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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-513 - 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 provision of benefits for emergency room charges under the terms of the Employer Benefit Plan.

### Background Facts

The Employee's spouse was hospitalized for tests and observation from February 25 to March 2, 1991, following a visit to the emergency room on February 25, 1991 for treatment of acute abdominal pain and nausea. The Employer denied benefits for the room and board charges of March 1 and 2, 1991 stating that the last two days of hospitalization were not medically necessary. The Employee's spouse's physician submitted a letter dated September 15, 1991 to the Employer's insurance carrier stating that the Employee's spouse was hospitalized until March 2, 1991 because she has a past history of colon cancer and gangrenous intestine, there was no definite diagnosis for the abdominal pain and nausea, and she was too ill to be discharged. Moreover, the physician maintained that it was medically necessary to perform the diagnostic tests (colonoscopy and esophagogastroduodenoscopy) [endoscopic examination of the esophagus, stomach and duodenum] on an inpatient basis. After a second review by the carrier, the Employee was notified on November 11, 1991 that the denial of benefits for the last two days was maintained.

The Employer has denied benefits for the room and board charges incurred on March 1 and March 2, 1991 on the grounds that the medical necessity of the charges has not been established.

### Dispute

Is the Employer required to pay for the room and board charges for the last two days, on March 1 and March 2, 1991, of the Employee's spouse's hospitalization?

### Positions of the Parties

Position of the Employee: The Employer is required to pay the last two days' room and board charges because the Employee's spouse' hospitalization was medically necessary and is a covered benefit. The hospitalization period including observation and testing were necessary because of her past medical history and the nature of her symptoms.

Position of the Employer: The Employer is not required to pay the last two days' room and board charges because the medical necessity of the charges has not been established. After February 27, 1991, the Employee's spouse was eating a regular diet, taking no intravenous medications or fluids and all tests were complete with negative results. Therefore, the services performed after February 27, 1991 could have been safely and adequately performed on an outpatient basis.

### Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan provides 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. (1) (a) of the Employer Benefit Plan states in pertinent part:

#### A. Health Benefits

##### (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.

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. (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 required inpatient admission for observation, pain management and further diagnostic studies. However, according to the consultant, as of February 28, 1991 the patient no longer had pain that required narcotic injections and was capable of orally administering her medications, was ambulatory and could have safely been discharged. Also the consultant stated that the diagnostic studies of a CT (computerized axial tomography) scan of the abdomen and colonoscopy could have been performed on an outpatient basis. Therefore, it is the consultant's opinion that hospitalization for the last two days was not medically necessary for the care and treatment of the Employee's spouse's condition. Accordingly, the Trustees conclude that the Employer's denial of the room and board charge for the last two days of the Employee's spouse'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.

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In this instance, the Employer is required to implement hold harmless procedures consistent with the provisions of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to pay the room and board charges in question because the Employee's spouse's last two days of hospitalization were not medically necessary. The Employer is required to initiate hold harmless procedures.