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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-062 – April 14, 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 Coal Industry Retiree Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Complainant, who is eligible for health benefits coverage as a Pensioner under the Coal Act Employer Benefit Plan, has raised two issues concerning his health benefits coverage administered by the Respondent. The first issue is whether the Complainant is required to pay a co-payment for laboratory and x-ray services, ambulance travel and physical therapy under the Coal Act Employer Benefit Plan. According to a representative for the Respondent's insurance carrier, the Complainant is required to pay a \$5.00 co-payment for all services except for in-patient hospital stays. A \$5.00 co-payment is also required for a physician's visit in the hospital.

The second issue raised by the Complainant concerns coverage for underpads for the Complainant's 36-year-old disabled son who is bedridden. According to a letter from the physician of the Complainant's son, underpads are medically necessary to prevent bedsores. The Respondent provided coverage for the underpads when the Complainant's son received them through a home health care agency. However, effective October 2000, the home health care agency stopped providing underpads, and the Complainant then began purchasing underpads from a medical supply company. The Respondent denied payment for the underpads purchased from the medical supply company stating that only underpads supplied through a home health care agency are covered under the Plan. Since August 2001, the Respondent has provided coverage for underpads supplied through a home health care agency. However, the Complainant states that because the underpads provided by the home health care agency are of a poor quality he purchases one box of higher quality underpads each month from the medical supply company. The Complainant states that the underpads are a covered benefit and that the Respondent should reimburse him for the cost of the underpads that he has had to purchase since October 2000.

Dispute

Does the Respondent's health plan comply with the terms of the Coal Act Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent's health plan is not in compliance with the Coal Act Employer Benefit Plan because a co-payment for x-ray, laboratory and ambulance services or physical therapy is not required under the Coal Act Employer Benefit Plan. Furthermore, underpads are a covered benefit under the Employer Benefit Plan whether they are purchased through a home health agency or over the counter.

Position of the Respondent: The Respondent has interpreted the Coal Act Employer Benefit Plan correctly, and the insurance carrier is administering it correctly.

Pertinent Provisions

The Introduction to Article III of the 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. (2) (c) of the Coal Act Employer Benefit Plan provides:

A. Health Benefits

(2) Outpatient Hospital Benefits

(c) Laboratory Tests and X-rays

Benefits are provided for laboratory tests and x-ray services performed in the outpatient department of a hospital which provides such services and when they have been ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Article III A. (3) indicates that benefits are provided in part for:

(h) Home, Clinic, and Office Visits

Benefits are provided for services rendered to a Beneficiary at home, in a clinic (including the outpatient department of a hospital) or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

\* \* \*

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Such benefits will not cover laboratory tests and x-rays ordered in connection with a routine physical examination, unless the examination is considered medically necessary by a physician.

Article III. A. (6) of the Employer Benefit Plan states in pertinent part:

(6) Home Health Services & Equipment

(b) Physical and Speech Therapy

Benefits are provided for physical and speech therapy services at home when prescribed by a physician to restore functions lost or reduced by illness or injury. Such services must be performed by qualified personnel. When the Beneficiary has reached his or her restoration potential, the services required to maintain this level do not constitute covered care.

\* \* \*

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Article III A. (7) provides in pertinent part:

(7) Other Benefits

\* \* \*

(b) Physical Therapy

Benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. Such therapy must be prescribed and supervised by a physician and administered by a licensed therapist. The physical therapy treatment must be justified on the basis of diagnosis, medical recommendation and attainment of maximum restoration.

\* \* \*

(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.
2. If the Beneficiary requires frequent transportation between the Beneficiary's home and a hospital or clinic for such types of treatment as radiation or physical therapy or other special treatment which would otherwise require hospitalization, benefits will be provided for such transportation only when the Beneficiary cannot receive the needed care without such transportation.
3. If the Beneficiary requires an escort during transportation, the attending physician must submit satisfactory evidence as to why the Beneficiary needs an escort.

Article III A. (8) of the Coal Act Employer Benefit Plan provides in pertinent part:

A. Health Benefits

(8) Co-payments and Deductibles

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the Beneficiary. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments. Beneficiaries and providers shall provide such information as the Plan Administrator may require to effectively administer these co-payments, or such Beneficiaries or providers shall not be eligible for benefits or payments under this Plan. Any overpayment to a provider who overcharges the Plan in lieu of collecting the applicable co-payment from a participant or beneficiary shall be repaid to the Plan Administrator by such provider.

Co-payments for covered Health Benefits are established as follows:

Benefit	Co-Payment
(a) Physician services as an outpatient as set forth in section A(2) and physician visits in connection with the benefits set forth in section A(3), paragraph (c) but only for pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and section A(7) paragraph (f).	\$5.00 per visit up to a maximum of \$100 per 12-month period per family.
(b) Prescription drugs and insulin, as set forth in section A(4) and take-home drugs following hospital confinement as set forth in section (A)(1)(a).	\$5 per prescription or refill up to \$50 maximum per 12-month period per family. <u>Note:</u> For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

\* \* \*

Q&A 81-52 provides:

Control  
Number  
81-52

Subject: Copayment for Laboratory and X-ray Services

References: Amended 1950 & 1974 Benefit Plans & Trusts,  
Article III, Sections A (3) (j) and A (8) (a)

Other: 1981 Contract Q&A #50

Question:

Are laboratory and x-ray services subject to co-payment?

