
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-571 - September 21, 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 implementation of a prescription drug utilization review program under the terms of the Employer Benefit Plan.

Background Facts

The Employer has implemented a "Drug Overutilization" program to identify possible problems of excessive and potentially dangerous usage of prescription drugs and to reduce the costs associated with unnecessary drug usage.

According to the Employer, the administrator of the prescription drug program performed a drug use review on behalf of the Employee. This review identified the prolonged administration of narcotic analgesics and Benzodiazepine anti-anxiety and sedative hypnotic agents. The administrator determined that the Employee was seeing at least six physicians and using three pharmacies concurrently to obtain his prescriptions. To determine the medical necessity of the prescribed drugs, the administrator wrote each physician, requesting him to complete a questionnaire concerning the Employee's drug usage.

Five physicians completed the questionnaire. Most physicians stated they were unaware that the Employee was receiving prescriptions from other physicians and further stated that the regimen of prescription drugs being taken by the patient was not appropriate to his current diagnosis. All responding physicians agreed that a change in drug therapy would be appropriate.

The Employee stated that the physicians will no longer treat him and that he is in great need of the prescription drugs he was previously receiving for extreme pain and a nervous condition. The Employee also stated that the prescription drug program administrator told him that he could see only one doctor and that one doctor will not treat him for all of his conditions.

The Employer obtained an outside consultant, at no cost to the Employee, to locate a physician who would be willing to treat his conditions and prescribe an appropriate drug therapy. According to the Employer, the Employee did not approve of any of the physicians suggested to him. The Employer states that the patient was not told that he must stop seeing his physicians. None of the physicians indicated on their questionnaires that they would refuse to see the patient, but they did state that his drug therapy was inappropriate and that they would no longer prescribe drugs in the previous manner.

Dispute

Is the drug utilization review program implemented by the Employer consistent with the provisions of the Employer Benefit Plan?

Positions of the Parties

Position of the Employee: The Employer's program is in violation of the terms of the Employer Benefit Plan because his physicians will not treat him or prescribe the medications he needs for pain and a nervous condition.

Position of the Employer: The Employer's Drug Overutilization program is consistent with provisions of the Employer Benefit Plan that limit covered services to those which are reasonable and necessary for the diagnosis or treatment of an illness or injury and are given at the appropriate level of care. Further, implementation of the program is within the Employer's authority under Article III. A. (10)(b) of the Plan which authorizes the Plan administrator to promulgate rules and regulations to implement and administer the Plan.

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. (4) (a) of the Employer Benefit Plan provides in pertinent part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State Law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a non-occupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set for in (3)(e).

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

(10) General Provisions

(a) 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.

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

2. (i) Regarding health care cost containment, designed to control health care costs and to improve the quality of care without any reduction of plan coverage or benefits, the Trustees of the UMWA Health and Retirement Funds are authorized to establish programs of optional in-patient hospital pre-admission and length of stay review, optional secondary surgical opinions, and case management and quality care programs and are to establish industry-wide reasonable and customary schedules for reimbursement of medical services at the 85th percentile (except when actual charges are less), and other cost containment programs that result in no loss or reduction of benefits to participants. The Trustees are authorized to take steps to contain prescription drug costs, including but not limited to, paying only the current average wholesale price', encouraging the use of generic drugs instead of brand name drugs where medically appropriate, and encouraging the use of mail order drug programs when advantageous.

(ii) The Trustees shall make available to the Plan Administrator any special cost containment arrangements that they make with outside vendors and/or providers. Further, the Plan Administrator may "piggyback" the cost containment programs adopted by the Trustees.

(iii) Disputes shall continue to be resolved in accordance with Article XX (e)(6) of the Wage Agreement.

(iv) It is expressly understood that nothing contained in this Section shall diminish or alter any rights currently held by the Employer in the administration of this Plan.

(v) Consistent with Article XX (12) of the 1984 and 1988 Wage Agreements, this Section in no way authorizes or implies a reduction of benefits or additional costs for covered services provided or relieves the Employer of an obligation set forth in Article XX of the Wage Agreement.

Discussion

Article III A. (4) (a) of the Employer Benefit Plan provides benefits for prescription drugs prescribed by a physician for treatment or control of a non-occupational accident or by licensed dentist for treatment following the performance of Plan-covered oral surgical services. The Introduction to Article III of the Plan states covered services are limited to those which are medically reasonable and necessary and which are given at the appropriate level of care.

Under Article III. A. (10)(g) 2., the Trustees are authorized to establish health care cost containment programs designed to control health care costs and to improve the quality of care without any reduction of plan coverage or benefits. Article III. A. (10)(g) 2. further provides that Plan Administrators may "piggyback" the cost containment programs adopted by the Trustees. In addition, under Article III. A. (10)(b), the Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan. The Trustees have established in prior RODs that such rules and regulations are binding if they are reasonable and have been effectively communicated to the beneficiaries involved. See RODs 81-697, 84-042, 88-322 and 88-403.

The drug utilization review program implemented by the Employer in this case is intended to identify and reduce possible health risks associated with drug overutilization or adverse drug interactions and to eliminate the cost of unnecessary drugs. When potential drug over-utilization problems are identified, the program includes a procedure to contact the prescribing physician(s) to determine if and when further intervention is appropriate. Such a procedure ensures that attempts are not made to limit a beneficiary's choice of providers unless there is a clear, substantiated pattern of continued overutilization. When such patterns are identified, it is reasonable for the Employer to meet with the beneficiary and request that he/she agree to choose one physician and one pharmacy to coordinate his/her prescription needs in order to avoid potentially dangerous and medically unnecessary prescription drug claims. The Employer has stated that it hired a consultant at its own expense to assist the Employee in obtaining a physician who would treat his conditions and prescribe the appropriate drug therapy, but that the Employee did not want to see any of the physicians suggested. The Employer further stated that the Employee was not told that he must stop seeing his physicians. These physicians have not refused to see the patient, but have determined that they will not prescribe all of the drugs they were prescribing before they were made aware of the fact that multiple physicians were writing prescriptions for this patient.

The Employer has attempted, at its own cost, to help the Employee locate a physician who will meet his medical needs. Further, the Employer has not refused to provide benefits or reduced coverage for the Employee.

The Trustees conclude that the Employer's drug utilization program as applied to this complainant's drug usage is reasonable and consistent with the provisions of the Employer Benefit Plan and has not reduced the Employee's health coverage or benefits.

Opinion of the Trustees

The Employer's drug utilization review, as applied to the Complainant's drug usage, is consistent with the provisions of the Employer Benefit Plan.