OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-581 - December 6, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and Robert T. Wallace.

The Trustees have reviewed the facts and circumstances of this dispute concerning health coverage under the terms of the Employer Benefit Plan.

Background Facts

The Employee states that the Employer notified him, as well as other covered individuals, that the Employer's health insurance plan has been changed to a so-called "80-20" plan augmented by additional coverage. Of particular concern to the Employee is a provision of the new plan that carries a $500 penalty for not using its hospital pre-certification program.

Information provided to the Funds indicates that, effective April 1, 1992, the Employer changed the basic health insurance plan and prescription drug coverage provided to its Employees to Blue Cross/Blue Shield of Virginia, which is augmented by further coverage handled through an insurance brokerage firm. The basic BC/BS plan provides payment for 80 percent of costs, with the 20 percent balance borne by the Employer. The augmented coverage is handled as follows: The insurance brokerage firm has established a separate post office box in the name of the Employer. The insurance carrier's payment vouchers are sent to that address, and remaining balances are coordinated with the Employer for payment. The box is checked daily by the insurance brokerage firm and balance payments sent to providers twice monthly. A consolidated bill is rendered to the Employer. The Employee is required to pay only the standard $5 or $7.50 co-payment charge outlined in the Employer Benefit Plan, and is insulated from any balance due under the basic 80/20 coverage.

Additionally, the BC/BS enrollment card notes "Admission Review Required.... $500 Penalty." A Blue Cross/Blue Shield booklet supplied to the Employee states: "failure to notify us will result in additional costs. If you don't call you will be responsible for paying a greater portion, if not all, of your hospital bill. These costs are in addition to your regular deductible or co-payment."

The Employer has stated that it was necessary to find a health insurance policy with potential cost savings to the company due to the high cost of providing health benefits on a "self-insured" basis. The Employer further stated that the company has not changed its health care plan, but

only the insurance company and its method of providing health insurance coverage to its classified employees.

The Employer states that in a case where the $500 penalty is assessed for not obtaining pre-certification for a hospital admission, the Employee will be "held harmless" by the Employer.

Dispute

Does the Employer's new health insurance arrangement provide health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan?

Positions of the Parties

Position of the Employee: The new health insurance plan provided by the Employer does not provide health benefits coverage for the Employee and his eligible dependents at the level prescribed by the Employer Benefit Plan.

Position of the Employer: The new health insurance plan provides health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan through its combination of insurance coverage and direct reimbursement of any penalties.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 provides in pertinent part:

> (3)(i) Each signatory Employer shall establish and maintain an Employee benefits plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the terms of this Agreement by that Employer at levels set forth in such plans.... The Plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

Article XX (10) of the 1988 Wage Agreement provides in pertinent part:

> (10) Health Care:
>
> Explanatory Note on Employer Provided Health Plan:
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> Active miners and their surviving spouses and dependents,

and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

* * *

Claims forms will be available at most hospitals, clinics, and physician offices. Generally, nothing more is required than signing the forms authorizing the hospital, clinic, or physician to bill the insurance carrier for the services rendered. The insurance carrier will keep individual records for each Participant and dependent and will notify the Participant of the co-payments credited to his account. The hospital, clinic, or physician will bill the Participant for the co-payments amount until the maximum is reached. In some instances, when the Employee pays for services or drugs, the bills should be obtained and submitted with the claim form according to the instructions on the form. If the annual co-payments maximum has been reached, the carrier will remit to the Participant the full payment for covered benefits.

Article III A. (10) (b) and (g) 3. of the Employer Benefit Plan provides in pertinent part:

(10) General Provisions

(b) 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 second 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.

* * *

3. The Employer and the UMWA agree that the 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, judgements or other expenses in connection with the case, but may be liable for any services of the provider which are not provided for 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 XX Section (c)(3)(i) of the 1988 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan, implemented through an insurance carrier(s), to provide health and other non-pension benefits for its Employees. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such a Plan shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such Plan. In Article XX (12) of the Wage Agreement, the Union and Employers recognize the detrimental effect of escalating health care costs and agree to support appropriate programs to control costs. Under Article III. A. (10) (g) 2. (i) of the Employer Benefit Plan, such programs can include those for pre-admission and length-of-stay review. And, in Article XX (12) of the Wage Agreement and Article III. A. (10) (g) 3. of the Plan, the Employers agree to establish hold harmless programs to ensure that the burden of cost containment efforts, concerning excessive charges or charges for services not medically necessary, is not shifted to beneficiaries.

In this case, the Employer has changed insurance carriers to Blue Cross/Blue Shield of Virginia, with that coverage augmented through an insurance brokerage firm. Both parties in this dispute agree that the basic coverage is a so-called "80/20" plan. As part of the BC/BS coverage, a pre-certification program carries a $500 penalty if advance approval is not secured before hospital admission. The Employer states that an Employee will be "held harmless" if a penalty is imposed.

Concerning the first issue, of an 80/20 plan, as noted earlier the Employer has created an arrangement whereby the insurance carrier's payment vouchers go directly to a separate Employer post office box, remaining balances are coordinated by the brokerage firm with the Employer, and balance payments sent twice monthly to providers. The Employer is billed directly for such payments by the brokerage firm. The Employee pays only the $5 or $7.50 charges covered under the Employer Benefit Plan, and is insulated from any balances due under the basic 80/20 plan. Inasmuch as this particular method of handling benefits payments achieves the same effect for the Employee as a standard plan paying full benefits from a single carrier, the facts presented here may be distinguished from RODs 88-235 and 88-374 (copies enclosed

herein) and, therefore the Trustees find that this arrangement could meet the provisions of the Employer Benefit Plan, only so long as the effects of the arrangement:

1.) remain invisible to the Employee, and;

2.) are fully complied with on a timely basis.

Under Article III. A. (10) (g) 2. (i) of the Plan, optional in-patient hospital pre-admission and length of stay review programs are authorized, and the Trustees conclude that the Employer may implement the pre-certification cost containment program described earlier.

Concerning the Employer's proposed handling of the $500 penalty for failure to pre-certify through "hold harmless", in RODs 88-374 and 88-235, the Trustees addressed the issue of whether an Employer can implement its plan through an insurance carrier and offer to pay or reimburse its Employees for their out-of-pocket expenses incurred in the administration of a plan not essentially conforming to the Employer Benefit Plan. In those opinions, the Trustees concluded that such practice is inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan. The issue in the two RODs cited was a difference in co-payments and deductibles from the Employer Benefit Plan, but the principle is the same. Additionally, since the $500 penalty involves neither an excessive charge nor a charge for services denied as not medically necessary, as defined in the Plan, technically, the "hold harmless" provision does not apply to this case. Unless the Employer can assume responsibility for the $500 penalty in the same manner as the balances due under the 80/20 plan, effectively insulating the Employee from its effect, this is inconsistent with the provisions of the Employer Benefit Plan.

Accordingly, the Trustees conclude that the Employer's proposed handling of the $500 pre-certification penalty is inconsistent with the express provisions of the Employer Benefit Plan.

Opinion of the Trustees

The Employer's basic provision of benefits under the Plan as described is consistent with the provisions of the Wage Agreement and the Employer Benefit Plan only so long as the effects of the arrangement: 1.) remain invisible to the Employee, and; 2.) are fully complied with on a timely basis. The pre-certification program established by the Employer is also consistent, except that the Employer's proposed handling of the pre-certification penalties is inconsistent with the express provisions of the Wage Agreement and the Plan, and is, therefore, disallowed.