Example 1: An independent provider of laboratory and x-ray services is used by physicians. The provider bills the Plan on a fee-for-service basis. Are the provider's services subject to co-payment?

Example 2: An outpatient department of a hospital bills the Plan for an emergency room visit. Although not indicated on the claim, the bill includes both hospital (emergency room) services and the attending physician's visit. The radiologist who takes and interprets x-rays ordered by the attending physician bills the Plan separately. Are the radiologist's services subject to co-payment?

Answer:

No, the laboratory and x-ray services, including the diagnostic services of the clinical pathologists and radiologists, are not subject to co-payment.

Example 1: The laboratory and x-ray services are not subject to co-payment, but the visits to the physician who ordered the lab's services are subject to co-payment.

Example 2: The emergency room visit is subject to co-payment but the radiologist's services are not.

Article III A. (10) (b) of the Coal Act Employer Benefit Plan states:

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan. The Trustees of the UMWA 1992 Benefit Plan will resolve any disputes, including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1992 Benefit Plan.

Article IV A. and B. of the Coal Act Employer Benefit Plan states:

Article IV. Managed Care, Cost Containment

- A. The Employer may adopt Participating Provider Lists (PPL's) of physicians, hospitals, pharmacies and other providers, provided that any such PPL has been approved for adoption under the Employer's benefit plan maintained pursuant to Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 1993 ("1993 NBCWA"). The Employer may also implement a formulary for prescription drugs; implement a mail-order procedure for prescription drugs, including appropriate limits on quantity and periodic physician review; and subject the prescription drug program to a rigorous review of appropriate use.
- 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

The first issue raised is whether a co-payment is required for x-ray and laboratory services, ambulance travel and physical therapy. Article III A. (8) addresses generally the issue of co-payments under the Plan. It provides that a co-payment applies to physician services as an outpatient as set forth in Article III A. (2), and for physician visits when provided in connection with laboratory and x-ray services, among others, provided under Article III A. (3) of the Plan. Further, in Q & A 81-52, the Trustees specifically reviewed whether co-payments were required for laboratory and x-ray services. The Trustees found that laboratory and x-ray services including diagnostic services of the clinical pathologists and radiologists, are not subject to a co-payment. The Trustees further found that where a beneficiary is billed for an emergency room visit and is billed separately for the radiologist's services, the emergency room visit is subject to a co-payment (because of the attending physician's visit), but the radiologist's services are not.

The other services that the Complainant states that he should not have to pay a co-payment for are physical therapy and ambulance transportation (addressed under Article III A. (6)(b), Article III A. (7) (b), and Article III A. (7) (e)). Co-payments for services provided under these provisions are not required because they are not included under the co-payment provision.

The Respondent's requirement that a beneficiary pay a co-payment for all services except in-patient hospital services is not consistent with the Plan because Article III A. (8) limits the co-payment to specific provisions under Article III A. of the Coal Act Employer Benefit Plan. Consequently, the Respondent's administration of Article III A. (8) is not in compliance with the Coal Act Employer Benefit Plan.

Regarding the other issue raised by the Complainant, the Introduction of Article III of the Employer Benefit Plan states that covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury. Article III A. (6)(d) of the Coal Act Employer Benefit Plan states that benefits are provided for the purchase of medical equipment suitable for home use when determined by a physician to be medically necessary. Benefits are provided for medical supplies including, but not limited to, those necessary to maintain homebound or bedridden beneficiaries when determined to be medically necessary by a physician. Disposable sheets and pads, heating pads and supplies for home management of open or draining wounds are examples of covered medical supplies. See ROD 88-314.

The Respondent states that only underpads purchased through a home health care agency are covered under the Plan. Thus, the issue here is not whether the underpads are medically necessary, but whether the Coal Act Employer Benefit Plan limits where medical supplies covered under the Plan should be purchased. The Coal Act Employer Benefit Plan is silent concerning where to purchase medical supplies covered under Article III A. (6) (d).



Article IV A. of the Coal Act Employer Benefit Plan states that the Employer may adopt Participating Provider List (PPL's) of physician, hospitals, pharmacies and other providers, provided that any such PPL has been approved for adoption under the Employer's benefit plan maintained pursuant to Article XX (c) (3) (i) of the National Bituminous Coal Wage Agreement of 1993. In the absence of an approved PPL, the Respondent is required to reimburse the Complainant for the purchased underpads.

Opinion of the Trustees

The Respondent's administration of the co-payment provision is not in compliance with Article III A. (8) of the Coal Act Employer Benefit Plan. The Respondent is required to reimburse the Complainant for underpads purchased from a medical supply company since October 2000.