OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 07-0028 - December 10, 2009

Trustees: Micheal W. Buckner, Daniel L. Fassio, and Michael H. Holland.

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's spouse was injured in a car accident in January 2006 and has been receiving treatment for neck, back and shoulder pain since that time. Significant pain has persisted through the use of anti-inflammatory medications, steroids, muscle relaxants and narcotics. The patient has been seen by neurologists, neurosurgeons and pain management specialists. Physical therapy has also been tried. A TENS (transcutaneous electrical nerve stimulator) unit was prescribed in May 2007. The Respondent has denied benefits for the TENS unit as not medically necessary because medical literature does not support its clinical efficacy.

Dispute

Is the Respondent required to provide benefits for the TENS unit prescribed for the Complainant's spouse in May 2007?

Positions of the Parties

Position of the Complainant: TENS units have been in standard use for pain management for decades and have been approved by the Food and Drug Administration. It is not an experimental device and was prescribed only after other treatments failed. Respondent should provide benefits for the unit.

Position of the Respondent: Medical literature indicates that TENS units are no more effective than placebos in managing pain, and add nothing to the benefits of exercise alone. Medical literature does not support the clinical efficacy of TENS for the treatment of this patient's clinical condition. Therefore, the TENS unit is not medically necessary and is not a covered benefit.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan, in pertinent part, 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.

Article III. A. (6) (d) of the Employer Benefit Plan states:

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Article III. A. (11) (a) 24. 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:

24. Charges for treatment with new technological medical devices, therapy which are experimental in nature.

Discussion

The Complainant's spouse suffers from chronic pain that has been resistant to conservative therapy. The spouse sought treatment by numerous physicians who tried multiple modalities to reduce her level of pain. Attempts at conservative pain management failed, and, after a year, the treating physician recommended the use of a TENS unit. Following treatment with the TENS unit, the patient reported a decrease in pain, and the amount of medication needed to control the pain has been reduced.

The Respondent has denied the charges for the TENS unit, citing research that found TENS units to be no more effective than treatment with a placebo in addition to adding no apparent benefit to exercise alone. Respondent considers the TENS unit to be experimental and not medically necessary.

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 policy of coverage of these modalities to determine if they are still investigational or are considered accepted treatments and therapies by the medical community. Medicare covers TENS units for patients with chronic and intractable pain. Medicare requires that the pain has been present for at least three months and that other treatments have been tried. Funds' Medical Director has determined that the medical records submitted document that Medicare requirements have been met in this case and that the TENS unit is medically necessary.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Respondent is required to provide benefits for the TENS unit purchased for the Complainant's spouse.