
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 07-0017 – June 25, 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 received a letter from his son's school, notifying him that his son's immunization form was either expired or not on file. The letter directed the Complainant to check with his son's physician to see if immunizations were due and to send a new, updated immunization form to the school, without which Complainant's son could not return to class. The child's physician gave the child three vaccinations. Respondent has denied the charges for the vaccinations as non-covered charges under the Employer Benefit Plan.

Dispute

Should Respondent pay for the three vaccinations given to the Complainant's son?

Positions of the Parties

Position of the Complainant: The vaccinations were given by a physician who followed Centers for Disease Control (CDC) guidelines and determined that all three immunizations were necessary.

Position of the Respondent: Respondent has agreed to pay for the Tetanus, Diphtheria, and Pertussis (TDAP) vaccination without precedent but maintains that the vaccinations fall under the General Exclusions of the Employer Benefit Plan.

Pertinent Provisions

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 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. (3)(o) of the Employer Benefit Plan states in pertinent part:

(3) Physicians' Services and Other Primary Care

(o) Primary Medical Care - Miscellaneous

1. Benefits are provided for care of newborn babies and routine medical care of children prior to attaining age 6.
2. Benefits are provided for immunizations, allergy desensitization injections, pap smears, screening for hypertension and diabetes, and examinations for cancer, blindness, deafness, and other screening and diagnostic procedures when medically necessary.
3. Benefits are provided for physical examinations when certified as medically necessary by a physician. Medically necessary will mean that a Beneficiary (i) has an existing medical condition under treatment by a physician, (ii) has attained age 55, (iii) is undergoing an annual or semi-annual routine examination by a gynecologist or (iv) is undergoing a routine examination prescribed by a specialist as part of such specialist's care of a medical condition.

Article III. A. (11) (a) 5. of the Employer Benefit Plan states:

(11) General Exclusions

- (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:
5. Immunizations provided by local health agencies.

Discussion

A letter dated October 11, 2007, was sent to the Complainant by his son's school, informing him that his son's immunization records were not current and that up-to-date immunization records had to be submitted for his son to return to school for his last year of high school. On November 12, 2007, Complainant's son received immunizations from a physician at a private group practice. The vaccinations given were TDAP, Menactra, and Hepatitis B vaccine.

Respondent denied charges for all vaccinations as non-covered charges. A letter submitted by the physician stated that the patient was given vaccines for school "and also was given a meningitis and hepatitis because he does plan to attend college per patient." The letter also states that these are recommended vaccinations according to CDC guidelines for this age child and for college entrance protocol.

There are no state requirements for immunization against Hepatitis B or meningitis where the Complainant's son attends school. TDAP is required if the previous TDAP vaccination was given more than 5 years earlier. The school follows the state guidelines for immunization requirements. According to immunization records, the Complainant's son last received the TDAP vaccination in August 1996. As a result, state guidelines required the Complainant's son to receive a TDAP vaccination.

Respondent has agreed to pay for the TDAP shot without establishing precedent but maintains the other vaccinations were appropriately denied citing Article III. A. (11) (a) (5), which excludes immunizations provided by local health agencies. Respondent is of the opinion that if the vaccinations are available at a local health agency, the beneficiary should receive them from that health agency. The interpretation of this provision is cited in ROD 88-371 which states:

This provision has historically been interpreted to mean that benefits are not paid where immunizations have actually been provided by a local health agency at no charge or at a reduced rate, as a way of avoiding unnecessary payment for this service.

The vaccinations in dispute were received at a private group practice, not at a local health agency. Therefore, the cited provision is not applicable in this case. Additionally, it was confirmed with the local health agency that the vaccinations under consideration are not given by the local health agencies without charge.

Respondent also cites Article III. A. (3)(o) (1)-(3), which outlines the circumstances under which routine medical care and immunizations are covered benefits. Article III. A. (3) (o) (1) refers to routine medical care for newborns and children under the age of 6 and does not apply in this

case. Article III. A. (3) (o) (3) provides for physical examinations when deemed medically necessary and performed on adults over the age of 55 and does not apply in this case. Article III. A. (3) (o) (2) provides for immunizations and other procedures when deemed medically necessary.

The Funds' Medical Director has reviewed the facts of this case and is of the opinion that the administration of the vaccinations in question meets the medical necessity requirement outlined in Article III of the Employer Benefit Plan because it is in accordance with recommendations issued by the CDC for children of this age group.

Opinion of the Trustees

The Respondent is responsible for providing health benefits under the Employer Benefit Plan for the vaccinations given to the Complainant's son.