
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 98-048 – February 9, 2005

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, 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 Complainant is actively employed by the Respondent, a signatory employer. In March 2000, the Complainant's spouse underwent a mastectomy for breast cancer. In November 2001, the Complainant's spouse ordered a bra and prosthesis from a medical supply provider. The charge for the bra (\$172.80) and prosthesis (\$345.60) totaled \$518.40 and was submitted to the Respondent's insurance carrier, Highmark Blue Cross Blue Shield (Highmark). According to the Explanation of Benefit (EOB) statement from Highmark, the covered benefit amount or allowance for the bra was \$139.96 and \$262.25 for the prosthesis, for a total of \$402.21. The EOB also indicates that the Complainant's spouse owes the provider \$0.00. Subsequently, the provider billed the Complainant's spouse \$116.19 for the amount not paid by Highmark. The Complainant's spouse states that she had previously purchased an identical bra and prosthesis from the same medical supply provider and was not billed by the provider for the balance.

According to the Respondent, Highmark advised the medical supply provider that since they were a participating provider they should accept the allowance paid on the claim. The provider responded to Highmark that the prosthesis and bra ordered were higher quality items than the prosthesis and bra covered by the Plan and that the Complainant's spouse owed the difference between the allowance and the charge. Highmark contacted the provider at least five times to request a bill which showed that the prosthesis purchased was a higher quality item. The provider failed to submit the information requested.

The Complainant has requested that the Respondent apply the hold harmless provision under the Employer Benefit Plan to the balance due on the medical supply order.

Dispute

Is the Respondent required to apply the hold harmless provision to the balance due on the Complainant's spouse's medical supply order?

Positions of the Parties

Position of the Complainant: The Respondent is required to apply the hold harmless provision to the balance due on the Complainant's spouse's medical supply order because the balance due is an excessive charge.

Position of the Respondent: The Respondent is not required to apply the hold harmless provision to the balance due on the Complainant's spouse's medical supply order because the prosthesis and bra were higher quality items compared to the items covered by the Company Plan, which would have adequately served the purpose. Therefore, the Complainant is responsible for the balance due.

Pertinent Provisions

Article III. A. (7) (a) 2. of the Employer Benefit Plan states:

(7) Other Benefits

(a) Orthopedic and Prosthetic Devices

Benefits are provided for orthopedic and prosthetic devices prescribed by a physician when medically necessary.

The following types of equipment are covered:

* * *

2. Prosthesis following breast removal.

* * *

Article III. A. (10)(h) 2. of the Employer Benefit Plan states:

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. The "hold harmless" protections available under this subparagraph do not apply until the deductible is met in full for the year and shall not apply in the case of any service or supply obtained from a non-PPL source until the PPL out-of-pocket maximum is reached.

Article III. A. (11)(a) 12. of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

12. Excessive charges.

Discussion

Article III. A. (7) (a) 1. of the Employer Benefit Plan establishes that benefits are provided for a prosthesis following breast removal.

In November 2001, the Complainant's spouse purchased a bra and prosthesis and was billed for the difference between the allowance and the charge. The provider informed Highmark that the prosthesis purchased was a higher quality item than the item covered by the Plan. Although Highmark requested that the provider submit documentation to support its claim, the provider failed to submit any documentation.

The Complainant has requested that the Respondent hold him harmless for the difference between the allowance and the charge. Under Article III A. (10)(g) of the Employer Benefit Plan, the Plan Administrator may determine whether or not a charge for a covered medical service exceeds the reasonable and customary charge for that service in the area where the service is provided. If a charge for a covered service is determined to be excessive, the Plan Administrator shall attempt to resolve the matter or defend the Employee against a provider who seeks to collect such a charge. Whether the Employer negotiates a resolution or defends a legal

action, the Employee would not be responsible for covered expenses in connection with the excessive fee claim. Article III A. (10)(g) is known as the Plan's "hold harmless" provision. In addition, the hold harmless protections do not apply until the deductible is met in full for the year. For services obtained from a non-PPL source, the hold harmless provision does not apply until the non-PPL out-of-pocket maximum is reached.

The Trustees conclude that without sufficient documentation to establish that the prosthesis was an upgrade, the balance due is considered an excessive charge, and the Complainant should continue to be held harmless from any attempts by the provider to collect payment for the covered services.

Opinion of the Trustees

Absent sufficient proof that the prosthesis was an upgrade, the Respondent is required to continue to hold the Complainant harmless and defend the Complainant from any attempts by the provider to collect payment for covered services.