
OPINION OF TRUSTEES

In Re

Complainant: Active Employees
Respondent: Employer
ROD Case No: 93-035 - November 8, 1996

Trustees: Thomas F. Connors, Michael H. Holland, Donald E. Pierce, Jr. and Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

Background Facts

The Complainants are employed in classified positions with the Respondent who is signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1993. A representative for the Complainants contends that the Respondent's benefit plan does not comply with the provisions of the 1993 Wage Agreement and the Employer Benefit Plan. Specifically, the representative states that the Respondent has failed to provide a Participating Provider List (PPL) of physicians, hospitals and pharmacies and other providers as required under the Enhanced Cost Containment Program provisions of Article XX (10) of the 1993 Wage Agreement. The representative states that because the Respondent has failed to implement a PPL under the Employer Benefit Plan, the Complainants have had to pay higher co-payments and deductibles for non-PPL providers. The representative also states that the Complainants have had to pay for services directly and then seek reimbursement from the Respondent. The representative states that some Complainants have received reimbursements and others have not.

The Respondent states that it is not required to establish a PPL under the terms of the 1993 Wage Agreement. In addition, the Respondent states that because of the small size of its organization, which only employs eight union employees, it is unable to participate in an existing PPL or to establish its own PPL. Because the Respondent's benefit plan does not have a PPL, it contends that the non-PPL copayments and other limits apply to the Complainants. The Respondent does not deny the Complainants' allegations that they were required to pay for services and then seek reimbursement. However, the Respondent states that it has changed its claims processing procedure "so that the health care provider is paid directly, unless directed by the employee."

Dispute

Is the Respondent's health plan in compliance with the 1993 Wage Agreement and the Employer Benefit Plan?

Positions of the Parties

Position of the Complainants: The Respondent's health coverage plan does not comply with the 1993 Wage Agreement and the Employer Benefit Plan.

Position of the Respondent: According to the 1993 Wage Agreement, the Respondent is not required to establish a PPL. Because the Respondent does not have a PPL, the non-PPL co-payments and other limits apply. The Respondent has changed its health care claims processing "so that the health care provider is paid directly, unless otherwise directed by the employee."

Pertinent Provisions

Articles XX (10) and (12) of the National Bituminous Coal Wage Agreement of 1993 provide, in pertinent parts:

(10) HEALTH CARE:

Enhanced Cost Containment Program

* * * * *

d. Health Care Participating Provider Lists (PPL)

Beginning no sooner than six months after the Effective Date, the Employer may implement Participating Provider Lists (PPLs) of physicians, hospitals, pharmacies and other providers, subject to the following requirements.

* * * * *

12. Beneficiaries Outside PPL Area - A Beneficiary who lives outside an area served by a PPL shall be permitted to utilize non-PPL providers without incurring additional deductibles and copayments. For purposes of determining the Beneficiary's deductibles and copayments, utilization of such non-PPL providers shall be considered to be within the PPL.

(12) HEALTH CARE COST CONTAINMENT:

The Union and the Employers recognize that rapidly escalating health care costs, including the costs of medically unnecessary services and inappropriate treatment, have a detrimental impact on the health benefit program. The Union and the Employers agree that a solution to this mutual problem requires the cooperation of both parties, at all levels, to control costs and to work with the health care community to provide quality health care at reasonable costs. The Union and the Employers are, therefore, committed to fully support appropriate programs designed to accomplish that objective. This

statement of purpose in no way implies a reduction in benefits or additional costs for covered services provided miners, pensioners and their families.

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Article III. A. (8) of the Employer Benefit Plan provides in pertinent part:

(8) Co-Payments and Deductibles

Effective January 1, 1994, the benefits provided in this Plan shall be subject to the co-payments and deductibles set forth below and such co-payments and deductibles shall be the responsibility of the Beneficiary. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments and deductibles. . . .

* * * * *

Co-payments for covered Health Benefits are established below. Co-payments for services or supplies subject to a deductible only apply after the deductible has been met in full for the year.

Participating Provider Lists (PPLs) implemented by the Employer pursuant to Article IV may include participating hospitals, physicians, pharmacies and other providers. The Plan payment for hospitals and related benefits provided from a non-PPL source will be limited to 90% of the amount that would have been paid by the Plan if the benefit had been provided by a provider on a PPL (or actual charges, if less). . . . In any case where a non-PPL provider is treated as being within the PPL, pursuant to the provisions of Article IV C., the Beneficiary will be responsible for the deductible and co-payment that would apply to a PPL service. . . .

