

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 138, November 24, 1980

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning health coverage for gastric bypass surgery and hereby render their opinion on the matter.

Background Facts

The Employee is a mineworker eligible for health benefit coverage under the Employer's Plan. The Employee is 5'11" and, according to the attending surgeon, "his most recent weight (as of April 28, 1980) is in the neighborhood of 500 lbs. His desirable weight would be 175 lbs." The Employee underwent gastric bypass surgery on April 17, 1980 as treatment for his morbid obesity.

On April 8, 1980, the Employee contacted the Employer to discuss the upcoming surgery, at which time he was referred to the insurance company administering the Employer's health benefit plan. The Employee was advised by a representative of the insurance company that he must obtain prior approval from the Plan Administrator for the surgery. It was, therefore, necessary for the attending surgeon to furnish the Plan Administrator with a letter stating the Employee's medical conditions which necessitated the surgery. The Employee allegedly obtained and sent such a letter to the insurance company; however, the insurance company denies receipt of the letter. Information from the physician's office indicates that such a letter was sent to the insurance company on April 10, 1980. On April 15, 1980 the Employee again contacted the insurance company and was informed that the physician's letter had not been received. The Employee underwent the surgery on April 17, 1980, as originally scheduled.

Approximately two weeks after surgery, the insurance company was provided with a letter from the physician (dated April 28, 1980) which stated the necessity of the surgery. According to information from the surgeon's office, this was the second letter concerning the Employee which was sent to the insurance company.

The charges associated with the surgery were denied by the insurance company on the grounds that authorization from the Plan Administrator had not been obtained by the Employee prior to the gastric bypass surgery.

Dispute

Is the Employer responsible for the payment of charges incurred by the Employee as a result of gastric bypass surgery?

Position of Parties

Employee's Position: The Employer is responsible for payment of the incurred medical charges. The insurance company was supplied with two letters from the physician stating the medical necessity of the surgery.

Employer's Position: According to Article III, A(3)(f) of the Employer's Plan, benefits are not provided for certain surgical services, such as gastric bypass surgery for obesity, without the prior approval of the Plan Administrator. This policy is outlined again in the 1978 Contract Question and Answer Number 38. The Employee failed to obtain such prior approval from the Plan Administrator. The physician's report was not received by the insurance company until after the surgery had already been performed. Therefore, the Employee did not comply with the provisions of the Plan, and, accordingly, was not entitled to medical benefits for such surgery.

Pertinent Provisions

- Article III, Section A(3)(f) of the Employer's Plan states the following:

Benefits are not provided for certain surgical services without prior approval of the Plan Administrator. Such surgical procedures include, but are not limited to, the following:
 - Plastic surgery, including mammoplasty
 - Reduction mammoplasty
 - Intestinal bypass for obesity
 - Gastric bypass for obesity
 - Cerebellar implants
 - Dorsal stimulator implants
 - Prosthesis for cleft palate if not covered by crippled children services
 - Organ transplants

- 1978 Contract Question and Answer No. 38, approved by the Trustees on June 27, 1979 states the following:

Subject: Obesity

Question:

1. a) Under Article III, Section A(3)(h) the benefits are limited to services "for treatment of illnesses or injuries, if provided by a physician". In this context, is the treatment of obesity, where no other pathology exists (e.g., hypertension, cardiovascular disease, diabetes), a covered benefit?
- b) Under what conditions are benefits provided for the surgical treatment of obesity?

Answer:

1. a) Yes, if the diagnosis signifies pathological, morbid form of severe obesity, i.e., 200% or more of the desirable weight. Beneficiaries eligible for obesity benefits at the onset of treatment are eligible for such benefits until they reach their desirable weight.
- b) Benefits are not provided for surgical treatment of obesity unless all of the following conditions are met:
 - 1) The beneficiary's condition meets the above definition of obesity;
 - 2) other, more conservative therapies have been tried and proven unsuccessful; and
 - 3) authorization has been obtained from the Plan Administrator.

Discussion

Contract Q & A 38 lists three requirements that a beneficiary must meet in order to receive benefits for surgical treatment of obesity: (1) the Employee's diagnosis must signify a pathological form of obesity, (2) more conservative therapies must have been tried and proven unsuccessful, and (3) authorization must have been obtained from the Plan Administrator. Information supplied by the miner's physician indicates the Employee meets the first two requirements. The only question is whether the Employee meets the third requirement of authorization from the Plan Administrator.

The purpose of the "prior authorization" requirement is to insure that benefits are paid only for surgery that is medically necessary. It is the practice of the Funds to permit approval prior to payment of benefits or prior to the performance of surgery if the surgery is determined to be medically necessary.

In the instant case, the Employer's Plan does not specify what steps an Employee should follow to obtain prior authorization for this surgical procedure. The Employee contacted the Plan

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Administration eight days prior to surgery and, according to the records of the Employee's doctor, sent the required information to the Plan Administration prior to surgery. When he did not receive a response, the Employee again contacted the Plan Administrator two days before surgery. After he was informed that the doctor's letter had not been received, the Employee had another letter sent soon after surgery.

Since the Employee's doctor attempted to inform the Plan Administrator prior to surgery and the surgery was medically necessary, authorization for benefits should be granted.

Opinion of the Trustees

Based on the facts stated above, the Trustees are of the opinion that the Employer is responsible for payment of charges incurred by the employee as a result of gastric bypass surgery in this case.