

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-774 - November 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 health benefits coverage for counseling services under the terms of the Employer Benefit Plan.

Background Facts

The Employer's Employee Assistance Program (EAP) provider, Human Affairs International, saw the Employee's son for depression with suicidal ideations. The EAP provider referred the son for counseling by a Licensed Professional Counselor (LPC) in Uniontown, PA. During the course of his treatment, it was determined that there were family problems and that the Employee's spouse, in particular, had problems with depression and feelings of guilt. In May, 1989, this counselor referred the family to an LPC in Morgantown, WV, whose specialty is working with young children, teens, and their families. According to the counselor's billing statements, the Employee's spouse was treated for generalized anxiety disorder (later in June, 1993, she was admitted for inpatient treatment of this condition); the Employee was counseled for adjustment reaction with mixed disturbance of emotions and conduct.

The Employer provided benefits for the counseling services for the family members, but later denied benefits for several visits. Benefits for eight counseling sessions had been in dispute, for dates of May 6, 13, 20, 27, and June 3, 8, 10 and 15. However, the mine where the Employee works was sold, with an effective transfer date of June 7, 1993. The purchasing company has determined that benefits should be provided for the three visits after the transfer of ownership date, and has settled these charges. The only visits still in dispute are the first five, May 6, 13, 20 and 27 and June 3, 1993, during the time when the previous company (Employer) owned the mine.

The first Employer denied benefits for the five visits, stating that services performed by this type of provider are not covered under the Employer Benefit Plan. Further, the Employee stated that the Employer notified him that the provider in question was not certified to perform counseling services. The Employee then submitted copies of the counselor's certification by the National

Board of Certified Counselors and of her licensure by the West Virginia Board of Examiners in Counseling.

Dispute

Is the Employer required to provide benefits for the five counseling sessions rendered to the Employee and the Employee's spouse by a counselor?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the five counseling sessions because the provider was licensed in the state of West Virginia to provide counseling services.

Position of the Employer: The Employer is not required to provide benefits for the counseling services since the provider rendering the services was not licensed in the state of West Virginia to provide counseling services, there is no evidence that a physician supervised the treatments, and it was not established that free care sources did not exist.

Pertinent Provisions

Article III. A. (3) (o) 4. of the Employer Benefit Plan states:

A. Health Benefits

(3) Physicians' Services and Other Primary Care

(o) Primary Medical Care - Miscellaneous

4. Benefits are provided for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician.

Article III. A. (7) (f) of the Employer Benefit Plan states:

A. Health Benefits

(7) Other Benefits

(f) Outpatient Mental Health, Alcoholism and Drug Addiction

Benefits are provided for:

Psychotherapy, psychological testing, counseling, group therapy and alcoholism or drug rehabilitation programs where free care sources are not available and when determined to be medically required by a physician.

Benefits are not provided for:

1. Encounter and self-improvement group therapy.
2. Custodial care related to mental retardation and other mental deficiencies.
3. School related behavioral problems.
4. Services by private teachers.
5. Alcoholism and drug rehabilitation if an advance determination has not been made by the rehabilitation team that the Beneficiary is a good candidate for rehabilitation.
6. Alcoholism and drug rehabilitation programs not approved by Medicare.

Discussion

Article III. A. (3)(o) 4. of the Plan provides benefits for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician. Health personnel whose services are covered under this provision must be certified or licensed to perform the service in question. Article III A. (7) (f) of the Plan provides benefits for outpatient counseling within certain limitations.

In this case, the therapist performing the psychological counseling holds a certificate bestowing on her the professional designation of "National Certified Counselor," and a certificate of license as a "Licensed Professional Counselor" under the laws of the State of West Virginia. Additionally, the counselor was contacted to ascertain whether she was practicing under the supervision of a physician. The counselor stated that she maintained a consulting relationship with both the attending physician, who monitored/prescribed the patient's medications, and with the psychiatrist who attended the Employee's spouse during her inpatient admission for mental illness.

The Trustees conclude that the counselor meets the requirement of Article III.A.(3)(o) 4. as a "physician extender;" that the counselor provided services under the supervision of a physician; that the services were covered mental health services pursuant to Art. III A. (7)(f)and, since the company's own EAP made the initial referral, that appropriate free care sources were not available. Therefore, the Trustees conclude that, consistent with the provisions of the Employer Benefit Plan, the Employer is required to provide benefits for the five counseling sessions rendered to the Employee and his dependents on May 6, 13, 20, and 27 and June 3, 1993.

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Consistent with the provisions of the Employer Benefit Plan, the Employer is required to provide benefits for the five counseling sessions rendered to the Employee and his dependents on May 6, 13, 20, and 27 and June 3, 1993.