
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-806 - 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 diagnostic testing under the terms of the Employer Benefit Plan.

Background Facts

On September 1, 1993, the Employee sought the advice and assistance of his physician in order to quit smoking. At the time of the visit, the physician ordered a variety of tests to be performed to rule out chronic obstructive pulmonary disease (COPD). The medical records do not indicate, however, that at the time of the visit the Employee was experiencing any symptoms of COPD, or any other disease or disorder.

The Employee's physician prescribed Nicoderm patches to assist the Employee in the weaning process from the cigarettes, and advised the Employee to return in 90 days for a follow up visit.

The Employer denied all charges in connection with the September 1, 1993, office visit, including the physician's charge, stating they were "routine services" that were not covered under the terms of the Employer Benefit Plan.

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, 1994. The Employer was not the subject of an economic strike during this period.

Dispute

Is the Employer required to provide benefits for the Employee's office visit and associated laboratory work and x-ray work performed on September 1, 1993?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the physician's charges and related laboratory work performed on September 1, 1993, because the Employee's physician ordered the tests and, therefore, they should be covered under the terms of the Employer Benefit Plan.

Position of the Employer: The Employer is not required to provide benefits for the Employee's physician's charges and related laboratory work because the services performed were routine in nature and, therefore, not covered under the terms of the Employer Benefit Plan.

Pertinent Provisions

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

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. . . .

Article III. A. (3) (h),(j) and (p) 10. states:

(3) Physician's Services and Other Primary Care

(h) Home, Clinic and Office Visits

_____ Benefits are provided for services rendered to a Beneficiary at home, in a clinic (including the outpatient department of a hospital) or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

(j) Laboratory Tests and X-rays

_____ Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

_____ Such benefits will not cover laboratory tests and x-rays ordered in connection with a routine physical examination, unless the examination is considered medically necessary by a physician.

(p) Services Not Covered

10. Physical examinations, except as specifically provided herein.

Article III. A. (10)(g) 3. states:

3. The Employer and the UMWA agree that 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 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 Employer was not the subject of an economic strike during this period.

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 for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care. The Introduction further states that 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.

Article III.(A)(3)(h) provides benefits for physician's services in connection with the treatment of illnesses or injuries, and Article III.(A)(3)(j) provides benefits for laboratory work and x-rays ordered by a physician in connection with a definite condition, illness or injury. Additionally, Article III.(A)(3)(p)10. excludes physical examinations, except as specifically provided for herein, and Article III.(A)(3)(j) excludes laboratory tests and x-rays in connection with a routine physical examinations.

In this case, the Employee sought the advice and treatment of his physician to assist him in a smoking cessation program. The physician prescribed Nicoderm patches to the Employee to aid in this process. In addition, the physician ordered a number of tests be performed to rule out COPD, although at the time of the visit the Employee's medical records did not contain any specific complaints associated with COPD, or any other illness.

A Funds medical consultant has reviewed the file and is of the opinion that there is nothing in the medical record that shows any kind of diagnostic findings, patient complaints or findings from a physical examination that would justify ordering the blood work, chest x-ray, or pulmonary function test. Therefore, the tests and x-rays in this case were not medically necessary because they were not "reasonable or necessary for the diagnosis or treatment of an illness or injury."
Article III, Introduction.

Since nicotine addiction is considered an illness (see ROD 88-578), and the physician provided the Employee with a prescription treatment, the physician's professional charge would be eligible for benefits. The x-rays and laboratory studies were not appropriate and thus not covered under the terms of the Employer Benefit Plan.

Article III. A. (10)(g) 3. of the Plan provides that the Plan Administrator shall attempt to negotiate with or defend a Beneficiary against providers who seek to collect charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Beneficiary is not responsible for any legal fees, settlements, judgments or other expenses in connection with such charges. This is known as the Plan's "hold harmless" provision.

In this case, the physician ordered x-rays and laboratory studies that were not medically necessary; thus, the Employer must hold the Employee harmless against any attempt by the provider to collect charges for these services.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is required to provide benefits for the physician's charge in connection with the Employee's visit on September 1, 1993, but is not required to provide benefits for the laboratory and x-ray charges incurred in that visit. However, the Employer is required to hold the Employee harmless against any attempt by the provider to collect charges for these services.