Physician Office Visits:

- In PPL: \$10.00 per office visit (up to an annual maximum of \$200 per family)
- Non-PPL: \$15.00 per office visit

Hospital and Related Charges:

- In PPL: No Co-payment
- Non-PPL: Balance of charges after Plan pays 90% of the PPL rate for covered services from a non-PPL source.

Prescription Drugs (Co-pays do not apply to out-of-pocket maximum):

In PPL: \$4.50 per prescription¹

Non-PPL: \$9.00 per prescription¹

Mail Order: No co-payment

Article IV A. (1) provides:

Article IV Managed Care, Cost Containment

A. (1) Effective six months after the Effective Date of the 1993 NBCWA, the employer may adopt Participating Provider Lists (PPLs) of physicians, hospitals, pharmacies and other providers, subject to the requirements set forth in C., below.

Article IV C. 12. further provides:

ARTICLE IV MANAGED CARE, COST CONTAINMENT

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C. The following requirements apply to a PPL implemented under this Plan:

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12. Beneficiaries Outside PPL Area -- A Beneficiary who lives outside an area served by the PPL shall be permitted to utilize non-PPL providers without incurring additional deductibles and co-payments. For purposes of determining the Beneficiary's deductibles and co-payments, utilization of such non-PPL providers shall be considered to be within the PPL.

Discussion

¹ Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

The Complainants' representative contends that the Respondent must implement a PPL program. Article XX (10) of the 1993 Wage Agreement and Article IV of the Employer Benefit Plan set forth managed care and cost containment objectives designed to provide quality care for employees at reasonable cost to the employer. The 1993 Wage Agreement states that "the Employer may implement Participating Provider Lists. . . ." Under the terms of the Wage Agreement and the Employer Benefit Plan, a PPL is a cost containment program that an employer is allowed, but not required, to implement.

Article III. A. (8) of the Employer Benefit Plan provides that certain benefits provided under the Plan shall be subject to co-payments and deductibles. The Beneficiary is responsible for a co-payment of \$10 (in PPL) or \$15 (non-PPL) for office visits and \$4.50 (in PPL) or \$9.00 (non-PPL) for prescription drugs. Under the terms of the Plan, the Beneficiary only pays \$200 in co-payments for in-PPL office visits. There is no co-payment for hospitalization and related services from an in-PPL source, but the beneficiary is responsible for the balance of charges after the Plan pays 90 percent of the PPL rate for a service from a non-PPL source.

Article III A. (8) also provides that "[t]he Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments and deductibles." The in-PPL and non-PPL schedules for co-payments and deductibles encourage employees to use the services of providers who are members of the PPL, which essentially helps to lower the employer's cost for providing health coverage. According to Article XX (12) of the 1993 Wage Agreement, the managed care and cost containment objectives of the PPL program were not intended as "a reduction in benefits or additional costs for covered services provided miners, pensioners and their families." If an employer does not establish a PPL, it should implement procedures that allow beneficiaries of its benefit plan to pay the in-PPL co-payments and deductibles. Otherwise, the beneficiaries of a benefit plan that does not have a PPL program will be subject to additional costs through higher copayments and deductibles.

Supporting this position, that the beneficiaries should pay the lower co-payments and deductibles, Article IV C. 12. of the Employer Benefit Plan provides that if an employer establishes a PPL and if a beneficiary lives outside the area served by the PPL, the beneficiary's co-payments and deductibles for non-PPL providers shall be deemed within the PPL. This provision also appears in the 1993 Wage Agreement.

The Complainants' representative states that the Respondent's claim processing procedures requires that Employees pay for medical services and then seek reimbursement. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the Beneficiary is expected to authorize the provider to bill the insurance carrier for services rendered and pay only the co-payment set forth in Article III A. (8) until the specified

maximum annual amount is reached. The procedure for claims handling and the method of payment established by the Respondent as described by the Complainants' representative is

inconsistent with the claims procedure contemplated under the terms of the 1993 Wage Agreement and the Employer Benefit Plan.

Opinion of the Trustees

The Respondent is allowed, but is not required, to implement a PPL program. In the absence of a PPL, the Complainants' co-payments and deductibles when utilizing non-PPL providers shall be considered to be within a PPL. The Respondent's procedure for claims handling and its method of payment as described by the Complainants' representative is inconsistent with the claims procedure contemplated under the terms of the Employer Benefit Plan and the 1993 Wage Agreement.