

OPINION OF TRUSTEES

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In Re

Complainant: Surviving Spouse  
Respondent: Employer  
ROD Case No: 81-310 - April 30, 1984

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 ("UMWA") 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 the eligibility of a Surviving Spouse for surgical benefits under the Employer's Benefit Plan. They hereby render their opinion on the matter.

Background Facts

The Complainant in this case is a Surviving Spouse of a miner who died as a result of a mine accident on January 2, 1979. On or about January 9, 1979, a representative of the Employer met with the Surviving Spouse to deliver a death benefit check and to answer any questions she had related to the settlement of the Workers' Compensation claim. During the course of that discussion, the Complainant alleges that she raised the subject of her skin condition and the treatment she anticipated having to undergo for it. She claims the Respondent's representative advised her that the procedure she needed was medically necessary and would be a covered benefit. She also claims to have stated that the treatment may require more than one procedure and that the Respondent's representative repeated his statement about it being medically necessary and, therefore, covered under the Plan. The Surviving Spouse underwent a facial dermabrasion on October 6, 1981, for post infectious scarring. The charges for this surgery were paid by the Respondent. According to the Complainant, on January 18, 1983, she underwent a second dermabrasion. There is no indication that payment for this procedure was authorized by the Respondent; however, the Complainant contends that, since payment for the first procedure had been made by the Respondent in the past and since the circumstances requiring the surgery had not changed, the charges for the second dermabrasion should be paid as well. In response to this position, the Respondent has denied that prior authorization of payment for this procedure was granted at any time and states that any previous payment for such a procedure was made in error. The charges relative to the second dermabrasion have been denied by the Respondent.

As part of their investigation of this dispute, a member of the Trustees' staff conducted a fact finding investigation in this case and, in the process, interviewed the Complainant and the Respondent's representatives. Based on these interviews, the staff member concluded that although the Complainant's concern over her physical condition was mentioned to a representative of the Respondent at the time of his visit, at no time was the particular procedure discussed.

### Dispute

Is the Respondent responsible for the payment of charges for the Complainant's facial dermabrasion performed on January 18, 1983?

### Positions of the Parties

Position of the Complainant: The Respondent is responsible for payment of charges incurred as a result of her facial dermabrasion performed on January 18, 1983, as it is not cosmetic surgery, as claimed by the Respondent. Furthermore, the fact that an earlier claim for the same procedure was paid by the Respondent in 1981 is evidence that it was considered a covered benefit under the Plan.

Position of the Respondent: The January 11, 1983 surgery was performed for the revision of scars caused by a disease and therefore is not covered. Additionally, no prior authorization was ever granted for the dermabrasion performed on October 6, 1981 and payment for this procedure was made in error.

### Pertinent References

Article III. A. (3) (p) 9. of the Employer's Benefit Plan provides:

#### III. Benefits

##### A. Health Benefits

##### (p) Services Not Covered

9. Cosmetic Surgery unless pertaining to surgical scars or to correct results of an accidental injury or birth defects.

### Discussion

Under Article III A (3) (p) 9. of the Employer's Benefit Plan, benefits are not provided for cosmetic surgery unless it pertains to surgical scars or Is performed to correct the results of an accidental injury or birth defects. According to the information available to the Trustees, the Complainant underwent facial dermabrasion to improve her severe patchy post acne pitting and scarring. Acne is a common inflammatory disease of the pilosebaceous unit which in many cases may lead to severe scarring of the skin. It is not considered to be the result of a surgical procedure, accidental injury or birth defect. Dermabrasion, the surgical removal of skin layers by a mechanical means Is performed to remove scars, tattoos, pigmented nevi, fine wrinkles or other irregularities of the skin. Therefore, the Funds medical staff have determined that the dermabrasion the Complainant underwent on January 18, 1983 was a cosmetic surgical procedure and is not a covered benefit under the terms of the Employer's Benefit Plan.

With respect to the Complainant's claim that the procedure had been prior authorized, the fact finding investigation has revealed that the subject of her skin condition was mentioned during the discussion held in January 1979. However, the dermabrasion procedure itself was not specifically mentioned. Consequently, without discussing the exact procedure, any reference to coverage of a medically necessary procedure must be viewed as a general characterization of benefits available under the Plan, and not as a binding prior authorization for a procedure which took place four years later.

In addition, the Complainant claims that authorization for this procedure should be inferred from the Respondent's payment of the 1981 dermabrasion. In support of this position, she submitted a copy of a letter from the physician who performed the dermabrasion on May 24, 1983, which describes a conversation in 1981 which allegedly resulted in payment of the first dermabrasion as a medically necessary procedure. By contrast, however, other clinical evidence contained in this file reflects the fact that she requested the follow-up elective procedure because she was pleased with the results of the first in reducing her post-acne scarring. Therefore, authorization for the first procedure would not constitute authorization for repeat surgery.

#### Opinion of the Trustees

The Respondent is not responsible for payment of charges related to the dermabrasion performed on the Complainant on January 11, 1983, as it was not within the limited scope of covered cosmetic procedures under the Employer's Benefit Plan.