
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-452 - May 7, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Elliot A. Segal, 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 implementation of hold harmless procedures under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was hospitalized April 23 through 27, 1990 for surgery. The Employer instituted a pre-certification procedure September 1, 1986, and under this program the Employer's carrier certified three days hospitalization, but the fourth day was not certified and later deemed not medically necessary. The Employer paid all hospitalization charges except \$265 for the fourth day's room and board charges.

After the carrier completed a post-stay review, the Employer wrote the Employee on August 3, 1990, stating it considered the \$265 charge not medically necessary and asked the Employee to sign and return a hold harmless agreement.

On October 29, 1990, the Employee called the Employer to say the form had been put aside at home. The Employee was asked to call back the next day after locating the form, and told help would be provided in completing the form. There is no record the Employee called back in response to that request.

On November 28, 1990 the Employee again called the Employer, saying he had received a notice from a collection agency. The Employer then mailed another hold harmless form to the Employee and asked that he return it with the collection notice. The Employee returned the signed hold harmless form but not the collection notice. The signature date on the form was May 12, 1990 nearly three months before the Employer sent the Employee the original form. The Employer has questioned the authenticity of the signature, and noted that the signature was not witnessed.

On June 4, 1991, the collection agency sent another notice, which the Employee reported to the Employer and to his union representative.

On July 3, 1991, the Employer wrote the Employee, stating it would not hold the Employee harmless in the matter of the disputed charge for the Employee's spouse's hospitalization on April 23, 1990, because the Employee had refused to cooperate in a timely manner with its hold harmless provisions.

Dispute

Is the Employer required to hold the Employee harmless from the provider's effort to collect a charge for services that were determined not medically necessary?

Positions of the Parties

Position of the Employee: The Employee asks that the Trustees help in resolving this hold harmless dispute.

Position of the Employer: The Employer is not required to hold the Employee harmless because the Employee did not respond fully or in timely fashion to repeated requests for return of the hold harmless form and associated documents necessary for the Employer to hold the Employee harmless from the provider's attempts to collect a medically unnecessary charge.

Pertinent Provisions

The Introduction to Article III states in pertinent part:

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...

Article III. A. (10) (b) of the Employer Benefit Plan states, in 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) 3. of the Employer Benefit Plan states:

(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. (10)(g) 3. of the Plan provides that the Plan Administrator shall, with the written consent of the Beneficiary, attempt to negotiate with or defend a beneficiary against providers who seek to collect excessive fees for their services. Whether the Employer negotiates a resolution or defends a legal action, the Beneficiary is not responsible for any expenses in connection with the excessive fee claim. This is known as the Plan's "hold harmless" provision.

Article III. A. (10) (b) of the Plan provides that 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 administer the hold harmless program, are binding on all persons dealing with the Beneficiaries under the Plan.

In this case, the Employer has refused to hold the Employee harmless because the Employee failed to sign and return the hold harmless form promptly, and failed to submit copies of the

collection notices. The Employer has also questioned the Employee's signature, noted that the form was 'not witnessed, and was wrongly dated. Despite the obviously incorrect date and the lack of a witness' signature, the form appears sufficient to establish the Employee's consent.

In the matter of effective communication, the Employer sent a hold harmless form to the Employee on August 3, 1990, and explained the hold harmless provision to the Employee via telephone calls on October 29, 1990 and November 28, 1990. In those instances, the Employee was informed that he must provide the Employer with a properly signed hold harmless agreement and copies of any collection notices or court actions. The Employee did not return the signed form or a copy of the collection notice subsequent to the first phone call on October 29, 1990. As a result of the telephone call on November 28, 1990 the Employer sent a second copy of the hold harmless agreement to the Employee to sign and return along with a copy of the collection notice. The Employee signed and returned a hold harmless form, but failed to include a copy of the collection notice.

Since the Employer reasonably and effectively promulgated and communicated its rules and regulations regarding hold harmless procedures to the Employee in two letters and two separate telephone conversations, and the Employee failed to respond fully and in a timely manner, the Employer's refusal to hold the Employee harmless is justified in this instance.

Opinion of the Trustees

The Employer is not required to hold the Employee harmless from the provider's efforts to collect the charge for the hospital stay that was determined medically unnecessary.