

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-754 - December 6, 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 health benefits coverage for emergency room charges under the terms of the Employer Benefit Plan.

Background Facts

On January 25, 1993, at 1:15 a.m., the Employee's spouse sought evaluation and treatment at a local hospital emergency room, complaining of a severe migraine headache that had been present all evening and had not responded to the spouse's normal medications. Additionally, on February 25, 1993, at 7:18 p.m., the Employee's spouse again sought treatment at the same hospital emergency room, complaining of a migraine headache that had begun at approximately 3:00 that afternoon.

In both cases the emergency room physician diagnosed the spouse's condition as a migraine headache and administered intramuscular injections of Nubain 10 m.g. (a synthetic agonist-antagonist narcotic analgesic), and either Phenergan or Vistoril 50 m.g. (anti-nausea medications). She was advised to follow up with her family physician.

The Employer paid the charges for the emergency room physicians, but denied the emergency room facility and pharmacy charges, stating that the care could have been rendered in a physician's office. The Employer sent the Employee's spouse's treatment plan to be reviewed by a peer review panel, convened through its insurance carrier, which indicated that the use of the emergency room setting was inappropriate and was preventing the Employee's spouse from receiving the high quality of medical care she requires. The peer review panel recommended that one physician coordinate all of the Employee's spouse's medication needs since she is on a variety of dangerous medications, and, from the records provided, appeared to be taking in excess of normal therapeutic doses, which suggested a high probability of addiction to one or more medications.

The Employer was signatory to the 1988 National Bituminous Coal Wage Agreement

(Wage Agreement) which terminated February 1, 1993. The Employer signed an Interim Agreement extending the terms and conditions of employment of the 1988 Wage Agreement from February 2, 1993 to the effective date of a successor agreement on December 16, 1993.

Dispute

Is the Employer required to provide benefits for the emergency room facility and pharmacy charges resulting from the Employee's spouse's evaluation and treatment on January 25, 1993, and February 25, 1993?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the emergency room and pharmacy charges resulting from the Employee's spouse's treatment on January 25, 1993, and February 25, 1993, because the spouse required emergency treatment and the Employer Benefit Plan covers such treatment.

Position of the Employer: The Employer is not required to provide benefits for the emergency room facility and pharmacy charges incurred by the Employee's spouse on January 25, 1993, and February 25, 1993, because the care could have been rendered in a physician's office. Additionally, a peer review panel concluded that the Employee's spouse's frequent use of the emergency room was inappropriate, and was preventing her from getting the coordinated, high-quality medical care she needs.

Pertinent Provisions

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

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. . . . Services which are not reasonable and necessary shall include, but are not limited to the following: . . . procedures which can be performed with equal efficiency at a lower level of care.

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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 in pertinent part:

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

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. ...

Discussion

The Employer was signatory to the 1988 Wage Agreement. The Employer signed an Interim Agreement extending the terms and conditions of employment of the 1988 Wage Agreement from February 2, 1993 to the effective date of a successor agreement on December 16, 1993. This dispute arose over an event that took place during the period covered by the Interim Agreement.

The Introduction to Article III of the Employer Benefit Plan states that covered services shall be limited to those services which are reasonable and necessary, and which are given at the appropriate level of care. It continues to say that the fact that a physician prescribes a procedure or level of care does not mean that it is medically reasonable or necessary, or that it is covered under the Plan. The Introduction also states that services that are not reasonable and necessary shall include procedures which can be performed with equal efficacy at a lower level of care. Article III.A.(2)(a) provides benefits for emergency medical treatment when it is rendered within 48 hours following the onset of acute medical symptoms.

At issue here are benefits for two emergency room facility and pharmacy charges: the first on January 23, 1993, with charges totalling \$48.80; and the second on February 25, 1993, with charges totalling \$57.80. The Employer has paid charges for the emergency room physician in both cases.

