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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-727 - March 27, 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 the provision of benefits for private duty nursing under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse suffered a stroke a number of years ago, resulting in paralysis in her arms and legs. The Employer had been providing benefits for nursing home care for the spouse, but, on April 16, 1993, the Employer's benefits coordinator advised the Employee that the Employer would no longer be financially responsible for the Employee's spouse's nursing home stay, effective May 1, 1993.

Two physicians submitted letters, dated April 29, 1993 and May 4, 1993, stating that the patient suffers from multiple ailments in addition to her paralysis, including urinary retention requiring catheterization, frequent urinary infections, constant muscle spasms, diabetes mellitus, and hypertension. One of the physicians has stated that the Employee's spouse is a total bed patient who is totally incapable of doing anything for herself. Both physicians recommended that she needs continued nursing home care.

A representative for the Employee stated that the Employee's wife will be sent home and asks that the Employer be required to provide benefits for 24-hour-a-day nursing care.

Dispute

Is the Employer required to provide benefits for the Employee's spouse's 24-hour-a-day nursing care?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's 24-hour-a-day nursing care because it is medically necessary and covered by the Employer Benefit Plan.

Position of the Employer: The Employer is not required to provide benefits for the Employee's spouse's 24-hour-a-day nursing care because private duty nursing services are excluded under Article III. A. (11)(a) 7. of the Employer Benefit Plan.

Pertinent Provisions

Article III.A.(5)(a) 1. states in pertinent part:

(5) Skilled Nursing Care and Extended Care Units

(a) Skilled Nursing Care Facility

Upon determination by the attending physician that confinement in a licensed skilled nursing facility<sup>1</sup> is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

1. skilled nursing care provided by or under the supervision of a registered nurse;

Article III.A.(6)(a) and (c) state:

(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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<sup>1</sup> Skilled nursing care facility is limited to a skilled nursing care facility which is licensed and approved by Federal Medicare.

(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)(a) 7. of the Employer Benefit Plan states:

(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.

Discussion

Article III.A.(5)(a) 1. of the Employer Benefit Plan provides benefits for confinement in a Skilled Nursing Care Facility when determined to be medically necessary by the attending physician. Additionally, this provision provides for skilled nursing care by, or under, the supervision of a registered nurse, while confined in a Skilled Nursing Facility.

The provision of skilled nursing services on a continuous, around-the-clock basis, as proposed in this case, constitutes private duty nursing. Under Article III. A. (11)(a) 7. of the Employer Benefit Plan, private duty nursing services are excluded from coverage, except when provided under limited circumstances in an inpatient hospital setting.

Article III.A.(6)(a) sets forth the conditions under which home health services are eligible for benefits. It states that the patient must be under the care of a physician, that the condition must require skilled nursing care, physical therapy, or speech therapy at least once in a 60 day period, that the patient's physician must initiate the treatment plan and specify the diagnosis, the functional limitations, and the type and frequency of the services to be rendered, and finally, that the patient must be confined to his/her home and that the services must be rendered by a certified home health agency. Additionally, the treatment plan must receive prior approval by the Plan Administrator.

Article III.A.(6)(c) provides skilled nursing as a home health service in an outpatient setting when the patient's condition has not stabilized and her physician concludes that the patient must be carefully evaluated and observed by a registered nurse.

A Funds' medical consultant has reviewed this file to include the two letters from the Employee's spouse's physician, the discharge summary from the spouse's most recent hospital confinement, and the nursing home resident care plan, physician's orders, progress notes, nursing notes and

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rehabilitation and occupational therapy evaluations. The consultant notes that the Employee's spouse suffers the effects of previous strokes with quadriplegia and multiple contractures of the arms and legs; and additionally, that she is also an insulin dependent diabetic and suffers with urinary retention and recurrent urinary tract infections. The consultant stated that the patient is bed-ridden and needs complete support to accomplish the acts of daily living; and, although the nursing support is extensive and continuous throughout the day, the services rendered are custodial in nature. The consultant further stated that the requirement for insulin injections and catheterization would not be considered skilled nursing care in that the underlying medical conditions have been stable for a long period of time, and non-skilled medical personnel can be taught to administer the insulin injections and care for the catheter. The consultant stated that, in his opinion, all care being rendered on a daily basis to the Employee's spouse would be considered custodial and, therefore, excluded under the terms of the Employer Benefit Plan. Despite the Employee's request, the daily skilled nursing services are not eligible for benefits as either skilled nursing care or private duty nursing under the Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for the Employee's spouse's proposed private duty nursing care. The Employer is also not required to provide continued benefits for the Employee's spouse's institutional nursing home care.