
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 02-0046 - January 30, 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

The Complainant's spouse underwent two CT scans in December 2005 and an MRI in January 2006 to test for renal cell cancer, but they were all inconclusive. A PET scan was performed on January 18, 2006, as requested by the attending physician, to rule out metastatic disease. The results of the PET scan were also inconclusive. The diagnosis of renal cell cancer was confirmed surgically in 2007. The Respondent has denied the charge for the PET scan as not medically effective or medically necessary for the diagnosis.

Dispute

Is the Respondent required to pay for the PET scan performed on the Complainant's spouse?

Positions of the Parties

Position of the Complainant: The Employer Benefit Plan provides for diagnostic services when medically necessary. The attending physician determined that the PET scan was medically necessary; therefore, the Respondent should cover this procedure.

Position of the Respondent: The PET scan under consideration does not meet the criteria for coverage. Its use in this situation is considered investigational and, therefore, is not a benefit covered by the Employer Benefit Plan.

Pertinent Provisions

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

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) 11 (a) of the Employer Benefit Plan states:

ARTICLE III BENEFITS

A. Health Benefits

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

24. Charges for treatment with new technological medical devices, therapy which are experimental in nature.

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

(h) Explanation of Benefits (EOB) and Hold Harmless

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

The Funds 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. The Funds' Medical Director reviewed Medicare's coverage policy regarding the use of PET scans and determined that Medicare will cover PET scans for certain cancers to diagnose, stage or evaluate for metastatic lesions. Renal cell carcinoma is not one of the cancers covered by Medicare for PET scan evaluation or staging. The Funds' Medical Director also determined that Medicare would cover a PET scan, such as the one under consideration, if the patient were enrolled in an approved clinical trial or clinical study.

The Funds' Medical Director determined that there is no documentation in the file indicating the participation of the Complainant's spouse in a clinical trial or clinical study. The Fund's Medical Director opined that the PET scan performed on the Complainant's spouse on January 18, 2006, would not be covered by the Employer Benefit Plan due to the general exclusions for coverage of experimental treatments stated in Article III A. (11) (a) 24.

In previous opinions (See RODs 98-048, 93-080 and 88-134), 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 PET scan 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 PET scan.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Respondent is not required to provide benefits for the PET scan administered to the Complainant's spouse on January 18, 2006. Respondent is required to hold the Complainant harmless regarding the PET scan.