OPINION OF TRUSTEES

In Re

Complainants: Employees
Respondent: Employer
ROD Case No: 88-322 - August 27, 1991

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 benefits for prescription drugs under the terms of the Employer Benefit Plan.

Background Facts

In a meeting with local union representatives on July 16, 1990, the Employer announced that it would implement a new prescription drug program ("Rx Option") on August 1, 1990 to control rising costs for prescription drugs. All Employees and retirees were notified by letter of the change in the administration of prescription drug benefits, and meetings were scheduled with all Employees and retirees to explain the new program and to distribute new medical and prescription drug identification cards. In addition, the Employer held a follow-up meeting on July 31, 1990 with local union representatives to discuss remaining concerns or questions about the program and to provide the names of pharmacies participating in the program.

Rx Option is administered by a third-party prescription drug claims administrator. The claims administrator has negotiated contracts with a large pharmacy chain and other independent pharmacies that have agreed to accept the Employer's negotiated payment level and any applicable co-payment as payment in full for each prescription filled. These pharmacies are known as "Network" pharmacies. The Employer states that its claims administrator has been instructed to provide all beneficiaries with reasonable access to a Network pharmacy. Beneficiaries have been advised that if there is not a Network pharmacy conveniently located near their homes, the claims administrator will contact the nearest pharmacy and attempt to enroll it in the program.

Rx Option offers beneficiaries three options for obtaining their prescription medications:

(1) Long-term maintenance medication may be obtained by mail order and the $5.00 co-payment otherwise required under Article III. A. (8) of the Employer Benefit Plan is waived.

(2) Prescriptions may be filled at a Network pharmacy where the Beneficiary presents his prescription drug card and pays the $5.00 co-payment, if applicable. The pharmacy files a claim for the balance of the prescription cost in accordance with the contract negotiated with the claims administrator.

(3) Prescriptions may be filled at a non-Network pharmacy where the Beneficiary pays the cost of the prescription and then files a claim for reimbursement. The beneficiary is reimbursed the reasonable charge for the prescription drug in accordance with Article III. A. (4) (a) of the Employer Benefit Plan.

The Employer contends that the Rx Option program is consistent with the intent of the cost containment provisions of the Wage Agreement and the Employer Benefit Plan. It maintains that the program provides for improved benefits due to the co-payment waiver when prescription drugs are obtained by mail order.

The Complainants contend that the Rx Option program is in violation of the prescription drug coverage provisions of the Employer Benefit Plan.

Dispute

Is the prescription drug program implemented by the Employer consistent with the provisions of the Employer Benefit Plant

Positions of the Parties

Position of the Complainants: The Employer's prescription drug program is in violation of the terms of the Employer Benefit Plan, because a Beneficiary who uses a non-Network Pharmacy is required to pay the full amount for prescription drugs up front, rather than just the applicable co-payment amount as set forth in the Plan.

Position of the Employer: The Employer contends that its prescription drug program is consistent with the cost containment provisions of the Wage Agreement and the Employer Benefit Plan. The Employer further contends that implementation of the program is within its authority under Article III. A. (10)(b) of the Plan to establish rules and regulations because the program was properly communicated to all Beneficiaries, it does not cause hardship for the Beneficiaries, and it does not reduce Plan benefits.

Pertinent Provisions

Article XX (10) and (12) of the 1988 Wage Agreement provides in pertinent part:

(10) Health Care:

...

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

...

Claim forms will be available at most hospitals, clinics, and physician offices. Generally, nothing more is required than signing the forms authorizing the hospital, clinic, or physician to bill the insurance carrier for the services rendered. The insurance carrier will keep individual records for each Participant and dependent and will notify the Participant of the co-payments credited to his account. The hospital, clinic, or physician will bill the Participant for the co-payment amount until the maximum Is reached. In some instances, when the Employee pays for services or drugs, the bills should be obtained and submitted with the claim form according to the instructions on the form. If the annual co-payment maximum has been reached, the carrier will remit to the Participant the full payment for covered benefits.

Covered drug prescriptions may be filled at drugstores, clinics and hospital prescription offices.

(12) Health Care Cost Containment:

The Union and the Employers recognize that rapidly escalating health care costs, including the costs of medically unnecessary services and Inappropriate treatment, have a detrimental impact on the health benefit program. The Union and the Employers agree that a solution to this mutual problem requires the cooperation of both parties, at all levels, to control costs and to work with the health care community to provide quality health care at reasonable costs. The Union and the Employers are, therefore, committed to fully support appropriate programs designed to accomplish this objective. This statement of purpose in no way implies a reduction of benefits or additional costs for covered services provided miners, pensioners and their families.

Article III. A. (4) (a) of the Employer Benefit Plan provides:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (I) physician for treatment of control of an illness or a non-occupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth In (3)(e). The initial amount dispensed shall not exceed a 30 day supply. Any original prescription may be refilled for up to six months as directed by the attending physician. The first such refill may be for an amount up to, but no more than, a 60 day supply. The second such refill may be for an amount up to, but no more than, a 90 day supply. Benefits for refills beyond the initial six months require a new prescription by the attending physician.

Reasonable charges for prescription drugs or insulin are covered benefits. Reasonable charges will consist of the lesser of:

(1) The amount actually billed per prescription or refill,

(2) The average wholesale price plus 25%, to be not less than $2.50 above nor more than $10.00 above the average wholesale price per prescription or refill, or

(3) For a pharmacist participating in a Trustee-established prescription drug program, the current price paid by the Funds and available to the Employer in a piggybacked program.

The Plan Administrator may determine average wholesale price from either the American Druggist Blue Book, the Drugtopics Redbook, or the Medi-Span Prescription Pricing Guide.

