
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 07-0015

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 underwent an appendectomy in February 2007 at which time the surgeon discovered an adenocarcinoma invading through abdominal muscle into the area of the appendix, including bowel perforation. A PET scan was prescribed for the purpose of diagnosing and staging treatment for the carcinoma. Respondent has denied the charges associated with the PET scan, asserting that the procedure is experimental or investigational.

Dispute

Must the Employer provide coverage for the requested PET scan?

Positions of the Parties

Position of the Complainant: The requested PET scan was medically necessary and appropriate for treatment of the carcinoma discovered during the Complainant's appendectomy. Respondent should cover the cost of the PET scan.

Position of the Respondent: The test in question is considered investigational and not medically necessary. Respondent should not be required to cover the cost of the PET scan.

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) 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.

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 PET scan performed on the Complainant was for staging treatment of a newly diagnosed colon cancer discovered during surgery on the Complainant's appendix.

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 guidelines cover PET scans for diagnosis, staging and restaging of colorectal carcinomas. Documents sent with the Respondent's position statement confirm that PET scans are covered for staging or restaging colorectal cancers by the insurance carrier used by the Respondent and are considered medically necessary to detect and assess the resectability of metastases.

Respondent cites ROD 02-0046 in defense of the denial of coverage, but the referenced ROD is not applicable in this case because the type of cancer in the referenced ROD was renal cancer for which Medicare considers PET scans investigational. The Funds' Medical Director is of the opinion that the PET scan performed on the Complainant was medically necessary and would, therefore, be a covered benefit under the terms 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 PET scan administered to the Complainant on 4/26/07.