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OPINION OF TRUSTEES

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In Re

Complainant: Surviving Spouse  
Respondent: Employer  
ROD Case No: CA-070 - June 30, 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 Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Complainant, whose diagnoses included dementia and diabetes, resided in an assisted living facility for three years. On December 13, 1999, due to changes in the Complainant's behavior, she was admitted to a Medicare approved skilled nursing care facility that specializes in providing care to patients diagnosed with Alzheimer's.

Upon admission to the skilled nursing care facility, the Complainant's mental status began to decline rapidly. The Complainant had frequent episodes of agitation, anxiety and combativeness that were not well controlled with her medication. There were also changes in her physical status: she had difficulty walking, became incontinent of urine, and lost her appetite. During her almost five month stay at the facility, the Complainant fell 12 times and sustained a wide range of injuries.

On April 21, 2000, the Complainant was hospitalized for one day and then returned to the nursing facility. On April 22, 2000, the Complainant was in severe pain from prior falls and severe bruising. She required more intense pain management, which included injections of morphine. On April 24, 2000, the Complainant required insulin injections for the first time. The Complainant began to deteriorate medically with increasing dehydration and renal complications that required I.V. therapy on May 2, 2000. Level 2 ulcers also developed over the Complainant's coccyx. The Complainant died on May 7, 2000.

The Respondent has denied coverage for the Complainant's stay at the skilled nursing care facility.

Dispute

Is the Respondent required to provide coverage for the care the Complainant received in the skilled nursing care facility from December 13, 1999, through May 7, 2000?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide coverage for the Complainant's stay at the skilled nursing care facility from December 13, 1999, through May 7, 2000, because the services provided to the Complainant were medically necessary and consisted of skilled nursing services provided by or supervised by a registered nurse.

Position of the Respondent: The Respondent is not required to provide coverage for the Complainant's stay at the skilled nursing care facility from December 13, 1999, through May 7, 2000, because the care provided the Complainant was custodial care which is specifically excluded from coverage under the terms of the Employer Benefit Plan.

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<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:

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;

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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.

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:

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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. 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.).

A Funds' medical consultant has reviewed the medical documentation submitted and has noted that although the Complainant was not able to care for herself, the medical records do not mention or document that any skilled nursing services were provided to the Complainant from December 13, 1999, until her one day hospital stay on April 21, 2000. From April 22, 2000, until the Complainant's death on May 7, 2000, the medical consultant states that skilled nursing services were required for the following: 1) monitoring the Complainant's pain; 2) monitoring the Complainant's problem with fluid management; and 3) monitoring the treatment of the Complainant's diabetes. Therefore, the consultant concluded that the care required and delivered from December 13, 1999, to April 21, 2000, was not skilled nursing care and that the care required and delivered from April 22, 2000, to May 7, 2000, was skilled nursing care.

### 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 care the Complainant received from December 13, 1999, to April 21, 2000. The Respondent is required to provide coverage for the skilled nursing care the Complainant received from April 22, 2000, to May 7, 2000.