OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 02-0045 - September 24, 2008

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 Employer Benefit Plan.

Background Facts

On June 1, 2006, the Complainant's wife presented to her physician with chest pain. Notes from a follow-up visit dated June 19, 2006, indicate that she was still experiencing a lot of pain, mostly in the interscapular area, despite having received a steroid shot. X-rays revealed a mid-thoracic and an L1 vertebral collapse, but the Radiology report stated there appeared to be no acute change since the x-ray taken August 2, 2005. The summary mentioned a review of the drug regimen, but was not specific regarding the prescribed drugs or their purpose. The indicated plan was to prescribe Ultram and Celebrex for pain, activity as tolerated, no heavy lifting, and vertebroplasty. The patient was to return in two weeks.

A vertebroplasty was performed on June 23, 2006, on an out-patient basis. The Respondent has denied the charges associated with the vertebroplasty as not medically necessary.

Dispute

Are the charges associated with the vertebroplasty performed on the Complainant's wife covered under the terms of the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The vertebroplasty was medically necessary to alleviate the pain suffered by the Complainant's wife and should be a covered benefit.

Position of the Respondent: Insufficient medical documentation was supplied to verify medical necessity. Respondent determined that criteria for coverage were not met because more moderate treatments were not used prior to the vertebroplasty.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states in pertinent part:

> Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. The benefits described in this Article are subject to any precertification, prescription drug formulary (PDP) requirements, and other utilization review requirements implemented pursuant to Article IV. Covered services that are medically necessary will continue to be provided, and accordingly, while benefit payments are subject to prescribed limits, this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Article III A. (10) (h)(2) of the Employer Benefit Plan states in pertinent part:

> (h) Explanation of Benefits (EOB) and Hold Harmless
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> 2. 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.

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Discussion

As stated in Article III of the Employer Benefit Plan, in determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. The Funds additionally relies on Medicare guidelines to determine if treatments or procedures are experimental under the circumstances and, therefore, not covered benefits pursuant to the terms of the Plan. Funds' Medical Director reviewed Medicare's coverage policy regarding the use of vertebroplasty and determined that vertebroplasty is a procedure covered by Medicare when conservative treatment has been tried and has failed to resolve the condition prior to resorting to vertebroplasty. This course of conservative treatment prior to resorting to vertebroplasty is required by other health plans in the Complainant's state in addition to being required by Medicare.

The Funds' Medical Director has reviewed the documentation in the Complainant's file and did not see any indication that conservative modalities of physical therapy, immobilization or narcotic analgesics had been tried prior to performing the vertebroplasty procedure on the Complainant's spouse. He is, therefore, of the opinion that the vertebroplasty performed on the Complainant's wife does not meet the medical necessity requirements of Article III of the Employer Benefit Plan. However, the Funds' Medical Director is of the opinion that the diagnostic MRI performed on 6/23/06 prior to the procedure would be a covered benefit under the terms of the Employer Benefit Plan.

In previous opinions (See RODs 98-048, 93-080 and 02-046), the Trustees interpreted the "hold harmless" provision under Article III A. (10) (h) 2. to require the Employer to hold the Complainant harmless for charges deemed excessive or not medically necessary so long as the services provided would have otherwise been covered by the terms of the Plan. In this case, the Complainant's charges for the vertebroplasty were not medically necessary, although they would have otherwise been covered by the terms of the Plan. Therefore, consistent with previous interpretations of the "hold harmless" provision, the Employer must hold the Complainant harmless from any charges related to the vertebroplasty performed on 6/23/06.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide medical benefits for the surgical procedure on the Complainant's spouse. Respondent is required to hold the Complainant harmless regarding the vertebroplasty performed on 6/23/06.