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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-210 - May 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 provision of health benefits for nursing services under the terms of the Employer Benefit Plan.

### Background Facts

On January 29, 1989, the Employee's spouse was hospitalized for an intracerebral hemorrhage and subsequently underwent a craniotomy (surgical opening of the skull) to remove an intracerebral hematoma (swelling containing blood). She also has a medical history of a previous stroke, obesity, hypertension and arteriosclerotic heart disease. She remained in the hospital until February 22, 1989, when she was transferred to the skilled care rehabilitation unit of a licensed skilled nursing facility where she remained until April 25, 1989, when she was discharged to her home. The skilled nursing unit of the facility is approved under the federal Medicare program. The care required by the patient in the facility consisted of assistance with eating, bathing, dressing, ambulation, administration of oral medication, monitoring of vital signs and the condition of her skin, routine care required by an incontinent patient and physical and speech therapies. Her physician states that she required skilled care and that the patient's husband was not able to provide the necessary care at home.

The Employer provided benefits for the Employee's spouse's stay in the skilled nursing facility from February 22, 1989 through February 28, 1989, but denied benefits for the period beginning March 1, 1989, stating that the Employee's spouse received care that was primarily custodial in nature and that the services that were required could have been provided at home. The Employee had his wife discharged against medical advice when he learned that the Employer had discontinued payment for her care in the skilled nursing facility.

The Employee asks whether the Employer is required to pay for the care the Employee's spouse received on the skilled care unit of a skilled nursing care facility from March 1, 1989 through April 25, 1989.

Dispute

Is the Employer required to provide benefits for the care the Employee's spouse received on the skilled care unit of a skilled nursing facility from March 1, 1989 through April 25, 1989?

Positions of the Parties

Position of the Employee: The Employee asks whether the Employer is required to provide benefits for the care his spouse received on the skilled care unit of a skilled nursing facility from March 1, 1989 through April 25, 1989.

Position of the Employer: The Employer is not required to pay for the care the Employee's spouse received on the skilled care unit of a skilled nursing facility from March 1, 1989 through April 25, 1989 because the care she received was primarily custodial and because the physical and speech therapies and periodic nursing care that were required could have been provided at home.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

Article III - Benefits

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

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;
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.

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

Discussion

The Introduction to Article III of the Employer Benefit Plan states that covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care. The Introduction further states that the fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under the Plan. Under Article III. A. (5) (a) of the Plan, benefits are provided for care in a skilled nursing facility only if the facility is a licensed skilled care facility that is approved under the federal Medicare program and if skilled nursing care is required by the patient. Benefits for custodial care are specifically excluded. The facility in which the Employee's spouse was confined is licensed by Medicare as a skilled nursing care facility.

Confinement in a skilled nursing facility is appropriate if it is necessary for a 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 alternate 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's spouse's nursing care needs consisted of bathing, dressing, incontinence care, turning and transfers, the administration of oral medication, monitoring of her vital signs and skin condition and passive range of motion exercises.

A Funds' medical consultant has reviewed the information submitted in this case and advised that the nursing care received by the patient after February 28, 1989 did not require the skills of a licensed nurse. The consultant is of the opinion that the nursing care provided in this case was custodial in that its primary purpose was to assist the patient in meeting the activities of daily living. Thus, the nursing care provided from February 28, 1989 until the patient's discharge home on April 25, 1989 does not meet the requirements for a skilled level of care in an inpatient facility.

The Employee's spouse also received physical and speech therapies during this time. The medical consultant is of the opinion that the treatment plan summaries provided do not indicate that services were based on expectations that the patient's condition would improve materially in a reasonable period of time. The consultant is of the opinion that these therapies were administered at a maintenance level and were not skilled in nature. Consequently, these services were not considered reasonable and necessary for the treatment of the patient's condition. Furthermore, these services did not require inpatient confinement in a skilled nursing facility.

Inasmuch as the care received by this patient after February 28, 1989 was custodial in nature, rather than skilled nursing care as defined in Article III. A. (5) (a) of the Employer Benefit Plan, the Employer is not required to provide benefits for the care she received from March 1, 1989 through April 25, 1989.

Opinion of the Trustees

The Employer is not required to provide benefits for the care the Employee's spouse received on the skilled care unit of a skilled nursing facility from March 1, 1989 through April 25, 1989.