OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-729 - December 15, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee; Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits for chelation therapy under the terms of the Employer Benefit Plan.

Background Facts

The Pensioner's physician administered 26 chelation therapy treatments to the Pensioner from October 5, 1992 through February 25, 1993. Chelation therapy removes unwanted metal ions from the body. The Pensioner's physician states that the Pensioner has extremely high levels of lead and iron in his body and that chelation therapy has been proven as an effective way to excrete these heavy metals through the kidneys.

The Employer paid for some of the charges for chelation therapy, but states that payment was made in error. Other charges for chelation therapy were denied. According to the Employer, the Pensioner's wife stated that the Pensioner was being treated with chelation therapy for arteriosclerosis and coronary artery disease. The Employer states that chelation therapy for these diagnoses is controversial because its safety is questionable and the clinical effectiveness has never been established.

Dispute

Is the Employer required to provide benefits for the chelation therapy administered to the Pensioner from October 5, 1992 through February 25, 1993?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the chelation therapy because the Pensioner's physician said that he has to have the treatment.

Position of the Employer: The Employer is not required to provide benefits for the chelation therapy because it is considered experimental and controversial when administered for the Pensioner's medical condition.

Pertinent Provisions

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

ARTICLE III BENEFITS

> 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 be included, 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.(10)(g)3. states:

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

The Introduction to Article III of the Employer Benefit Plan states that covered services are limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury.

In this case, the patient received twenty-six chelation treatments from October 5, 1992 through February 25, 1993. A Funds' medical consultant has reviewed the information submitted in this file to include the laboratory results of hair and urine samples. The consultant states that chelation therapy is used primarily for acute, severe, heavy metal intoxication with treatment limited to a short period of time (generally a few days). According to the consultant, the use of chelation therapy in the absence of symptoms and acute serum elevation of heavy metals remains unproven and not medically accepted therapy at this time. The test results submitted by the Pensioner's physician to document the medical necessity of the chelation therapy were based on hair and urine samples. There were no serum tests to document high levels of lead and iron. In addition, the lengthy period of treatment provided by the physician is inconsistent with the time-limited period accepted by the medical profession for treatment of acute heavy metal intoxication. The consultant is of the opinion that the treatment at issue would not be considered medically appropriate under the terms of the Employer Benefit Plan.

Regarding the Pensioner's wife statement that her husband was being treated with chelation therapy for arteriosclerosis and coronary artery disease, the consultant has previously advised that chelation therapy is not accepted treatment for these medical conditions.

Because the use of chelation therapy in this case is of unproven value and, therefore, cannot be considered medically necessary, the Trustees conclude that the Employer is not required to provide benefits for the chelation therapy administered to the Pensioner.

Article III.A.(10)(g) 3., the "hold harmless" provision, states that in any case where a provider attempts to collect excessive charges or charges for services which are not medically necessary, 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.

In this case, the Pensioner was administered therapy that was not medically necessary. Accordingly, the Employer is required to hold the Pensioner harmless against any attempts by the provider to collect charges for this therapy.

Opinion of the Trustees

The Employer is not required to provide benefits for the chelation therapy administered to the Pensioner from October 5, 1992 through February 25, 1993, but is required to hold the Pensioner harmless against any attempts by the provider to collect charges for this therapy.