
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: CA-001- November 13, 2002

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson,
and Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for skilled nursing facility care under the terms of the Coal Act Employer Benefit Plan.

Background Facts

On May 17, 1993, the Pensioner was admitted to the hospital suffering from malnutrition and dehydration and possible Parkinson's disease. During the admission, a nasogastric tube was inserted to augment his food intake and reverse his weight loss. Prior to his transfer to the Continuing Care Unit on May 24, 1993, it was decided that he was afflicted with progressive supranuclear palsy, not Parkinson's disease.

On August 16, 1993, he was discharged to a Skilled Nursing Facility (SNF) where he remained until September 1, 1994. He was seen in consultation for chronic throat irritation and episodes of nausea and vomiting. It was recommended that a gastrostomy tube be inserted since the supplemental feedings would be required for a lengthy period. He was admitted to the hospital for surgical insertion of the gastrostomy feeding tube on October 8, 1993. He remained overnight and returned to the SNF the following day.

Throughout his stay in the SNF, he received nightly tube feedings with pump assistance. During the day, he was encouraged to eat a soft diet but rarely consumed more than 50-75%. He required assistance with nearly all "Activities of Daily Living" (ADLs) due in part to his weakened condition, his uncontrolled shaking and a lack of self-motivation. The gastrostomy site was cleaned frequently with hydrogen peroxide to prevent infection. The Pensioner's care in the SNF changed only minimally throughout his stay.

The Continuing Care Unit and SNF are approved under the Federal Medicare program and Medicare benefits were provided until exhausted on September 1, 1993. The Employer's carrier provided benefits for the months of September and October 1993 and made payment on December 14, 1993. In early March 1994 the SNF submitted its billings for November and December 1993 and January and February 1994. Following a request to the SNF on March 22, 1994 for medical records, the Employer's carrier notified the SNF, on May 29, 1994 that benefits

would be provided for the identifiable medical expenses for this period but denied room and board charges as custodial care. Further, the Employer advised the SNF that benefits should not have been provided for the September and October 1993 room and board charges and requested a refund of the erroneous payment.

The Pensioner qualifies as a Coal Act retiree. The terms of applicable provisions of the Coal Act Employer Benefit Plan are identical to those of the 1988 Employer Benefit Plan, under which it was initially reviewed.

Dispute

Is the Employer responsible for the room and board charges incurred by the Pensioner from September 1, 1993 through September 1, 1994?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the room and board charges because skilled nursing care was required.

Position of the Employer: The Employer is not required to provide benefits for room and board charges because the care was custodial.

Pertinent Provisions

Article III A. (5) (a) of the Coal Act Employer Benefit Plan states:

(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 facility 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 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 direct 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. (11) (a) 8. of the Coal Act 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:

* * * * *

8. Custodial care, convalescent or rest cures.

Discussion

Under Article III. A. (5) of the Coal Act Employer Benefit Plan, benefits are provided for care in a skilled nursing facility only if the facility is a licensed skilled care facility approved under the Federal Medicare program and if skilled nursing care is required by the patient. Benefits for custodial care are specifically excluded under Article III. A. (5) Exclusions, and (11) (a) 8.

Confinement in a skilled nursing facility is appropriate if it is necessary for a patient to receive skilled services on essentially a daily basis, and if, from a practical standpoint, the services can only be provided during an inpatient stay at a skilled nursing facility and not at a lower level of care. Skilled nursing care is generally considered to encompass those services that are reasonable and necessary for the treatment of an illness or injury and that must be performed by or under the direct supervision of specially qualified personnel, such as a licensed nurse or physical therapist, if the safety of the patient is to be assured and the medically desired result is to be achieved. According to the information submitted to the Funds, the Pensioner's nursing care needs consisted of gastrostomy tube feedings with pump assistance, bathing, dressing, periodic incontinence care, transfers, administration of oral medications, monitoring of vital signs and skin condition, weighing, and passive range of motion exercises.

A Funds' medical consultant has reviewed the information submitted in this case and has advised that the services the Pensioner received during the period in question do not comprise skilled nursing care; the medical evidence does not support a conclusion that would justify payment for skilled nursing care; the care requirements would be categorized as custodial in nature. Therefore, consistent with the provisions of the Coal Act Employee Benefit Plan, the Employer is not required to provide benefits for the room and board charges incurred by the Pensioner during his confinement in the skilled nursing facility from September 1, 1993 to September 1, 1994.

Opinion of the Trustees

Consistent with the provisions of the Coal Act Employee Benefit Plan, the Employer is not required to provide benefits for the room and board charges incurred by the Pensioner during his confinement in the skilled nursing facility from September 1, 1993 to September 1, 1994.