

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-439 - September 21, 1987

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 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 the provision of health benefits for oral surgery and hospitalization under the terms of the Employer Benefit Plan.

Background Facts

An oral surgeon diagnosed the Employee's dependent daughter as having a developmental jaw deformity and maxillary deficiency. A total maxillary osteotomy and rigid fixation were performed in the hospital on December 23, 1986 under general anesthesia. This surgical procedure repositioned the upper jaw so that it would better articulate with the lower jaw, thereby improving mastication and speech and establishing lip competence.

The claim was considered for coverage under the Employer Benefit Plan, and payment was denied for the surgical procedure and the associated anesthesia and hospitalization charges. The Employer states that the Employee originally requested prior approval for the procedure and associated hospitalization in May 1985, and that it refused to grant prior approval and notified both the Employee and the oral surgeon that neither the surgery nor the hospitalization would be covered under the Employer Benefit Plan. The Employer also states that the Employee did not request separate pre-authorization for the December 1986 surgery or hospitalization.

The Employee states that the Employer and its insurance carrier have been inconsistent in their coverage of orthognathic surgery. The Employee cites cases of two other Employees' children undergoing surgery similar to his daughter's in which he states he believes the insurance carrier paid benefits for the surgery and the hospitalization. The Employee believes his child's surgery and hospitalization should also be covered.

The Employer states that, in the one case cited in which the Employee is employed by it, the insurance carrier mistakenly paid benefits for the oral surgery five years ago. In the other case

cited, which involved an employee who was not employed by it, the Employer states that it has no knowledge of and cannot comment upon benefit payments by other employers.

### Dispute

Is the Employer responsible for the provision of health benefits coverage for the Employee's son's oral surgery and hospitalization?

### Position of the Parties

Position of the Employee: The Employer is responsible for the provision of health benefits for the Employee's daughter's oral surgery and hospitalization because it is medically necessary and a covered benefit under the Employer Benefit Plan. The Employee states that this kind of surgery and associated hospitalization have been covered under the Plan in the past and, therefore, should be covered in this case.

Position of the Employer: The Employer is not responsible for the provision of health benefits for the Employee's daughter's oral surgery because it is not one of the covered oral surgical procedures under Article III. A. (3)(e), and it is not responsible for the provision of health benefits coverage for the Employee's daughter's hospitalization because it is not a covered benefit under III. A. (1)(g) of the Employer Benefit Plan. The Employer's insurance carrier may have paid erroneously for such services in the past, but the Employer cannot be responsible for paying for a non-covered benefit just because it was incorrectly paid for in the past. In addition, the Employee and the physician were notified in advance of the performance of the surgery that neither the surgery nor the associated hospitalization would be covered under the benefit plan.

### Pertinent Provisions

Article III. A. (3)(e) of the Employer Benefit Plan states:

(e) Oral Surgery

Benefits are not provided for dental services. However, benefits are provided for the following limited oral surgical procedures if performed by a dental surgeon or general surgeon:

- Tumors of the jaw (maxilla and mandible)
- Fractures of the jaw, including reduction and wiring
- Fractures of the facial bones
- Frenulectomy when related only to ankyloglossia (tongue tie)
- Temporomandibular Joint Dysfunction, only when medically necessary and related to an oral orthopedic problem.
- Biopsy of the oral cavity
- Dental services required as the direct result of an accident

Article III. A. (1) (g) of the Employer Benefit Plan states:

(g) Oral Surgical/Dental Procedures

Benefits are provided for a beneficiary who is admitted to a hospital for the oral surgical procedures described in paragraph (3) (e) provided hospitalization is medically necessary.

Benefits are also provided for a beneficiary admitted to a hospital for dental procedures only if hospitalization is necessary due to a preexisting medical condition and prior approval is received from the Plan Administrator.

Discussion

Article III. A. (1) (g) of the Employer Benefit Plan provides benefits for a medically necessary hospitalization only when the admission is for an oral surgical procedure listed in Article Iii. A. (3) (e) or, when hospitalization to perform a dental procedure is necessary due to a beneficiary's preexisting medical condition, and prior approval has been received from the Plan Administrator. Article III. A. (3)(e) specifies the limited oral surgical procedures for which benefits are provided, and does not include total maxillary osteotomy as a covered procedure. A Funds' medical consultant has advised that there is no documentation to establish a preexisting medical condition necessitating hospitalization. Thus, because the total maxillary osteotomy is not a covered procedure under Article III. A. (3)(e), and the Employee's daughter does not have a preexisting medical condition that would satisfy the requirements of Article III. A. (1) (g), neither the procedure nor the hospitalization for the procedure is a covered benefit. Moreover, the fact that an Employer or several Employers have erroneously paid benefits for a procedure does not make the procedure a covered benefit. In this case, the Employee was informed well in advance that the surgery and associated hospitalization would not be covered under the Benefit Plan.

Opinion of the Trustees

The Employer is not responsible for payment of benefits for the Employee's daughter's oral surgery or the associated hospitalization.