

OPINION OF TRUSTEES

---

In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 168, November 25, 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 benefits under the Employer's Plan. The Employee's spouse, also an eligible beneficiary under the Employer's Plan, underwent gastric bypass surgery on February 8, 1980, as treatment for morbid obesity.

According to a report in the file from the surgeon, the patient, aged 36, had been overweight most of her life, weighed 232 pounds at the time of surgery (ideal weight - 110 lbs.), and was suffering from hypertension and depression. Further medical evidence in the file reveals that the patient had been under treatment on diet program since as far back as 1971 without significant or lasting success.

The first recorded notice to the Employer's Plan covering the surgery occurred by phone call from the attending surgeon to the Insurance Carrier on March 20 1980. Subsequently, full written documentation was supplied to the Carrier by the surgeon.

Dispute

Is the Employer responsible for payment of the 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 medical necessity has been detailed, as was the prior history of unsuccessful weight control through other means over many years.

Employer's Position: In accordance with Article III, Section A(3)(f) of the Employer's Plan and 1978 Contract Q&A #38, the Employer has denied benefits based upon the lack of evidence that prior approval was obtained.

---

Applicable Regulations

o Article III, Section A (3)(f) of the Employer's Plan provides:

"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

o 1978 Contract Q&A #38 states:

Subject: Obesity

Question:

1. a) Under the Article III, Section A (3)(h) the benefits are limited to services "for the 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 desirable weight. Beneficiaries eligible for obesity benefits at the onset of treatment are eligible for such benefits until they reach 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 diagnosis must signify a pathological form of obesity, (2) more conservative therapies must have been attempted without success, and (3) authorization must have been obtained from the Plan Administrator. Information in the form of letters and medical reports has been supplied by several physicians indicating the patient meets the first two requirements.

As to the third requirement there is no evidence that the Employer was contacted prior to the surgery. Rather, the first reference to a contact with the Employer is a letter to the attending surgeon from the Insurance Carrier confirming a telephone conversation of March 20, 1980, approximately six weeks following surgery. The letter, undated, describes the criteria governing surgical treatment of obesity and invites the physician to send medical documentation.

Since prior approval of the Plan Administrator had not been obtained, as required, the gastric bypass surgery is not covered under the terms of the Employer's Plan.

---

Opinion of the Trustees

The Trustees are of the opinion that the Employer is not responsible for payment of charges incurred by the Employee as a result of gastric bypass surgery.