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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 07-0011 – 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

Complainant experienced complete paralysis of the muscles of the right shoulder, and, to a lesser extent, of the lower arm. Complainant was diagnosed with severe right brachial plexopathy (disorder of the network of nerves branching from the last four cervical spinal nerves, which are connected to the area from the right shoulder to the right elbow). The attending physician prescribed five treatments of intravenous immunoglobulin (IVIG), four of which were performed in August 2006. The last dose was not given because of other complications. The attending physician then referred the Complainant to a consulting physician who confirmed the diagnosis of right brachial plexopathy.

The charge for the treatments was denied by the Respondent on the grounds that the use of IVIG for the diagnosis being treated is investigational and experimental, and is, therefore, not covered by the Employer Benefit Plan.

### Dispute

Is the Respondent required to cover the cost of the four IVIG treatments from August 2006?

### Positions of the Parties

Position of the Complainant: The prescribed treatments were considered necessary by the attending physician. Respondent is required to cover the charges under the terms of the Employer Benefit Plan.

Position of the Respondent: The prescribed treatment is not FDA approved for the treatment of the original diagnosis of Right Brachial Plexitis/Plexopathy. Its use in this case is not generally accepted and not medically necessary. This is an experimental and/or investigational treatment. The diagnosis of Guillain-Barré Syndrome was never documented in the medical records.

### Pertinent Provisions

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

#### ARTICLE III BENEFITS

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 current questionable 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 a 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.

### Discussion

Article III of the Employer Benefit Plan states that coverage will be provided for services that are reasonable and necessary for the diagnosis and treatment of an illness or injury when given at the appropriate level. In supporting the decision to deny coverage, Respondent listed conditions for which IVIG would be approved. Included in this list is Guillain-Barré Syndrome, an autoimmune disorder.

The attending physician did not specify a diagnosis of Guillain-Barré Syndrome on the EMG report of August 1, 2006, or the prescription recommending the IVIG treatments. In response to an inquiry from ROD staff concerning the medical history and reasons for course of treatment, the attending physician opined that the diagnosis of right brachial plexopathy was a variant of

Guillain-Barré Syndrome. Guillain-Barré Syndrome is an immune mediated neuropathy (a functional and/or pathological change in the peripheral nervous system, the cause of which is associated with the immune system). He further stated that the treatment for immune mediated neuropathy is IVIG.

ROD staff contacted the consulting physician to whom the Complainant was referred after the fourth IVIG treatment for his medical opinion regarding the diagnosis of right brachial plexopathy. Specifically, he was asked if the diagnosis falls under a general category of autoimmune disease, or is a variant of Guillain-Barré Syndrome. His response corroborates the attending physician's medical opinion that the Complainant's diagnosis is a variant of Guillain-Barré Syndrome.

The Funds' Medical Director has reviewed the documents contained in the ROD file and concurs with Complainant's attending and consulting physicians regarding the relationship between Complainant's diagnosis and Guillain-Barré Syndrome. 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. Medicare covers IVIG treatments for Guillain-Barré Syndrome. The Funds' Medical Director is of the opinion that the IVIG treatments for the Complainant would be covered by the provisions of Article III of the Employer Benefit Plan.

#### Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Respondent is required to provide benefits for the IVIG treatments administered to the Complainant in August 2006.