OPINION OF TRUSTEES

In Re

Complainants: Employees and Pensioners
Respondent: Employer
ROD Case No: 88-403 - January 29, 1992

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

On March 4, 1991, the Employer notified Employees and Pensioners that it was implementing two new prescription drug programs, effective April 1, 1991. One program, a mail order service, allows beneficiaries to order maintenance drugs, up to a 90-day supply with each prescription. Such drugs are delivered directly to the beneficiary's home and any applicable co-payment is waived. There does not appear to be a dispute with respect to this program.

The second program, known as the Multisource Drug Program, is a generic substitution program. Under this program, the Employer has requested that pharmacies dispense an Illinois State Formulary-approved generic product whenever a prescription is written to allow generic substitution (i.e., when the physician does not specify "no substitution"). Benefit payments are based on the average wholesale price (AWP) of the generic drug. When the physician indicates "may not substitute" on the prescription, the Employer states that an adjustment in payment will be made if the physician subsequently provides medical documentation to the Employer of the need for the brand name product. Benefits are limited to the average generic cost unless the medical necessity of the brand name product is established. The Employer has notified its beneficiaries that it would hold them harmless for any prescription charges in excess of the generic AWP.

The Complainants contend that they should be able to choose whether to have a prescription filled with a brand name drug or a generic substitute.

Dispute

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

Positions of the Parties

Position of the Complainants: The Employer's prescription drug program should not be permitted because it takes away the beneficiary's choice between brand name and generic drugs.

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 because it effectively reduces costs for prescription drugs without reducing the quality of health care. Furthermore, the program does not reduce benefits or impose additional costs for covered services provided to employees, pensioners, and their families. The Employer states that neither the Wage Agreement nor the Employer Benefit Plan specify that benefits are provided only for brand name prescription drugs. The Employer contends that the decision to purchase a brand name or generic drug should not be based upon the beneficiary's preference; instead, it should be made by the prescribing physician on the basis of medical necessity considerations.

Pertinent Provisions

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

> (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 in pertinent part:

> (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 or 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)....

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

(11) 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

Under Article III. A. (4) (a) of the Employer Benefit Plan, benefits are provided for prescription drugs prescribed by a physician for treatment or control of an illness or a non-occupational accident or by a licensed dentist for treatment following the performance of Plan-covered oral surgical services. Article III. A. (10)(g) 2. of the Employer Benefit Plan authorizes the Trustees 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. Article III. A. (10)(g) 2. further provides that Plan Administrators may "piggyback" the cost containment programs adopted by the Trustees, and states that this 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 generic substitution program in an effort to reduce the cost of its prescription drug benefits program. The information provided shows that the program was explained to beneficiaries and pharmacies via written communications and it appears to have been effectively communicated. The dispute here is whether the generic substitution program implemented by the Employer is reasonable.

Clearly, the use of generic drugs provides an opportunity for significant cost savings and, as reflected in the language of Article III. A. (10)(g) 2. of the Employer Benefit Plan, should be encouraged where medically appropriate. However, the program implemented by the Employer, in effect, mandates the use of generic drugs by limiting benefits to the average cost of the generic equivalent when one is listed in the state formulary. This limitation is contrary to Article III. A. (4) (a) of the Plan which establishes the reasonable charge formula for prescription drugs and makes no distinction between brand name and generic drugs. If a prescription drug is prescribed by a licensed physician or a licensed dentist and is medically necessary for treatment of the beneficiary's condition, there is no basis in the Plan provisions for restricting benefits to the cost of an approved generic substitute when a brand name drug is purchased. Thus, the generic substitution program implemented by the Employer reduces benefits in a manner not authorized by the terms of the Wage Agreement and the Employer Benefit Plan.

Opinion of the Trustees

The Employer's generic substitution program is inconsistent with the prescription drug coverage and cost containment provision of the Employer Benefit Plan, and therefore is not within the Employer's authority to implement under Article III. A. (10) (b).