Article III. A. (8) of the Employer Benefit Plan provides in pertinent part:

(8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the Beneficiary....

Co-Payments for covered Health Benefits are established as follows:

Benefit	Co-Payment
(b) Prescription drugs and insulin, as set forth in section A(4) and take-home drugs following hospital confinement as set forth in section (A)(1)(a).	$5 per prescription or refill up to $50 maximum per 12-month period(*) per family. Note: For purposes of this co-payment provision, a prescrip tion or refill shall be deemed to be each 30 days (or fraction thereof) supply.

*The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991 and March 27, 1992.

Article III. A. (10)(b) of the Employer Benefit Plan provides in pertinent part:

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

...

Article III. A. (10)(g) 2. of the Employer Benefit Plan provides in pertinent part:

(10) General Provisions

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

2. (i) Regarding health care cost containment, designed to control health care costs and to improve the quality of care without any reduction of plan coverage or benefits, the Trustees of the UMWA Health and Retirement Funds are authorized to establish programs of optional in-patient hospital pre-admission and length of stay review, optional second surgical opinions, and case management and quality care programs, and are to establish industry-wide reasonable and customary schedules for reimbursement of medical services at the 85th percentile (except when actual charges are less), and other cost containment programs that result in no loss or reduction of benefits to participants. The Trustees are authorized to take steps to contain prescription drug costs, including

but not limited to, paying only the current average wholesale price, encouraging the use of generic drugs instead of brand name drugs where medically appropriate, and encouraging the use of mail order drug programs when advantageous.

(ii) The Trustees shall make available to the Plan Administrator any special cost containment arrangements that they make with outside vendors and/or providers. Further, the Plan Administrator may "piggyback" the cost containment programs adopted by the Trustees.

(iii) Disputes shall continue to be resolved in accordance with Article XX (e)(6) of the Wage Agreement.

(iv) It is expressly understood that nothing contained In this Section shall diminish or alter any rights currently held by the Employer in the administration of this Plan.

(v) Consistent with Article XX (12) of the 1984 and 1988 Wage Agreements, this Section in no way authorizes or implies a reduction of benefits or additional costs for covered services provided or relieves the Employer of any obligation set forth in Article XX of the Wage Agreement.

Discussion

As stated in Article XX (12) of the 1988 Wage Agreement, the parties to the Agreement are committed to fully support appropriate programs designed to control costs and to provide quality health care at reasonable costs. Article III. A. (10)(g) 2. of the Employer Benefit Plan authorizes the Trustees to take steps to contain prescription drug costs and provides that Plan Administrators may "piggyback" the cost containment programs adopted by the Trustees. Article III. A. (10)(g) 2. states that the cost containment section of the Plan does not authorize or imply a reduction of benefits or additional costs for covered services provided nor relieve the Employer of any obligation set forth in Article XX of the Wage Agreement. Article III. A. (10)(g) 2. further stipulates that nothing contained in the cost containment section of the Plan shall diminish or alter any rights currently held by the Employer in the administration of this Plan.

Under Article III. A. (10)(b), an Employer is authorized to promulgate rules and regulations to implement and administer the Plan. The Trustees have determined in prior RODs that such rules and regulations are binding if they are reasonable and have been effectively communicated to the Beneficiaries. See RODs 81-697 and 84-042.

The Employer in this case has established a new program, Rx Option, to administer the prescription drug benefits provided under Article III. A. (4) of the Employer Benefit Plan. The features of this program and the options available to beneficiaries for obtaining prescription drugs were explained to beneficiaries in meetings with the Employer and through detailed written Instructions that were distributed to beneficiaries. Thus, the new program was effectively communicated to the beneficiaries.

The issue now is whether the program implemented by the Employer is reasonable. The need for cost containment programs that control health care costs and improve the quality of care without reducing Plan coverage or benefits is clearly recognized in the provisions of the Wage Agreement and the Employer Benefit Plan.

The Employer's prescription drug program encourages beneficiaries to obtain medications using a mail order service or Network pharmacies which have agreed to provide drugs at a cost savings to the Employer. Beneficiaries who use the mail order service have the convenience of home delivery and are not required to make co-payments. In addition, files are maintained on all beneficiaries who use the mail order service or Network pharmacies in order to prevent adverse drug reactions in beneficiaries who may be taking more than one prescription or who may have special medical conditions. Thus, the general aims of the program are reasonable. However, part (3) of the Rx Option program is inconsistent with the terms of the Employer Benefit Plan because a beneficiary who uses a non-Network pharmacy will be required to pay more than the $5.00 co-payment required pursuant to Article III. A. (8) when a prescription is purchased. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the beneficiary is expected to authorize the provider to bill the insurance carrier for services rendered and to pay only the applicable co-payment amount. Under the Rx Option program, beneficiaries are required to pay up front for prescription drugs if they use a non-Network pharmacy.

Under the Rx Option program, there is no reduction of Plan benefits if a beneficiary chooses to use a non-Network pharmacy. Benefits are provided to such beneficiary in accordance with the reasonable charge formula established in Article III. A. (4) of the Employer Benefit Plan. However, because a beneficiary would be required to pay up front if he used a non-Network pharmacy, there would be a potential for prescription drug charges which exceed this formula to be shifted to the beneficiary, contrary to the hold harmless provision of the Plan and Article XX (12) of the Wage Agreement.

Opinion of the Trustees

The requirement that beneficiaries pay up front when using non-Network pharmacies in the prescription drug program implemented by the Employer is inconsistent with the prescription drug coverage and cost containment provisions of the Employer Benefit Plan.