OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-505 - June 3, 1992

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

Background Facts

On May 28, 1991, the Employee's son was taken for testing to assess a possible learning disability. This testing was recommended by the Board of Parent Resources of the Employee's son's school. The evaluation was necessary to determine whether the child would be promoted to the third grade, or remain in second grade for an additional year. The Employee and his son returned on June 25, 1991 for a consultation where the results of the testing were discussed.

On July 5, 1991, the Employer informed the Employee that the $300 charge for the diagnostic tests performed on May 28, 1991 did not qualify as a covered medical expense under the terms of the contract. The Employee appealed this determination, and on September 24, 1991 received a letter from the Employer, stating that the Employer now considered the expenses on May 28, 1991 and June 25, 1991 to be medically necessary. The Employer noted that it would send the claims to the proper department for adjustment. Of the total bill of $435.95, $216.00 was considered to be excessive charges, $10.95 was considered not medically necessary and, $7.50 was the Employee's co-payment amount. The Employer paid $201.50 to the provider of services.

The Employee was advised by the Employer on December 5, 1991 that he needed to complete and sign a hold harmless form for the $216.00 that was determined to be excessive charges. The Employee has been unwilling to sign the hold harmless form as he disagrees with the Employer's methods of reaching a settlement. Consequently, the Employer has been unable to pursue any settlement on his behalf.

Dispute

Are the Employer's hold harmless procedures appropriate in this case?

Positions of the Parties

Position of the Employee: The Employee disagrees with the Employer's hold harmless procedures and, therefore, has refused to sign the hold harmless form. The Employee maintains that the Employer should be more aggressive in settlement attempts, and not wait until the bill goes to collection before taking any action.

Position of the Employer: The Employer Benefit Plan states that the Employer should 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. The Employer cannot hold the Employee harmless without the written consent of the Employee.

Pertinent Provisions

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

> (10) General Provisions
>
> (b) Administration
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> 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
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> 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 ad adverse determination should be appealed.

Article III. A. (11) (a) of the Employer Benefit Plan states in part:

In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

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12. Excessive charges.

Discussion

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

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 if effectively communicated to the Employees, an Employer's rules, including any necessary to the hold harmless program, are binding on the Employees.

In this case, the Employer has established and communicated to its Employees the hold harmless procedures. If the price of a medical procedure is determined to be over the reasonable and customary fee, the Employee is notified via the Explanation of Benefits received from the insurance carrier that the amount covered is less than the amount charged for the service. According to the Employer, if a provider attempts collection of the excessive charge the Employee is then given the opportunity to sign the hold harmless form, and Is provided verbal as well as written instructions. The Employer states that it explains to the Employee that many providers will charge in excess of the reasonable and customary fee, yet never attempt to collect the difference. The Employer goes on to explain the routine collection attempts by the Provider, but stresses the importance of the Employee's responsibility to keep management informed if further collection attempts are made. In addition to the aforementioned verbal instructions, the Employer follows up with a letter reminding the Employee of his responsibility to keep the Employer informed of any collection activity associated with the bill. If the provider makes an active effort to collect the excessive charges (other than routine monthly statements), the Employer will then contact the provider in an attempt to negotiate a settlement of the account balance. The Employer contends that, in the majority of cases, the provider is willing to accept a negotiated fee. If, at this point, the Employer is unable to negotiate a settlement, it will either pay the fee as charged, or elect to bring the issue before the legal system.

In this case, of the total charge of $435.95, there is an outstanding balance of $234.45. This represents $216.00 in excessive charges, $10.95 for medically unnecessary supplies (video tape - educational supplies) and the $7.50 co-payment. On December 5, 1991, the Employee was notified by the Employer that he needed to sign a hold harmless form for the $216.00. To date, he has been unwilling to sign the form which is the only authorization that the Employer has to become involved in settlement efforts. Additionally, the Employee was advised that he was responsible for the $7.50 co-payment and the $10.95 for educational supplies.

The Trustees have reviewed on numerous occasions the hold harmless procedure and the promulgation of rules associated with this procedure, most specifically in RODs 88-076, 84-264, 84-413, and 88-335 (copies enclosed herein). In all of these cases, the Employee's failure to follow the Employer's established hold harmless procedures relieved the Employer of any responsibility to hold the Employee harmless. In this case, the Employee cites his disagreement with the Employer's methods for negotiating a settlement as the reason he will not sign the hold harmless form. However, in not signing the form, he has rendered the Employer powerless in any attempt to effect a settlement. Since the Trustees have previously decided that an Employee's failure to follow the Employer's established hold harmless procedures relieves the Employer of any responsibility to hold the Employee harmless, the Trustees find in this case that the Employer has performed its duties in the administration of the Plan and, thus, need not hold the Employee harmless unless the Employee signs a hold harmless form.

Opinion of the Trustees

The Employer is not required to hold the Employee harmless for the $216.00 charge incurred by the Employee's son's on May 28 and June 25, 1991, unless the Employee signs a hold harmless form.