
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: CA-005 - October 24, 2001

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 benefits for air ambulance under the terms of the Coal Act Employer Benefit Plan.

Background Facts

The Pensioner, who lives in western Kentucky, had a history of cirrhosis (a hardening of liver tissue), esophageal and gastric varices (weakening of the wall of the veins in the esophagus and stomach that can lead to severe bleeding), and ascites (fluid accumulation in the abdomen which is often a complication of cirrhosis). On April 5, 1994, the Pensioner was admitted to a local hospital after an episode of acute bleeding in the upper gastro-intestinal tract, i.e., esophagus and stomach. The Pensioner states he was initially offered three options: watchful waiting, a surgical Transjugular Intraheptic Portosystemic Shunt (TIPS) procedure or a liver transplant.

At the request of the Pensioner's spouse, and because he had been under the care of a physician at the Mayo Clinic, Rochester, MN, for several years prior to admission, that physician was consulted regarding the immediate problem. The physician's opinion was that the Pensioner should be evaluated for a transcutaneous transhepatic intraportal systemic shunt. Shunt insertion, which can be accomplished by various surgical approaches, including a TIPS procedure or a transcutaneous transhepatic intraportal systemic shunt, reduces the pressure on the walls of the upper gastrointestinal veins.

On April 6, 1994, the Pensioner, who the medical documentation demonstrates was clinically stable, was transported via air ambulance to the Mayo Clinic. The Employer has provided benefits for the medical care rendered, that included placement of the shunt, but has denied benefits for the air ambulance charges. The Pensioner has since died. The Pensioner's widow has stated that the only remaining charges still in dispute are for air ambulance.

Dispute

Is the Employer required to provide benefits for the air ambulance for the Pensioner?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the air ambulance because it was medically necessary to use the out-of-town medical facility.

Position of the Employer: The Employer is not required to provide benefits for the air ambulance, because prior approval was not obtained, and the Pensioner did not need to travel to that distant facility for appropriate treatment of his condition.

Pertinent Provisions

The Introduction to Article III of the Coal Act Employer Benefit Plan states, in pertinent part:

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. (7) (e) of the Plan states:

(7) Other Benefits

(e) Ambulance and Other Transportation

Benefits are provided for ambulance transportation to or from a hospital, clinic, medical center, physician's office, or skilled nursing care facility, when considered medically necessary by a physician.

With prior approval from the Plan Administrator benefits will also be provided for other transportation subject to the following conditions:

1. If the needed medical care is not available near the Beneficiary's home and the Beneficiary must be taken to an out-of-area medical center.

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Opinion of the Trustees

The Trustees deadlocked on this matter. Trustees Holland and Hudson found for the Complainant. Trustees Dunham and Segal found for the Respondent. Under the ROD procedures adopted pursuant to the 1998 NBCWA, the matter was referred to a neutral interest arbitrator, Robert Nagle, for resolution. The arbitrator was directed to choose one of the two draft opinions proposed by the Trustees. The arbitrator's choice is printed below as the opinion of the Trustees.

Decision of the Arbitrator

The Employer is not required to provide benefits for the air ambulance charges in this case. The Employer is required to provide benefits for ground transportation to an appropriate medical center nearer the Pensioner's home.