

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-589 - May 12, 1993

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee;  
Elliot A. Segal, Trustee; Marty D. Hudson, 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 home health care under the terms of the Employer Benefit Plan.

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Background Facts

On March 4, 1988, the Employee suffered a subarachnoid hemorrhage and five days later suffered a stroke. Upon the Employee's return home from the hospital he was provided with 24-hour per day nursing care which was continued until September 6, 1991. At that time the Employer reduced the number of private duty nursing service hours by four hours per day. Again, on September 20, 1991, the nursing care was reduced by an additional four hours per day.

On March 3, 1992, the union was notified by the Employer that an on-site review was planned to evaluate the care being rendered to the Employee. On March 17, 1992 two plan administrators from the Employer and a union representative visited with the Employee and the Employee's spouse at their home. During the March 17, 1992 visit the Employee's spouse was informed by the Employer that the registered nursing care being provided to her husband would be reduced by four hours a day beginning on April 1, 1992, and again on April 15, 1992, April 29, 1992 and May 14, 1992. As of May 14th, the Employer would provide for a registered nurse's visit only twice a month.

The Employer states that prior to making the decision regarding the reduction of nursing hours an inpatient rehabilitation evaluation was recommended to assess the patient's condition and ability to perform certain functions. Additionally, there were to be assessments made by physical and occupational therapists on the proper transfer techniques and to provide the appropriate family training. The Employee's family refused this recommendation and the Employer arranged an outpatient evaluation to provide the same services. Subsequent to the outpatient evaluation, Health Risk Management (HRM), the case management firm hired by the Employer,

recommended admission to the rehabilitation unit of the hospital. An independent evaluation had also suggested that admission to the rehabilitation facility would be beneficial.

At this time, the level of nursing care was at sixteen hours per day and HRM had recommended that this level of nursing care be maintained until the patient was admitted for rehabilitation training. After the patient and his family had been properly trained and the patient was discharged from the rehabilitation hospital, HRM recommended that the level of nursing care be reduced to twelve hours per day. Transitioning of the nursing care was recommended at the rate of four hours every two weeks thereafter. HRM recommended that an intermittent nursing visit be provided weekly and as needed to assess the patient's status and to provide continued support and education to the care-givers.

### Dispute

Is the Employer required to provide benefits for home health services to the Employee at the previous level of 24 hours per day?

### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for home health services rendered to the Employee because they are necessary to maintain his health and well-being, and 24-hour nursing coverage has been provided under the Plan since 1988.

Position of the Employer: The Employer is not required to provide benefits for continuous skilled nursing care because the Employee's condition has stabilized, the care he receives can be carried out by a trained personal attendant, and such care is not considered skilled nursing care.

### Pertinent Provisions

Article III. A. (6)(a) and (c) of the Employer Benefit Plan states:

#### (6) Home Health Services & Equipment

##### (a) General Provisions

Benefits are provided for home health services, including nursing visits by registered nurses and home health aides, and various kinds of rehabilitation therapy, subject to the following conditions, and approval of the Plan Administrator.

1. The Beneficiary must be under the care of a physician.
2. The Beneficiary's medical condition must require skilled nursing care, physical therapy, or speech therapy at least once in a 60-day period.

3. The physician must initiate a treatment plan and specify a diagnosis, the Beneficiary's functional limitations and the type and frequency of skilled services to be rendered.

4. The Beneficiary must be confined to his home. The services must be provided by a certified home health agency.

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(c) Skilled Nursing

Benefits are provided for skilled nursing care rendered by a registered nurse as a home health service when a Beneficiary's condition has not stabilized and a physician concludes that the Beneficiary must be carefully evaluated and observed by a registered nurse. The Plan Administrator may request an evaluation visit to the Beneficiary's home.

Article III. A. (11) 7. and 8. state:

(11) General Exclusions

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

7. Private duty nursing. If necessary to preserve life and certified as medically necessary by the attending physician and an Intensive Care Unit is unavailable, benefits are provided for private duty nursing services for up to 72 hours per inpatient hospital admission. In no event will payment be made for private duty nursing during a period of confinement in the Intensive Care Unit of a hospital.

8. Custodial care, convalescent or rest cures.

Discussion

Article III. A. (6) of the Employer Benefit Plan provides benefits for home health services, including visits by registered nurses and home health aides, under certain conditions and subject to the approval of the Plan Administrator. Benefits are not provided, for example, unless the Beneficiary's medical condition requires skilled nursing care at least once in a 60-day period. Skilled nursing care is generally considered to encompass those services that are reasonable and necessary for the treatment of an illness or injury and which must be performed by, or under the

direct supervision of, a licensed nurse if the safety of the patient is to be assured and the medically desired result is to be achieved.

The Employer has progressively reduced the number of home nursing hours rendered to the Employee beginning March 17, 1992, stating that the Employee's condition no longer required skilled nursing care, and that a properly trained member of the Employee's family could provide the same level of care. A Funds' medical consultant has reviewed the evidence submitted in this case, including physician's orders and nursing notes pertaining to the Employee's home health services. The consultant advises that while it is clear that the Employee requires almost constant care to accomplish the tasks of daily living, the type of care being provided does not meet the definition of skilled nursing care under the terms of the Employer Benefit Plan. In addition, as discussed in ROD number 84-283, home health services, as contemplated by Article III. A. (6), consist of visits by registered nurses and/or home health aids to provide certain specific services on an intermittent basis. Provision of nursing services on a continuous, around-the-clock basis, as provided here, constitutes private duty nursing. Under Article III. A. (11) 7. private duty nursing is excluded from coverage except under certain circumstances and when provided in an inpatient hospital.

Therefore, the Trustees conclude that the Employer is not required to provide benefits for 24-hour skilled nursing care, since this level of care in the home is not covered under the terms of the Plan.

#### Opinion of the Trustees

The Employer is not required to provide benefits for in-home 24-hour skilled nursing care to the Employee.