
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-625 - November 4, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, 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 non-standard health benefits coverage under the terms of the Employer Benefit Plan.

Background Facts

The Employee states that the Employer refuses to provide health benefits in accordance with the provisions of the National Bituminous Coal Wage Agreement of 1988 and to reimburse him for bills he has already paid. To support his position, the Employee submitted a copy of an Explanation of Benefits (EOB) form dated March 21, 1992, that he received from the Employer's insurance carrier, and copies of two additional unpaid medical bills. The EOB form covers an office visit on March 2, 1992 for a dependent of the Employee. Of the total charge of \$292, \$191 was paid by the carrier. The balance, \$101, is made up of \$10 and \$1 amounts as "deductible." An explanatory note states "D. has met \$90.00 of her deductible for the benefit year beginning January 1, 1992. She has met \$7.00 of her deductible and \$3.60 of her coinsurance limit for the benefit year beginning January 1, 1991." Provisions of the Employer's plan were not submitted to the Trustees for review.

The Employer has not responded to repeated requests for information in support of its position.

Dispute

Is the Employer's implementation of its health coverage plan in violation of the 1988 Wage Agreement?

Positions of the Parties

Position of the Employee: The Employer has implemented a plan for health benefits coverage that is not in accordance with the 1988 Wage Agreement.

Position of the Employer: The Employer has not responded to repeated requests for information to support its position in this dispute.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreements of 1984 and 1988 provides in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit 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 term of this Agreement by that Employer at levels 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 Plans

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 service 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-payment credited to his account. The hospital, clinic, or physician will bill the Participant for the co-payment 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-payment maximum has been reached, the carrier will remit to the Participant the full payment for covered benefits.

Article I (1), (2) and (4) of the 1988 Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).
- (2) "Wage Agreement" means the National Bituminous Coal Agreement of 1988, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II A. (1) and (4) of the Employer Benefit Plan provide:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

- (1) is actively at work¹ for the Employer on the effective date of the Wage Agreement; or
- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III A. (8) of the Employer Benefit Plan state in pertinent part:

(8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the Beneficiary....

Co-Payments for covered Health Benefits are established as follows:

¹ Actively at work includes an Employee of the Employer who was actively at work on January 31, 1988, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

<u>Benefits</u>	<u>Co-Payment</u>
(a) Physician services as an out-patient as set forth in Section A (2) and physician visits in connection with the benefits set forth in Section A(3), paragraph (c) but only for pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and Section A(7) paragraph (f).	Working Group -- \$7.50 per visit up to a maximum of \$150 per 12-month period ⁽²⁾ per family. Non-working Group -- \$5 per visit up to a maximum of \$100 per 12-month period ⁽³⁾ per family.

Article III. A. (10)(g) 3. of the Employer Benefit Plan states:

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

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 be 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

²The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991; March 27, 1992.

³The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991; March 27, 1992.

Article III. A. (8) of the Employer Benefit Plan provides that certain benefits provided under the Plan shall be subject to co-payments of \$5.00 or \$7.50 and such co-payments shall be the responsibility of the Beneficiary. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the beneficiary is expected to authorize the provider to bill the insurance carrier for the services rendered and to pay only the co-payment charge set forth in Article III A. (8), until the specified maximum yearly amount is reached. The procedure for claims handling and the method of payment established by the Employer in this case are inconsistent with the claim procedure contemplated under the terms of the Wage Agreement and the Employer Benefit Plan.

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires each 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 further stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such Plan. Thus, levels of benefits to be provided to Employees, Pensioners and their dependents and survivors which are established through collective bargaining may not be unilaterally changed. Given the clear language of Article XX, an Employer cannot arbitrarily change Plan benefits. The Trustees conclude that the Employer's use of a non-conforming health coverage plan is inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan.

Article III. A. (10)(g) 3. of the Employer Benefit Plan provides that the Plan Administrator shall attempt to negotiate or defend the Employee against providers who seek to collect excessive fees for their services. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with the excessive fee claim. This is known as the Plan's "hold harmless" provision. In this case, the Employer has denied a total of \$11 charges that exceed the maximum allowable payment. There is no evidence submitted with the case to indicate that the provider has attempted to collect these excessive charges from the Employee. However, if the provider does attempt to collect the excessive charges, and upon proper notice by the Employee, it would be appropriate for the Employer to initiate hold harmless procedures.

Opinion of the Trustees

The Employer's implementation of a non-conforming health benefit plan is inconsistent with the express provisions of the 1988 Wage Agreement. The Employer is required to provide health benefits coverage for the Employee and his eligible dependents at the level specified in the Employer Benefit Plan and for payment of the Plan-covered medical expenses incurred by the Employee and his eligible dependents. The Employer is required to hold the Employee harmless if the provider attempts to collect excessive charges.