

OPINION OF TRUSTEES

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In Re

Complainant: Employee's Spouse  
Respondent: Insurance Company  
ROD Case No: 175, September 28, 1982

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee,; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning gastric bypass surgery and hereby render their opinion on the matter.

Background Facts

The Employee's spouse was under the care of a physician for the treatment of obesity. She is 5 feet, 6 1/2 inches tall and weighed 235 pounds. According to her physician she has had a long-standing problem with obesity which has not responded to her own efforts to control by diet, working with physicians, Weight Watchers, etc. In addition, she has the probability of gallbladder disease. She was admitted to a hospital for elective gastric bypass surgery for treatment of obesity.

The Employee's spouse claims that on two occasions she contacted the Insurance Carrier by phone to inquire if payment would be made for her gastric bypass surgery. On both occasions she said she was informed that benefits would be provided long as it was necessary for her health, and that all she needed was a letter from her doctor to that effect. The Insurance Carrier does not maintain copies of phone inquiries after six months; therefore, they have no record of the calls. The Insurance Carrier states that their Employees are well trained in contract language and therefore they are reasonably sure that their Employees would have explained the requirements correctly.

Question or Dispute

Is the Employer responsible for benefits for gastric bypass surgery as treatment for obesity?

Position of Parties

Complainant: The gastric bypass surgery should be paid for because the Insurance Carrier informed her by phone that it would be provided as long as it was necessary for her health and that all she needed was a letter from her doctor.

Respondent: They have no record of a phone conversation with the patient. They base their denial on Q&A #38, which states that benefits cannot be provided for treatment of obesity unless the beneficiary is 200% or more of desirable weight.

#### Pertinent Provisions

Article III. A. (3)(f) of the Employer's Benefit Plan provides as follows:

(f) Surgical Services Limitations

Benefits are not provided for certain surgical services without prior approval of the Plan Administrator. Such surgical procedures include, but are not limited to, the following:

- Plastic surgery, including mammoplasty
- Reduction mammoplasty
- Intestinal bypass for obesity
- Gastric bypass for obesity
- Cerebellar implants
- Dorsal stimulator implants
- Prosthesis for cleft palate if not covered by crippled children services
- Organ transplants

Article III. A. (3)(h) of the Employer's Benefit Plan provides as follows:

"Benefits are provided for services rendered to a Beneficiary at home, clinic or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

1978 Contract Question and Answer #38 provides as follows:

Subject: Obesity

Reference: Amended 1950 & 1974 Benefit Plans & Trusts, Art. III, Sect. A (3) (f) (h)

Question:

1. a) Under Art. III, Sect. A (3) (h) the benefits are limited to services "for the treatment of illnesses or injuries, if provided by a physician". In this context, is the treatment of obesity, where no other pathology exists (e.g., hypertension, cardiovascular disease, diabetes), a covered benefit?

- b) Under what conditions are benefits provided for the surgical treatment of obesity?

Answer:

1. a) Yes, if the diagnosis signifies pathological, morbid form of severe obesity, i.e., 200% or more of desirable weight. Beneficiaries eligible for obesity benefits at the onset of treatment are eligible for such benefits until they reach their desirable weight.
- b) Benefits are not provided for surgical treatment of obesity unless all of the following conditions are met:
  - 1) the beneficiary's condition meets the above definition of obesity;
  - 2) other, more conservative therapies have been tried and proven unsuccessful; and
  - 3) authorization has been obtained from the Plan Administrator.

#### Discussion

Under Article III. A. (3) (h) of the Employer's Plan, benefits are provided for the treatment of an illness by a physician. However, under Q&A #38, where no other pathology exists, the treatment of obesity is a covered benefit only if the diagnosis signifies a pathological, morbid form of severe obesity, where the patient's weight is 200% or more of her desirable weight, and prior approval has been received from the Plan Administrator. Because the Employee's spouse was 235 pounds at the time she underwent the gastric bypass and her ideal weight is 130 pounds, she does not meet the requirements of a morbid form of severe obesity (she was not 200% or more of her ideal weight). Therefore, the Employer is not responsible for coverage of the gastric bypass surgery.

In addition, there is a dispute over the facts concerning the telephone requests for prior authorization. The Employee's spouse claims that the Insurance Carrier represented that they would provide coverage if the surgery was necessary to her health and if she furnished them with a letter to that effect from her physician. The Insurance Carrier states that they would not have given out that information but would have advised her as to the correct requirements. However, the Carrier maintained no record of calls over six months old. Because the exemption granted to the Trustees by the Department of Labor only allows the Trustees to resolve disputes concerning the nature of benefits or questions of eligibility under the terms of the Employer's Plan, the Trustees may not address this issue. It should be noted that under the terms of the Employer's Plan, prior authorization must be obtained from the Plan Administrator rather than the Insurance Carrier.

### Opinion of the Trustees

The Trustees are of the opinion that, under the terms of the Employer's Benefit Plan, the Employer is not responsible for payment of charges for the gastric bypass surgery performed on the Employee's spouse.