
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-855 - January 23, 1997

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 and skilled nursing care facility care under the provisions of the Employer Benefit Plan.

Background Facts

The Pensioner's spouse (hereinafter "Beneficiary") was admitted to the hospital on July 2, 1988. At the time of admission, she required a tracheostomy (a surgical opening to facilitate breathing through a tube) with ventilator support. She also suffered from diabetes that frequently was unstable and, in August, underwent surgery for a bowel obstruction which resulted in the need for a colostomy (diversion of the bowel to an abdominal opening for the elimination of fecal matter). In addition, her medical condition was complicated by obesity, high blood pressure, and open, draining decubitus ulcers (bed sores). She remained an inpatient until November 30, 1988 when she was discharged to her home and began receiving home health agency services. These services included round-the-clock nursing care, frequent suctioning of her tracheostomy, monitoring of blood sugar levels, care for decubitus ulcers and colostomy, physical therapy, administration of many medications, and nebulization and oxygen therapy to maintain her airway and pulmonary function.

On May 1, 1989, the Beneficiary was transferred to a skilled nursing care facility where she remained until her death on August 22, 1989. The Beneficiary was not eligible for Medicare coverage during the period when these services were provided.

The Employer provided benefits as follows: In the home, for the physical therapy services and up to eight hours per day of nursing services provided by the home health agency; in the skilled nursing facility, for the physical therapy services. Accordingly, those benefits are not in dispute.

Dispute

Is the Employer required to provide benefits for all the remaining services provided to the Pensioner's spouse by the home health agency and the skilled nursing care facility?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for all the services of the home health agency and the skilled nursing care facility because the services were medically necessary.

Position of the Employer: The Employer is not required to provide benefits beyond what it has already provided in this case because the other services of the home health agency and the skilled nursing care facility services were custodial in nature.

Pertinent Provisions

Article III. A. (5) (a) 1. through 7. of the Employer Benefit Plan state:

(5) Skilled Nursing Care and Extended Care Units

(a) Skilled Nursing Care Facility

Upon determination by the attending physician that confinement in a licensed skilled nursing facility¹ is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

1. skilled nursing care provided by or under the supervision of a registered nurse;
2. room and board;
3. physical, occupational, inhalation and speech therapy, either provided or arranged for by the facility;
4. medical social services;
5. drugs, immunizations, supplies, appliances, and equipment ordinarily furnished by the facility for the care and treatment of inpatients;
6. medical services, including services provided by interns or residents in an approved, hospital-run training program, as well as

¹ Skilled nursing care facility is limited to a skilled nursing care facility which is licensed and approved by Federal Medicare.

other diagnostic and therapeutic services provided by the hospital;
and

7. other health services usually provided by skilled nursing care facilities.

The Plan will not pay for services in a nursing care facility:

1. that is not licensed or approved in accordance with state laws or regulations;

2. unless the service is provided by or under the general supervision of licensed nursing personnel and under the general direction of a physician in order to achieve the medically desired results.

Exclusions:

Telephone, T.V., radio, visitor's meals, private room or private nursing (unless necessary to preserve life), custodial care, services not usually provided in a skilled nursing facility.

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

(6) Home Health Services and 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. of the Employer Benefit Plan 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

Article III. A. (5) (a) defines the available benefits for care rendered by a skilled nursing care facility. Article III. A. (6) (a) and (c) sets forth the benefits for home health services which are pertinent to this case for home health services. Article III. A. (11) (a) 7. excludes benefits for private duty nursing except for specific and limited inpatient situations, and, 8. excludes benefits for custodial care.

Q&A #99, as well as RODs 84-283, 88-589, 88-727 and 88-763 (copies enclosed herein) state that nursing care in the home that is continuous constitutes private duty nursing, which is excluded from coverage under Article III. A. (11), except under limited circumstances not present in this case. As noted earlier, the benefits already provided by the Employer for nursing care in the home are not in dispute, nor are the benefits provided for physical therapy in the home.

Therefore, the Employer is not required to provide additional benefits for the care provided in the home setting.

A Funds' medical consultant has reviewed the medical records submitted concerning the Beneficiary's stay in the skilled nursing care facility. The consultant is of the opinion that the care provided in the skilled nursing facility from May 1, 1989 through July 1, 1989 was skilled nursing care and was medically appropriate. The consultant is of the further opinion that the level of care provided to the Beneficiary after July 1, 1989 was not skilled nursing care but rather custodial care. Accordingly, skilled nursing facility benefits are required for the Beneficiary's stay in the nursing home from May 1, 1989 through July 1, 1989, but benefits are not required for the care provided in the nursing home between July 2, 1989 and August 22, 1989. The Employer has not disputed the provision of benefits for physical therapy services in the skilled nursing facility.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide additional benefits for home health services for the Beneficiary for the period of November 30, 1988 through May 1, 1989. The Employer is required to provide skilled nursing facility benefits for the Beneficiary's stay in the skilled nursing facility for the period from May 1, 1989 through July 1, 1989, but is not required to provide benefits for the care provided in the facility from July 2, 1989 through August 22, 1989.