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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-549 - July 15, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, 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 out-patient hospital benefits under the terms of the Employer Benefit Plan.

### Background Facts

On April 22, 1991 the Employee sought medical evaluation and treatment for his daughter at a local hospital emergency room. The emergency room record indicates that the Employee's daughter reported acute lower abdominal pain for the two days immediately prior to the visit. The emergency room physician examined the Employee's daughter but was unable to arrive at a definitive diagnosis, however, he was of the opinion that the pain was caused by dysmenorrhea (onset of menstrual cramps) or the early signs of appendicitis. He instructed the Employee to bring his daughter back 12 hours later for a follow-up examination.

On April 23, 1991 the Employee returned his daughter to the emergency room for the follow-up examination and testing ordered by the emergency room physician the previous day.

The Employer determined that the use of the emergency room on April 22, 1991 was in relation to an acute medical condition and provided benefits. However, the Employer denied benefits for the follow-up services on April 23, 1991 stating these services could have been provided with equal efficacy at a lower level of care.

### Dispute

Is the Employer required to provide benefits for the emergency room charges incurred by the Employee's daughter on April 23, 1991?

### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the emergency room charges incurred by the Employee's daughter's on April 23, 1991 because the Employee was following the instructions of the emergency room physician in returning his daughter to the emergency room for the follow-up examination. Alternatively, the Employer should hold the Employee harmless for these charges.

Position of the Employer: The Employer is not required to provide benefits for the charges resulting from the Employee's daughter's use of the emergency room on April 23, 1991 because these services could have been performed in a doctor's office or an out-patient clinic without compromising the quality of care or endangering the patient.

### Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

#### 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. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided and accordingly this paragraph shall not be constructed to detract from plan coverage or eligibility as described in this Article III.

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. (3)(h) and (j) states:

(h) Home, Clinic, and Office Visits

Benefits are provided for services rendered to a Beneficiary at home, in a clinic (including the outpatient department of a hospital) or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory test and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Article III. A. (10)(g)(3) states:

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.

Question and Answer #81-85 states:

Subject: Follow-up Care to Emergency Treatment

References: Amended 1950 & 1974 Benefit Plans & Trusts, Article III, Section A (2) (a) and (3)(i)

Question:

1. A beneficiary requires follow-up services to emergency treatment which are rendered beyond the 48-hour initial emergency care limitation, and which are also rendered in an emergency room. Are benefits provided for both the medical treatment and the emergency room charges?

2. A beneficiary requires emergency room treatment and receives it within 48 hours of the onset of acute symptoms. After the 48-hour period has expired the acute symptoms reappear. If the beneficiary goes to the emergency room for treatment within 48 hours of the reappearance of the acute symptoms, are benefits provided for both the medical treatment and the emergency room charges?

Answer:

1. In this situation, the charge for emergency room service is not covered. However, benefits will be provided for charges for medical treatment which is otherwise covered under the Plan.
2. Yes

#### 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 an 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. (2) (a) provides for emergency medical treatment when rendered within 48 hours following the onset of acute medical symptoms.

A Funds' medical consultant has reviewed this file which includes the emergency department records of both April 22 and 23, 1991. The consultant advises that the examination on April 22, 1991 would clearly be considered medically appropriate. He further advises that the re-examination on April 23, 1991 was medically reasonable, and the laboratory tests and x-rays done were appropriate, but the visit did not require an emergency department setting. The consultant notes that, customarily, the patient would be referred to her own physician, or to an out-patient clinic for this type of follow-up evaluation. In the consultant's opinion, performing the services in a private physician's office or an out-patient clinic would not have compromised the quality of care the patient received.

Q&A #81-85 addresses the issue of follow-up care being rendered in an emergency room. It states that in this particular situation, the charge for the emergency room service would not be covered. However, benefits for charges for medical treatment otherwise covered by the Plan would be provided. Article III. A. (3)(h) and (j) provide benefits for physician's services, and laboratory and x-rays when incurred to diagnose and/or treat an illness or injury. Therefore, of the total bill of \$416.00, \$51.00 is the actual emergency department charge and would be ineligible under the terms of the Plan. The remaining \$365.00 represents the charges for the emergency room physician, the x-ray and laboratory tests. The \$365.00 would be eligible under Articles III. A. (3)(h) and (j) of the 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, among other things, seek to attempt to collect for services deemed to be medically unnecessary. 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 or medically unnecessary claim. This is known as the Plan's "hold harmless" provision. Since the \$51.00 charge for the emergency room facility has been determined to be not medically necessary, the Employer is required to hold the Employee harmless in this instance.

Opinion of the Trustees

The Employer is required to provide benefits for the charges covering physician's services, laboratory and x-ray incurred by the Employee's daughter on April 23, 1991. The Employer is not required to provide benefits for the emergency room charge incurred in that visit but is required to hold the Employee harmless for that charge.