OPINION OF TRUSTEES

In Re

Complainants: Pensioners
Respondent: Employer
ROD Case No: CA-040 – September 17, 2003

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 Health Benefits Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Complainants are Pensioners who are eligible to receive health benefits coverage from the Respondent. The representative for the Complainants claims that the Benefit Plan implemented by the Respondent does not provide health benefits coverage at the level prescribed by the terms of the Coal Act Employer Benefit Plan. Specifically, the Complainants' representative states that the Complainants' medical claims have not been paid in full because the Respondent has determined that the charges are excessive, but the Respondent has refused to hold the Complainants "harmless" for the excessive charges. As a result, the Complainants' bills have been turned over for collection. In addition, the Complainants' representative states that the Respondent does not pay the medical claims in a timely manner.

The Respondent states that charges for covered benefits that exceed reasonable and customary amounts are excluded from coverage under the Employer Benefit Plan and cites ROD 29 as support for its position. The Respondent states that it pays medical claims at the Health Insurance Association of America (HIAA) 85th percentile. The Respondent also states that many outstanding claims result from the Complainants' inadequate documentation of claims and failure to provide additional documentation when requested. Finally, the Respondent notes that Medicare eligible retirees should submit the medical claims first to Medicare and then to the Respondent. The Respondent states that documentation concerning the medical claims in question does not indicate that Medicare was billed first.

Dispute

Is the Respondent providing health benefits coverage for the Complainants as required by the Coal Act Employer Benefit Plan?

Positions of the Parties

Position of the Complainants: The Respondent is required to apply the "hold harmless" provisions of Article III. A. (10) (g) when medical charges exceed the reasonable and customary amounts for covered services. The Respondent is also required to pay in a timely manner the covered medical expenses incurred by the Complainants.

Position of the Respondent: The Respondent is not required to provide coverage under the Coal Act Employer Benefit Plan for charges that exceed the reasonable and customary amounts for services. The Respondent states its position is supported by the Trustees' decision in ROD 29. The Complainants' medical claims should be submitted to Medicare before being submitted to the Respondent's insurance carrier.

Pertinent Provisions

Article III. A. (10) (g) 1. and 3. of the Coal Act Employer Benefit Plan provide:

ARTICLE III BENEFITS

A. Health Benefits

(10) General Provisions

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

1. Each Beneficiary shall receive an explanation of billing and payment rendered on behalf of such Beneficiary. Should full payment for a service be denied because of a charge that has been determined by the Plan Administrator to be in excess of the reasonable and customary charge, a copy of such EOB shall be forwarded to the UMWA (International Headquarters, Attention: Benefits Department).

* * *

3. 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.

Article IV. B. of the Coal Act Employer Benefit Plan provides:

ARTICLE IV MANAGED CARE, COST CONTAINMENT

B. In addition, the Employer may implement certain other managed care and cost containment rules, which may apply to benefits provided both by PPL providers and by non-PPL sources but which (except for the co-payments specifically provided for in the Plan) will not result in a reduction of benefits or additional costs for covered services provided under the Plan.

Discussion

In accordance with Article III A. (10)(g) of the Coal Act 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 the charge for a covered service is not excessive, the Employer is responsible for payment of the charge under the terms of the Employer Benefit Plan. If a charge for a covered service is determined to be excessive, the Plan Administrator shall attempt to resolve the matter or defend the Pensioner against a provider who seeks to collect such a charge. Whether the Employer negotiates a resolution or defends a legal action, the Pensioner would 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. Article III A. (10)(g) 3. is known as the Plan's "hold harmless" provision. Additionally, pursuant to Article IV B. of the Coal Act Employer Benefit Plan, no reduction of benefits or additional costs for covered services shall be suffered by beneficiaries.

In this case, the Respondent has paid claims at the HIAA 85th percentile and denied coverage for charges that exceed the maximum allowable payment. The collection notices for payment of the balance due indicate that the provider has attempted to collect these excessive charges from the Complainants. The Complainants have requested that the Respondent initiate hold harmless procedures; therefore, the Respondent is required to follow the "hold harmless" provision of Article III A. (10) (g) of the Coal Act Employer Benefit Plan.

The Respondent cited ROD 29 to support its position. In ROD 29, the Trustees found that the Employer was not required to provide coverage for charges which are deemed to be excessive. ROD 29 was examined under the 1978 National Bituminous Coal Wage Agreement (Wage Agreement) which did not contain the "hold harmless" provision. However, the 1984 Wage Agreement was amended to include the "hold harmless" provision. Consequently, ROD 29 did not address the "hold harmless" provision found under subsequent Wage Agreements. In later opinions (see RODs 84-412 and 88-625) which address the "hold harmless" provision under Article III A. (10) (g) of the Employer Benefit Plan, the Trustees found that the "hold harmless" provision must be followed by the Employer when a charge had been determined to be either excessive or for services not medically necessary.

The Complainants state that the Respondent does not pay the medical claims in a timely manner. Although the Coal Act Employer Benefit Plan does not specify a time period for processing and payment of medical claims, a reasonable payment period may be inferred. Industry practice and the requirements imposed by a majority of states that specify a time period suggest that a reasonable range for the processing and payment of a claim that includes all documentation necessary for processing is 15 to 60 days (see RODS 88-492 and 88-633). The Respondent alleges that claims not paid within a timely manner result from the Complainants not submitting adequate documentation to process the claim or because the claim was not submitted to Medicare first. The Respondent's insurance carrier provided information on a sampling of the claims sent in by the Pensioners. Once the insurance carrier received the claims, the claims were paid within an 11 day period. Thus, the time period for review and payment of the sample claims by the Respondent's insurance carrier was not beyond a period of 15 to 60 days.

Opinion of the Trustees

The Respondent is required to follow the "hold harmless" provision of Article III. A. (10)(g) of the Plan when a charge has been determined to be either excessive or for services not medically necessary.