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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-763 - June 23, 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 home health care under the terms of the Employer Benefit Plan.

### Background Facts

For multiple medical problems, the Pensioner had been receiving home health care 24 hours a day, seven days a week since December, 1992. He died on August 31, 1993. According to medical records and nursing notes provided in this case, he was an insulin-dependent diabetic who suffered from chronic renal (kidney) failure, severe peripheral vascular disease (a disease effecting the copious blood supply to the vessels situated away from the center or central structure [trunk of the body]), chronic cor pulmonale (heart disease due to pulmonary hypertension secondary to disease of the blood vessels of the lungs), coal workers pneumoconiosis (black lung disease), and neutropenia (a decrease in the number of neutrophilic leukocytes in the blood). The Pensioner had numerous hospitalizations for recurrent problems including pneumonia and chronic draining ulcers of his lower extremities.

The home health care services consisted of diabetic testing, assistance with medications and insulin injections, wound care for leg ulcers, and assistance with activities of daily living such as bathing and meal preparation. According to the information supplied, the Pensioner was ambulatory without assistance, able to handle his own toileting needs, and capable of injecting his insulin and performing his own medical tests. The home health care had been delivered by nurses and nurses aides on an around-the-clock basis. The Employer stated that this type of nursing service constituted private duty care and, as such, was not a covered benefit under the Employer Benefit Plan.

### Dispute

Was the Employer required to continue to provide benefits for 24 hour-per-day, seven day a week home health care as had been delivered to the Pensioner since 1992?

Positions of the Parties

Position of the Pensioner: The Employer was required to provide benefits for the 24 hour-a-day, seven days a week home health care because such care was medically necessary.

Position of the Employer: The Employer was not required to provide benefits for the 24 hour-a-day, seven days a week home health care since this constituted private duty nursing care and, as such, was not a covered benefit.

Pertinent Provisions

Article III.A.(6)(a) and (c) of the Employer Benefit Plan 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.

(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. and 8. state:

(11) General Exclusions

(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.
8. Custodial care, convalescent or rest cures.

Discussion

Under Article III.A.(6)(a) of the Employer Benefit Plan, benefits are provided for home health services by nurses and nurses aides on an intermittent basis. Under Article III.A.(11) 7. benefits are excluded for 24 hour-per-day, seven day per week care unless the Beneficiary is confined in a hospital and the nursing care is being given in lieu of confinement in the Intensive Care Unit. Article III.A.(11) 8. excludes benefits for custodial care.

In ROD 84-283 (copy enclosed herein), the Trustees denied benefits for private duty nursing at home, stating that the home health services contemplated in Article III.A.(6)(a) consist of visits by registered nurses and home health aides to provide certain specific services on an intermittent basis. The provision of nursing services on a continuous, around-the-clock basis, as provided in ROD 84-283 and here, constitutes private duty nursing. Under Article III.A.(11) 7., private duty nursing is excluded from coverage except when provided in an inpatient setting as noted above.

A Funds' medical consultant has reviewed the evidence submitted in this case and has determined that the care delivered was custodial in nature, was mainly to help the Pensioner with his activities of daily living and to assist with his medications, injections, and dressing changes. The consultant further noted that the home health service records document that the

care delivered to the Pensioner was not skilled in nature nor oriented toward teaching the patient, or his family members, methods of self-care. Since the home health care services provided to the Pensioner constitute custodial and around-the clock care, the Trustees find that these services are not eligible under the terms of the Employer Benefit Plan.

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Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide benefits for the home health care provided to the Pensioner.