OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 07-0008 - 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 Employee's spouse has been diagnosed with an advanced form of follicular lymphoma and is receiving chemotherapy. Treatment was planned for 8 cycles, commencing February 1, 2007. The attending physician has requested a PET scan be performed after every two scheduled cycles to assess treatment response. The attending physician attempted to obtain pre-certification for the requested PET scans and was denied by the Employer's insurance carrier. A PET scan was performed on April 24, 2007. Following the PET scan, the patient was continued on the planned cycle of chemotherapy.

Dispute

Must the Employer provide coverage for the requested PET scan?

Positions of the Parties

Position of the Complainant: Respondent must provide coverage for the PET scan as a physician prescribed and medically necessary diagnostic tool to determine whether chemotherapy dosage needs to be adjusted.

Position of the Respondent: Respondent paid for the initial PET scan performed on Complainant's spouse on January 31, 2007, which determined the stage of her lymphoma. Respondent is not required to pay for the follow-up PET scan because repeat PET scans for treatment response is not medically necessary under both Medicare and Blue Cross/Blue Shield of Illinois guidelines.

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
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> A. Health Benefits
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> (11) General Exclusions
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> (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:
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> 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
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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

The Introduction to Article III of the Employer Benefit Plan limits covered services to those that are reasonable and necessary to the diagnosis or treatment of an illness or are otherwise covered by the Plan. The initial PET scan performed on the Complainant's spouse was diagnostic in nature, and Respondent covered that charge. The PET scan performed on April 24, 2007, with "monitoring response to chemotherapy" listed as the reason for the procedure, did not perform either a diagnostic or treatment function.

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. Funds' Medical Director reviewed Medicare's coverage policy regarding the use of PET scans, and determined that Medicare will cover PET scans for diagnosis, staging and restaging. Medicare will cover PET scans to monitor the response to treatment of lymphoma only in the context of a clinical study. The attending physician's response to a request for additional information stated that the Complainant's spouse was not in a clinical study. He responded that the intent of PET scans during treatment after two cycles was to assess response to treatment, and the purpose of the PET scan obtained 3 weeks after completion of treatment was for restaging.

Funds' Medical Director has reviewed the information pertaining to this ROD and has determined that the PET scan in question was performed midway through the planned cycle of chemotherapy treatments rather than at the end of a treatment cycle in preparation for restaging. Based on Medicare guidelines, it is the opinion of the Funds' Medical Director that the PET scan performed on April 24, 2007, would be considered experimental and fall under the general exclusions listed in Article III A. (11)(a) 24. of the Employer Benefit Plan.

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 which is the basis of this ROD. Respondent is required to hold the Complainant harmless regarding the PET scan.