
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: CA-073 – March 15, 2006

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 has end stage renal disease. According to an undated statement from a physician, the Complainant needs to be transported by non-emergency transport to dialysis treatment because he has no other viable means of transportation, nor does he have any family members to assist with transportation. The physician also noted that the Complainant had other past medical problems including coronary artery disease, arthritis, anemia, and carcinoma of the prostate. A statement dated September 8, 2005, from another physician, indicates that it is unsafe for the Complainant to drive himself to and from dialysis treatments due to frequent hypotension and dizziness. The physician also states that due to dizziness and hypotension, the Complainant requires assistance with ambulation.

Since April 3, 2004, the Complainant has used a transportation service that offers minivans and wheelchair vans to transport him three-times a week from his home in West Virginia to dialysis treatment. The journey from the Complainant's home to the dialysis center is 58 miles one way, which costs \$174.00 per round trip.

The Respondent states that even though the Complainant contacted the transportation service without prior approval from the Plan Administrator and without establishing medical necessity, the Respondent does not dispute the need to transport the Complainant to dialysis. However, the Respondent states that the Complainant did not establish a need for medical care during transportation to and from dialysis. Therefore, the Respondent paid the claims based on the lowest-cost practical transportation, which is by automobile at \$.15 per mile. Consequently, the Complainant has been billed for the remaining balance.

Dispute

Is the Respondent required to provide coverage for the Complainant's transportation to and from dialysis by minivan or wheelchair van?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide coverage for the Complainant's travel expenses, which includes minivan or wheelchair van, because it is a benefit covered under the Employer Benefit Plan.

Position of the Respondent: The Respondent is not required to provide benefits for the Complainant's travel expenses because of the following reasons: 1) the Complainant did not document that he needed medical care during transportation which would necessitate transportation by ambulance; 2) the Complainant is transported by a minivan or wheelchair van; therefore, the Complainant could be transported by automobile; 3) the Complainant was reimbursed at \$.15 per mile, which is the automobile rate or the rate for the "lowest-cost practical transportation." The Respondent states that its position is supported in RODs 88-241 and 93-008.

Pertinent Provisions

Article III A. (7). (e) (2) 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:

* * *

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.

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Article III. A. (10) (g) 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

* * *

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.

Discussion

Article III A. (7) (e) of the Employer Benefit Plan provides benefits for transportation other than ambulance, with prior approval of the Plan Administrator, when a Beneficiary requires frequent transportation for treatment that would otherwise require hospitalization, and the care cannot be obtained without such transportation.

The Complainant requires renal dialysis three times each week to sustain his life and must be transported to the dialysis center to receive these treatments. One physician indicated that the Complainant needed non-emergency transport because he has no other means of transportation and does not have any family members to assist with transportation. Another physician indicated that it was unsafe for the Complainant to drive himself to dialysis because he experiences frequent hypotension and dizziness, and requires assistance with ambulation.

If a beneficiary requires frequent transportation between his home and a hospital or clinic, benefits for transportation expenses are limited to the cost of the least expensive, feasible form of transportation. See ROD 88-241. The Complainant in the current case uses a transportation service that transports him 116 miles round trip three times a week by minivan and charges \$174.00 for each round trip. The Respondent has provided reimbursement for mileage incurred by automobile at \$.15 per mile or \$17.40 per round trip, and the Complainant has been billed for the balance due.

The Respondent cited RODs 88-241 and 93-008 to support its position to limit payment of the Complainant's transportation claims to that of the use of a private automobile. In ROD 88-241, the Trustees determined that the reimbursement rate of \$.15 per mile for the use of the beneficiary's car was the beneficiary's least expensive, feasible form of transportation to and from dialysis. In ROD 93-008, a beneficiary was transported by ambulance to and from dialysis. Because medical necessity for the use of an ambulance was not established by the beneficiary, the beneficiary requested reimbursement for automobile mileage. The Employer refused the beneficiary's request, but the Trustees determined that the Employer was to reimburse the beneficiary at \$.15 per mile, which was the "current reimbursement rate" for use of a private automobile when ROD 93-008 was decided. The Funds' "current reimbursement rate" is \$.45 per mile, which is based on the IRS standard mileage rate.

More analogous to the present case is ROD 93-040. The beneficiary was transported three times a week to dialysis by ambulette (minivan) because the beneficiary was unable to drive herself to dialysis and there were no other family members or friends available to drive her. The Trustees found that in cases where transportation by private car is not a feasible option, it is Funds' policy to provide benefits for ambulette. For ambulette service in West Virginia, the Funds would currently reimburse this provider at the rate charged. In the current case as in ROD 93-040, the Complainant has no other means of transportation and transportation by private car is not feasible

because he does not have family members to assist with transportation. Therefore, the Respondent is required to provide benefits for the ambulette service at the rate charged by the provider.

Opinion of the Trustees

The Respondent is required to provide benefits for the Complainant's transportation service between the Complainant's home and dialysis center at the rate charged by the provider.