
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-216 - 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 October 29, 1988, the Pensioner was hospitalized for drug abuse and possible overdose, cerebral atrophy with suspected alcohol-induced brain damage, hypokalemia (deficiency of calcium in the blood), malnutrition and urine retention. He also has a medical history of hypertension, gout, pneumoconiosis, cirrhosis associated with alcoholism, and degenerative arthritis of the lower back. He remained in the hospital until November 4, 1988, when he was transferred to the skilled nursing unit of a licensed skilled nursing facility. The skilled nursing unit of the facility is approved under the Federal Medicare program.

The Pensioner's physician states that it was medically necessary for him to be in a skilled nursing care facility from November 4, 1988 until December 3, 1988, due to his urine retention, confusion and cerebral atrophy. The care required by the patient in the facility consisted of assistance with bathing, dressing, ambulation, administration of oral medication, routine care required by a semi-incontinent patient and monitoring of vital signs and the condition of his skin.

The Employer provided benefits for the Pensioner's stay in the skilled nursing facility from November 4, 1988 through November 15, 1988 but denied benefits for the period after November 15, 1988 stating that the Pensioner received care that was custodial in nature. The Employer noted that, although the facility billed for the period from November 4, 1988 through December 3, 1988, the Pensioner left the skilled nursing facility against medical advice on December 1, 1988. Records from the facility show that his spouse had his bed in the facility reserved until December 3, 1988 in the expectation that the Pensioner would return.

Dispute

Is the Employer required to provide benefits for the care the Pensioner received on the skilled care unit of a skilled nursing facility during the period from November 16, 1988 through December 3, 1988?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the charges incurred by the Pensioner at the skilled nursing facility because his physician states that his admission was medically necessary and he required skilled nursing care from November 4, 1988 through December 3, 1988.

Position of the Employer: The Employer is not required to pay for the care the Pensioner received on the skilled care unit of a skilled nursing facility during the period from November 16, 1988 through December 3, 1988, because the care he received was custodial in nature.

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.

*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 only if skilled care is required by the patient. Benefits for custodial care are specifically excluded. The facility in which the Pensioner 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 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 Pensioner's nursing care needs consisted of assistance with bathing, dressing, ambulation, the administration of oral medication, incontinence care and monitoring of vital signs and the condition of his skin. A Funds' medical consultant has reviewed the information submitted in this case and advised that the nursing care received by the patient during the period from November 16, 1988 through December 1, 1988 did not require the skill of licensed personnel. The consultant is of the opinion that the care provided during this period 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 November 16, 1988 until the patient left the facility on December 1, 1988 does not meet the requirements for a skilled level of care in an inpatient facility.

Inasmuch as the care received by this patient during the period from November 16, 1988 through December 1, 1988 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 that period. In addition, the Employer is not required to pay charges billed for December 2 and 3, 1988 because the Pensioner had left the facility on December 1, 1988 and no services were rendered to the Pensioner on those days.

Opinion of the Trustees

The Employer is not required to provide benefits for the Pensioner's care in a skilled nursing facility during the period from November 16, 1988 through December 3, 1988.

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