In this case involving these two emergency room visits, the Employer questioned the medical appropriateness of the use of the emergency room, and felt that the treatment provided, in view of the patient's medical history and utilization patterns, was excessive. As a result, the Employer asked that the Employee's spouse's treatment records be reviewed by a peer review panel for medical appropriateness. The Employer was also concerned regarding the potential for chemical dependence. The peer review panel concluded that the Employee's spouse's frequent and continued use of the emergency room was inappropriate and was preventing her from receiving the high quality medical care that she requires.

In RODs 81-553 and 84-703 (copies enclosed herein), the Trustees concluded that an Employer must provide at least one impartial medical review, such as an independent physician or state peer review panel, when denying claims for medical care deemed inappropriate and/or excessive. In this case, the Employer has obtained two concurring opinions from its insurance carrier regarding the Employee's spouse's treatment. The first opinion was based on the carrier's routine internal review procedures. The second opinion was provided by a panel composed of the carrier's medical director and two physicians who contract with the carrier as consultants. The carrier claims such a panel is as independent as possible, considering the size of the Employer's work force and its importance to the health providers in the area. However, the Employer should have selected a physician consultant from outside its employment area, or from a state-level peer review group. The Employer has not met the requirement that it secure an independent opinion before denying benefits for services as not medically necessary and appropriate. Thus, the Employer may not deny benefits on this basis.

A Funds' medical consultant has reviewed this file, which includes the emergency department records of both visits, as well as documentation of numerous other emergency room visits by the spouse, also for migraine headaches. The consultant notes that the emergency room records do not document acute findings other than a history of severe headaches. The consultant further notes that the emergency room physician is required to treat these complaints, but when the complaints become recurrent, they are best treated in a setting offering long term care and counseling. The consultant advises that in an emergency room setting, cases such as this are often treated with a narcotic agonist-antagonist, such as Nubain, to keep the patient from developing a dependence on narcotic medications, and to encourage the patient to seek care in a more appropriate setting. In the consultant's opinion, the treatments provided to the Employee's spouse on January 25, 1993, and February 25, 1993, reflected this approach to emergency medical care, and he concluded that the Employee's spouse's visits to the emergency department were not medically appropriate, since care could have been provided in a less acute setting such as a private physician's office or clinic.

ROD 88-520 discussed offices or clinics available after usual business hours when the use of a hospital emergency room was inappropriate. A check by Funds' staff finds that there are at least four clinics and four physician offices offering some after-hours services, all within the area used

by the Beneficiary in the past. It is reasonable that the Complainant could have used such facilities in the late afternoon or in the early evening for the visit of February 25, 1993.

The Employee has raised the issue of hold harmless as discussed in Article III.A.(10)(g) 3. of the Plan. The Plan states that hold harmless can apply in cases where there are excessive charges or charges for services that are not medically necessary. In the case of the February 25, 1993 visit, the use of the emergency room setting for treatment that could have been safely rendered in a physician's office has been determined not medically appropriate. The Trustees, in prior RODs, have concluded that to invoke hold harmless in the case of an initial emergency room visit would, in essence, be defending the Employee against his/her own actions since the emergency room cannot turn a patient away. Therefore, since the Employee's spouse made the decision to seek care in an emergency room setting, the use of hold harmless in this instance would not be appropriate.

The Trustees conclude, consistent with the provisions of the Employer Benefit Plan, that the Employer is required to provide benefits for the emergency room and pharmacy charges resulting from the Employee's spouse's evaluation and treatment on January 25, 1993, but is not required to provide benefits for the emergency room charge incurred on February 25, 1993. Since the pharmacy charges on that date would have been incurred regardless of the setting, the Employer is required to provide benefits for this. The Employer is not required to hold the Employee harmless for the February 25, 1993 emergency room charge.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is required to provide benefits for the emergency room and pharmacy charges incurred as a result of the Employee's spouse's emergency room visit on January 25, 1993, but is not required to provide benefits for the emergency room charge incurred on February 25, 1993. The Employer is required to provide benefits for the pharmacy charge incurred on February 25, 1993, but is not required to hold the Employee harmless for the emergency room charge incurred on that date.