
OPINION OF TRUSTEES

In Re

Complainants: Employee
Respondent: Employer
ROD Case No: 88-609 - December 16, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee;
Elliott 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 care under the terms of the Employer Benefit Plan.

Background Facts

On February 12, 1992 the Employee's spouse sought medical evaluation and treatment at the emergency department of a medical center. The emergency department record notes that the patient had had a non-productive cough for three days and has been started on the antibiotic Ceclor the day before. The emergency room physician had a chest x-ray taken, and treated and released the patient.

The Employer provided benefits for the physician charge, but denied benefits for the chest x-ray, drug charges and the emergency room charge for this visit.

In addition to claiming benefits for the visit, the Employee filed a "hold harmless" form covering the charges. The Employer, in its response, stated that the use of the "hold harmless" provision of the Employer Benefits Plan is not appropriate in this instance.

Dispute

Is the Employer required to provide benefits for the chest x-ray, drug charges and the emergency room charge resulting from the Employee's spouse's evaluation and treatment on February 12, 1992? If not, is the Employer required to hold the Employee harmless for these charges?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the chest x-ray, drug charges and the emergency room charge incurred on February 12, 1992 because the Employee's spouse had to visit the emergency room on that date. If the services were not medically necessary, the Employer should initiate "hold harmless" procedures.

Position of the Employer: The Employer is not required to provide benefits for the chest x-ray, drug charges and the emergency room charge resulting from the Employee's spouse's evaluation and treatment on February 12, 1992 because the visit did not take place within 48 hours of the onset of symptoms at the time of the visit. Also, the use of "hold harmless" procedures is not appropriate in this instance.

Pertinent Provisions

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

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 construed 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. (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.

Discussion

Article III. A. (2)(a) of the Employer Benefit Plan provides that emergency medical treatment is a covered benefit when it is rendered within 48 hours following the onset of acute medical symptoms.

The emergency medical record indicates that the patient had a non-productive cough for three days and was started on the antibiotic Ceclor the day before. A Funds' medical consultant has reviewed the information present in this case and has advised that the patient was not seen within 48 hours of the onset of her complaint and was not suffering from any new or acute symptoms; there was no evidence of a new medical illness being present. Because the Employee's spouse did not have acute medical symptoms that warranted emergency medical treatment, or continuing symptoms that became acute within 48 hours of the emergency room visit, the Trustees conclude that the Employer is not required to provide benefits for the emergency room charge resulting from the Employee's wife's evaluation and treatment on February 12, 1992. The Employer, however, is required to provide benefits for the chest x-ray and drug charges incurred in the evaluation and treatment.

Article III. A. (10)(g) 3. of the 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.

Hold harmless, then, defends the Beneficiary against claims for excessive charges or medically unnecessary treatment by the provider. In the case of an initial visit to an emergency room, the decision to seek treatment there is usually made by the Beneficiary. As a practical matter, the emergency room will essentially accept and screen all patients who present themselves for medical care. Emergency room staff must often perform diagnostic work-ups to rule out as well as define and treat illness or injury. Charges would be incurred for such medically necessary services, even in those instances where it is determined that the patient did not require emergent care. However, the decision by the Beneficiary to visit the emergency room may itself constitute an unnecessary use of the facility.

As noted earlier, the Funds' medical consultant has found that the patient had had a non-productive cough for three days, and had been started on an antibiotic the day before. Rather than returning to or telephoning the physician who prescribed the antibiotic, the patient visited an emergency room the following evening. The consultant found no evidence in the emergency room record of a worsening condition within 48 hours, or new acute medical symptoms. Invoking hold harmless in this situation would amount to defending the Beneficiary against his/her own actions, since the decision to use the emergency room was the patient's own, and the available evidence shows that the use of the emergency room was not appropriate to the patient's condition at the time.

Opinion of the Trustees

The Employer is not required to provide benefits for the emergency room charge resulting from the Employee's spouse's evaluation and treatment on February 12, 1992, nor to implement hold harmless procedures. The Employer is required to provide benefits for the chest x-ray and drug charges incurred in the same visit.