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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-335 - August 21, 1991

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 benefits for an Employee's inpatient hospital stay under the terms of the Employer Benefit Plan.

### Background Facts

The Employee was hospitalized from March 1 to March 4, 1990 for stabilization and treatment of a severe asthmatic condition that was not responding to outpatient therapy. The Employer denied benefits for the last day's room and board charge stating that the last day of hospitalization was not medically necessary. The Employee's physician submitted a letter dated May 15, 1990 to the Employer's insurance carrier stating that the Employee was hospitalized until March 4, 1990, when she was stable enough to go home. However, the Employee was notified on June 27, 1990 that the denial of benefits was maintained. On July 13, 1990, the Employee paid the room and board charge to the hospital. The representative for the Employee contends that the charge is a covered benefit and that the Employer should reimburse the Employee.

The Employer has refused to reimburse the Employee on the grounds that the medical necessity of the charge has not been established and the Employee did not follow the Employer's established procedures concerning charges denied as not medically necessary. The Employer has submitted copies of notices dated April 27, 1989 and June 11, 1990, which were posted at the Employee's mine location. Both notices indicate that when an Employee received an Explanation of Benefits (EOB) form stating that charges will not be paid because they are excessive or not medically necessary, the Employee must take the EOB to the mine office, fill out a cost containment form and submit the form to the insurance carrier requesting its assistance in resolving the matter with the provider. The notices also state that the Employee should not pay any portion of the charge while the carrier is negotiating with the provider. The Employer states

that the Employee's payment of the room and board charge in question has precluded it from negotiating a resolution or defending the Employee against any legal action by the provider.

### Dispute

Is the Employer required to reimburse the Employee for payment of the room and board charge for the final day of the Employee's hospitalization from March 1 to March 4, 1990?

### Positions of the Parties

Position of the Employee: The Employer is required to reimburse the Employee for payment of the room and board charge because the last day of the Employee's hospitalization was medically necessary and is a covered benefit.

Position of the Employer: The Employer is not required to reimburse the Employee for payment of the room and board charge because the medical necessity of the charge has not been established and the Employee has failed to adhere to the Employer's established procedures for administering the hold harmless provision of the Employer Benefit Plan. The Employee's payment of the charge has precluded the Employer from taking steps to resolve the matter with the provider or to defend the Employee against any legal action commenced by the provider.

### Pertinent Provisions

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

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. (1) (a) of the Employer Benefit Plan provides:

(1) Inpatient Hospital Benefits

(a) Semi-private room

When a Beneficiary is admitted by a licensed physician (hereinafter "physician") for treatment as an inpatient to an Accredited Hospital (hereinafter "hospital"), benefits will be provided for semi-private room accommodations (Including special diets and general nursing care) and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

Medically necessary services provided in a hospital include the following:

Operating, recovery, and other treatment rooms  
Laboratory tests and x-rays  
Diagnostic or therapy items and services  
Drugs and medication  
(including take-home drugs which are limited to a 30-day supply)  
Radiation therapy  
Chemotherapy  
Physical therapy  
Anesthesia services  
Oxygen and its administration  
Intravenous injections and solutions  
Administration of blood and blood plasma  
Blood, if it cannot be replaced by or on behalf of the Beneficiary

Article III. A. (10)(b) and (g) 3. 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....

(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.

#### 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 this Plan. Article III. A. (1) (a) of the Plan states that when a Beneficiary is admitted to a hospital by a physician for treatment as an inpatient, benefits will be provided for semi-private room accommodations and all medically necessary services provided for the diagnosis and treatment of the Beneficiary's condition.

A Funds' medical consultant has reviewed this file and has advised that the medical documentation provided indicates that the patient had stabilized as of March 2, and could have been safely discharged on March 3, 1990 to be followed as an outpatient. It is the consultant's opinion that the last day of the Employee's admission was not medically necessary. Accordingly, the Trustees conclude that the Employer's denial of the room and board charge for the last day of the Employee's admission is reasonable under the terms of the Employer's Benefit Plan.

Article III. A. (10)(g) 3. 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 charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Beneficiary is not responsible for any expenses in connection with such charges. This is known as the Plan's "hold harmless" provision. In addition, under Article III. A. (10)(b), an Employer is authorized to promulgate rules and regulations necessary to the administration of the Plan. If reasonable and effectively communicated to the Employees, an Employer's rules, including any necessary to the hold harmless program, are binding on the Beneficiaries.

In this case, the Employer established and communicated to its Employees procedures for dealing with situations in which a health care provider's charges have been denied as excessive

or not medically necessary. The procedures were posted at the Employee's mine location and clearly indicate that an Employee should not pay any portion of the denied charge. Although the Employee has been off work for disability reasons since August 9, 1989, she was working at the time the Employer's procedures were first posted on April 27, 1989. Thus, it is reasonable to conclude that the Employee had been notified of the Employer's hold harmless procedures prior to the Employee's payment of the disputed charge on July 13, 1990. Such procedures are necessary to ensure that, when providers attempt to collect excessive or medically unnecessary charges, the billing/payment relationship remains between the provider and Employer and that Employees are removed from that relationship as much as possible. The Employer's procedures are reasonable to prevent the shifting of costs (in this case, medically unnecessary charges) to Employees by allowing the Employer to intervene on behalf of the Employee to resolve any differences with the healthcare provider over payment amounts and to hold the Employee harmless from the provider's attempts to collect excessive or medically unnecessary charges, consistent with the hold harmless provision of the Plan.

Contrary to the Employer's clearly communicated hold harmless procedures, the Employee in this case paid a charge that was determined not medically necessary. The Employee's action effectively precluded the Employer from fulfilling its responsibility to hold the Employee harmless from efforts by the provider to collect charges for medically unnecessary services. Therefore, the Employer is not required to pay benefits to the Employee as reimbursement for the Employee's direct payment to the provider.

#### Opinion of the Trustees

The Employer is not required to reimburse the Employee for payment of the room and board charges in question because the Employee's last day of hospitalization was not medically necessary and the Employee failed to follow the Employer's established hold harmless procedures.