
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 07-0026 – September 27, 2009

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's spouse is diagnosed with fibromyalgia, osteoarthritis and persistent trochanteric bursitis of the hip. The treating physician recommended a series of physical therapy treatments of Iontophoresis to relieve the pain from the bursitis. Iontophoresis is the introduction of ions of soluble salts into tissues of the body by means of an electric current. It is a form of electro-osmosis and its use is often for therapeutic purposes. It is also known as ion therapy. Iontophoresis was used on the Complainant's spouse for eight visits. The Respondent has deemed the treatments to be experimental, investigational and unproven. Respondent refused to pay for the treatments based on lack of medical necessity.

Dispute

Is the Respondent required to provide benefits for the Iontophoresis treatments received by the Complainant's spouse?

Positions of the Parties

Position of the Complainant: The treatments were medically necessary and prescribed by the physician treating the Complainant's spouse. The treatments should be covered under the Respondent's Health Plan.

Position of the Respondent: The denied services are experimental and investigational in nature and therefore are not covered under the Employer Benefit Plan.

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 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 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.

Article III A. states in pertinent part:

ARTICLE III

A. Health Benefits

(2) Outpatient Hospital Benefits

(e) Physiotherapy

Benefits are provided for physiotherapy treatments performed in the outpatient department of a hospital. Such therapy must be prescribed and supervised by a physician.

(3) Physicians' Services and Other Primary Care

(m) Specialist Care

Benefits will be provided for treatment prescribed or administered by a specialist if the treatment is for illness or injury which falls within the specialist's area of medical competence.

(7) Other Benefits

(b) Physical Therapy

Benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. Such therapy must be prescribed and supervised by a physician and administered by a licensed therapist. The physical therapy treatment must be justified on the basis of diagnosis, medical recommendation and attainment of maximum restoration.

(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 Complainant's spouse was prescribed a series of physical therapy treatments for bursitis of the hip, using Iontophoresis. The bursitis had not responded to injections or medications. The patient received eight treatments between August 1, 2008 and October 1, 2008. The physician reports improvement following the therapy, but medication is still needed to treat the condition.

Respondent's position is that the use of Iontophoresis for the treatment of inflammatory musculoskeletal disorders is experimental and investigational because there is insufficient evidence of its effectiveness.

The Introduction to Article III states that in determining whether or not a therapy is medically reasonable, due consideration will be given to the customary practices of physicians in the community where the service is provided. Funds' Medical Director has reviewed the facts of this case and states that in cases of emerging treatments and therapies, the Funds relies on Medicare policies of coverage of these modalities to determine if they are still investigational or are considered accepted treatments and therapies by the medical community. In regard to Iontophoresis, Medicare does not have a national policy, but leaves the coverage up to the local Part A intermediaries or Part B carriers. Although the local carrier in the Complainant's state has no policy regarding the treatment, the Medicare carrier in the neighboring state as well as several other carriers covers Iontophoresis for the treatment of bursitis. The Complainant's spouse had been treated with several other modalities before the series of treatments in question. It is the opinion of the Funds' Medical Director that the physical therapy using Iontophoresis received by the Complainant's spouse is a covered benefit under 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 Iontophoresis treatments administered to the Complainant's spouse.