Employee's status was observed after the antibiotics were discontinued, and during this time, his family was taught various techniques for the care of his medical condition in anticipation of his discharge. Teaching activities that require the skills or knowledge of a nurse also constitute skilled nursing services. The medical consultant is of the opinion that skilled nursing care on an inpatient basis was required for an additional seven days after November 4, 1988 to observe the patient's status off antibiotics and to teach his family the various techniques for the care of his medical condition prior to discharge to his home or to a non-skilled nursing environment. These services required the skills of a licensed nurse in order to evaluate the patient's need for modification of treatment or institution of medical procedures and, with regard to teaching and training to detect improper technique, recommend corrections and reinforce the teaching provided to family members. The medical consultant is of the opinion that a one-week period was reasonable for this type of discharge preparation since the Employee's spouse had received some training during the Employee's stay at the second skilled nursing care facility and since she would be receiving support via home health care services following the Employee's discharge.

From November 12, 1988 through March 24, 1989 the Employee received nursing services consisting of the routine administration of gastrostomy tube feedings and medication, assistance with bathing, dressing, transfers and ambulation, monitoring of vital signs, his respiratory status and his skin condition and routine care required by an incontinent patient. The medical consultant is of the opinion that the nursing care provided from November 12, 1988 until the patient's discharge on March 24, 1989 could have been performed by the average non-medical person with a reasonable amount of instruction and did not require the skills of licensed personnel and, therefore, was at an intermediate level. The consultant is of the opinion that inpatient confinement in a skilled nursing care facility was not necessary beyond November 12, 1988.

The Employee received physical, occupational and speech therapies during his stay on the rehabilitation unit. The Employer denied benefits for the occupational therapy provided from October 1, 1988 through March 24, 1989 and the physical and speech therapies rendered from

January 1, 1989 through March 24, 1989. The physical therapy included therapeutic exercises, transfer training and progressive gait training; the speech therapy included receptive and expressive language therapies; and the occupational therapy included training in activities of daily living. The medical consultant is of the opinion that the speech and physical therapies rendered after December 31, 1988 were not based on the expectation that the patient's condition would improve materially in a reasonable period of time. The medical consultant is, therefore, of the opinion that these services were at a maintenance level and were not skilled in nature. The consultant has further advised that he finds no documentation in the information submitted to the Funds of goals for further improvement from occupational therapy during the period in question and therefore is of the opinion that the occupational therapy provided after September 30, 1988 was essentially a maintenance program and, as such, is not considered skilled in nature.

Because the nursing care received by the Employee during the period from October 1, 1988 through November 12, 1988 was skilled in nature as defined in Article III. A. (5) (a) of the Employer Benefit Plan, the Employer is required to provide benefits for the nursing care received during that period. Inasmuch as the patient did not require skilled nursing care, as defined in Article III. A. (5)(a) of the Employer Benefit Plan, after November 12, 1988, the Employer is not required to provide benefits for the nursing care received beyond that date. In addition, the Employer is not required to provide benefits for the speech and physical therapies received by the Employee from January 1, 1989 through March 24, 1989, nor for the occupational therapy received by the Employee from October 1, 1988 through March 24, 1989, because such services were not provided at a skilled level of care, as required for coverage under the Plan.

Opinion of the Trustees

The Employer is required to provide benefits for the nursing care received by the Employee in the skilled nursing care facility from October 1, 1988 through November 12, 1988. The Employer is not required to provide benefits for the nursing care received in the facility from November 13, 1988 through March 24, 1989. The Employer is not required to provide benefits for the occupational therapy rendered from October 1, 1988 through March 24, 1989, nor for the physical and speech therapies rendered from January 1, 1989 through March 24, 1989.