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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-486 - June 3, 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 provision of benefits for emergency room care for the employee's spouse under the terms of the Employer Benefit Plan.

### Background Facts

On Tuesday, July 2, 1991, the Employee's spouse sought medical evaluation and treatment at a hospital emergency room. According to the emergency room record, the Employee's spouse had been hit in the left eye. The emergency room physician diagnosed a corneal abrasion and treated the patient with an antibiotic ointment and applied an eye patch.

The employee's spouse returned to the emergency room on July 3 and 4, 1991 to have her eye rechecked. The physician reports for those dates state that the patient's eye was improving. The July 3 report states that the patient's eye was to be rechecked again the following day.

The Employer provided benefits for the July 2, 1991 emergency room services and the July 3 and 4 physician charges, but denied benefits for the July 3 and 4, 1991 emergency room charges on the grounds that the care provided the Employer's spouse on those dates was not of an acute nature requiring emergency medical treatment.

### Dispute

Is the Employer required to pay the emergency room charges resulting from the Employee's spouse's evaluation and treatment on July 3 and 4, 1991?

### Positions of the Parties

Position of the Employee: The Employer is required to pay the emergency room charges because the Employee's spouse's symptoms required emergency room treatment.

Position of the Employer: The Employer is not required to pay the emergency room charges because the care the Employee's spouse received does not fall within the definition of medical emergency services as defined by the Employee Benefit Plan.

#### Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan 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. (2) (a) of the Employer Benefit Plan states:

(2) Outpatient Hospital Benefits

(a) Emergency Medical and Accident cases

Benefits are provided for a Beneficiary who receives emergency medical treatment or medical treatment of an injury as the result of an accident, provided such emergency medical treatment is rendered within 48 hours following the onset of acute medical symptoms or the occurrence of the accident.

Article III A (10)(g) 3. 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

Article III.A. (2) (a) of the Employer Benefit Plan provides that emergency medical treatment is a covered benefit when it is rendered within 48 hours following the onset of acute medical symptoms.

A Fund's medical consultant has reviewed the information presented in this case, including the emergency room medical records for the visits of July 2, 3 and 4, 1991.

The consultant is of the opinion that the July 2 visit was reasonable for the treatment of a corneal abrasion. The consultant further states that if the patient were not having complications, one follow-up physical examination outside the emergency room on July 3 or 5 would also have been reasonable. The consultant notes that the medical records do not indicate any complications but clearly request that the patient return to the emergency room on July 3 and 4.

The consultant is of the opinion that use of the emergency room setting on July 3 and 4 was not medically necessary.

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 and treatment of an illness or injury and which are given at the appropriate level of care. The fact that a procedure or level of care is prescribed 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) of the Plan provides that the Plan Administrator shall attempt to negotiate with or defend the Employee against providers who seek to collect charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with such charges, but may be liable for services that are not provided under the Plan. This is known as the Plan's "hold harmless" provision.

As noted above, the use of an emergency room is a covered benefit, unless it is deemed not medically necessary. Inasmuch as the use of an emergency room for the visits of July 3 and 4 was not medically necessary, the Employer is not required to provide benefits for those emergency room charges, but must hold the Employee harmless.

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The Employer is not required to provide benefits under the Employer Benefit Plan for the emergency room charges for the visits on July 3 and 4, 1991, but is required to hold the Employee harmless from efforts to collect charges for those visits.