

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-156 November 2, 1983

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 health coverage for surgical services and hereby render their opinion on the matter.

Background Facts

The Employee's wife underwent surgery on June 3, 1982 at which time she had a cone biopsy of her cervix with frozen section performed and subsequently a vaginal hysterectomy. The surgeon charged \$300.00 for the cone biopsy with frozen section and \$900.00 for the vaginal hysterectomy. Because both surgeries were performed at the same time and in the same operative field the Employer determined that the cone biopsy was an incidental procedure and issued payment at 50% of the charge. The balance of the charge for the cone biopsy with frozen section was denied. The surgeon's charge for the vaginal hysterectomy was paid in full,

In addition, a portion of the assistant surgeon's fee for the cone biopsy and frozen section was denied based on the determination that the cone biopsy was incidental surgery and should be paid at 50% of the charge,

Dispute

Is the Employer responsible for payments of the surgeon's and assistant surgeon's fees resulting from the Employee's spouse's surgeries on June 3, 1982?

Positions of the Parties

Employee's Position: The Employer is responsible for payment of charges including by the Employee's spouse as the result of her surgeries on June 3, 1982.

Employer's Position: The Employer contends that payment was properly made in accordance with the provisions of the plan and that since both surgeries were performed at the same time in

the same operative field, the cone biopsy is considered incidental and benefits were allowed at 50% in accordance with Section A (3) (a) of Article III, of the Employer's plan.

#### Pertinent Provisions

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

(a) Surgical benefits: Benefits are provided for surgical services essential to a beneficiary's care consisting of operative and cutting procedures (including the usual and necessary post-operative care) for the treatment of illness, injuries, fractures or dislocations which are performed either in or out of a hospital by a physician.

When surgical services consist of necessary major surgery (primary) and the physician performs surgery additional to the primary surgery (incidental surgery), benefit payments for the incidental surgery will be provided but at a rate 50% lower than the physician's normal charge had he performed only the incidental surgery.

(b) Assistant Surgeons: If the beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating surgeon in the performance of such surgical services when a condition of the beneficiary and type of surgical service require such assistance.

#### Discussion

The surgeon and assistant surgeon fees resulting from the Employee's spouses vaginal hysterectomy have been properly paid in accordance with the provisions of the plan. The cone biopsy with frozen section (although performed during the same operative session and in the same operative field), as not a subsequent operative procedure and was performed through a separate surgical opening. The cone biopsy should be considered a separate surgical procedure and therefore a covered benefit under Article III Section A (3) (a) of the Employer's benefit Plan.

#### Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for payment of the charges for the surgeon and assistant surgeon resulting from the Employee's spouse's cone biopsy and frozen section performed on June 3, 1982.