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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-011- April 10, 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 benefits under the terms of the Coal Industry Retiree Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

On April 19, 1991, the Complainant was admitted to a long-term care facility following an acute care admission. The Complainant's diagnoses included closed head trauma with residual persistent vegetative state (PVS), periodic seizures, chronic bronchitis, and sacral decubitus. A tracheostomy and gastrostomy were performed to aid the Complainant's breathing, to facilitate ingestion of nourishment and to help in the administration of medications. Thus, the Complainant was generally non-responsive and unable to communicate.

Throughout the Complainant's confinement, he was unable to perform the activities of daily living. For example, the Complainant required gastrostomy tube feedings for ingestion of nourishment and medications; intermittent suctioning of the tube; and passive exercise to prevent contractures. The Complainant also required decubitus care, respiratory therapy, and bladder and bowel management.

The Respondent provided coverage for the Complainant's stay at the long term care facility until June 1, 1994. In October 1994, the Respondent's insurance carrier notified the Complainant's family that the Complainant had, in fact, been receiving custodial care since June 1, 1994, and that custodial care was not covered under the Respondent's Employer Benefit Plan. Therefore, effective June 1, 1994, coverage for the Complainant's care was denied. The Complainant remained in the long term care facility until his death on August 21, 1995.

Dispute

Is the Employer required to provide benefits for the Pensioner's confinement in a long term care facility from June 1, 1994, through August 21, 1995?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide benefits coverage for the Complainant's confinement in a long term care facility from June 1, 1994, through August 21, 1995, because the care provided was medically necessary.

Position of the Respondent: The Respondent is not required to provide benefits for the Complainant's confinement in a long term care facility from June 1, 1994, through August 21, 1995, because the care provided was custodial and thus excluded from coverage under the Employer Benefit Plan.

Pertinent Provisions

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

for Covered services shall be limited to those services which are reasonable and necessary 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 this 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.

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Article III A. (5) (a) of the Employer Benefit Plan states, in pertinent part:

ARTICLE III BENEFITS

A. Health Benefits

(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<sup>1</sup> is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

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

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.

Article III A. (11) (a) 8. 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:

8. Custodial care, convalescent or rest cures.

Discussion

The Introduction to Article III of the Coal Act Employer Benefit Plan limits covered services to those that are medically necessary for the diagnosis or treatment of an illness or injury and that are provided at the appropriate level of care. Article III A. (5) (a) of the Coal Act Employer Benefit Plan provides benefits for medically necessary care in a Skilled Nursing Facility. Article III A. (11) (a) 8. of the Coal Act Employer Benefit Plan excludes benefits for custodial 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 which must be performed by or under the direct supervision of a licensed nurse if the safety of the patient is to be assured and the

medically desired result is to be achieved. Custodial care is a lower level of care and constitutes services that assist an individual to meet the activities of daily living (i.e., personal care, feeding, toileting, etc.).

According to the information submitted in this case, from June 1, 1994, through August 21, 1995, the Complainant remained in a vegetative state. The care provided the Complainant included bladder and bowel management, decubitus care, tracheostomy suctioning, passive exercises, gastrostomy tube feedings, medication administration, and respiratory therapy. A Funds' medical consultant has reviewed the medical documentation submitted and concluded that although the Complainant required constant care, the Complainant did not require skilled nursing care as defined by Article III A. (5) (a) of the Coal Act Employer Benefit Plan during the period in question. Therefore, the Respondent is not required to provide benefits for the Complainant's long term care from June 1, 1994, through August 21, 1995.

Opinion of the Trustees

Consistent with the Article III A. (5) (a) of the Coal Act Employer Benefit Plan, the Respondent is not required to provide benefits for the Pensioner's long term care from June 1, 1994, through August 21, 1995.

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