

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-334 - November 28, 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 the level of health benefits for the Employee's son's physical therapy and hereby render their opinion on the matter.

Background Facts

The Employee's 3-1/2 year old son was born with Hydrocephalus and Spinal Meningomyelocele. He has undergone surgery for these problems. He continues to have paresis (slight or incomplete paralysis) of both lower extremities, although he can walk with braces for a short distance. The Employee's dependent receives physical therapy as a hospital outpatient under the supervision of his pediatrician. The therapy includes activities, exercises, and instruction designed to train him for independent ambulation at his maximal functional level. The Employer has denied payment for the physical therapy services, although the Employer paid for these services in the past. The Employer maintains that those payments were made in error.

Question or Dispute

Is the Employer responsible for coverage of the Employee's son's physical therapy?

Positions of the Parties

Employee's Position: The Employer is responsible for payment of the charges for his son's physical therapy treatment since they have been paid for in the past.

Employer's Position: The Employer is not responsible for payment of the physical therapy charges since the Employee's son has a congenital defect and will not be able to obtain restoration of functions lost or reduced by illness or injury. The Employer notes that "Where the patient did not have the function or functions to begin work [sic], they obviously cannot be restored." Accordingly, the Employer states that "The Plan does not provide benefits to raise the level of functions the person has to begin with, only to restore those lost or reduced by injury or illness." Thus, the Employer contends that "... the requirements of Article III A. (7) (b), that the physical therapy treatment must be justified on the basis of diagnosis, medical recommendation and attainment of maximum restoration, are not met." Furthermore, the Employer maintains that previous payments by the Employer for the child's physical therapy treatment were made in error.

Applicable Relations

Article III, Section A (1) (a) of the Employer's Benefit Plan provides:

- (1) In-Patient Hospital Benefits
 - (a) Semi-Private Room

When a Beneficiary is admitted by a licensed physician (hereinafter "physician") for treatment as an in-patient to an Accredited Hospital (hereinafter "hospital"), benefits will be provided for semi-private room accommodations (including special diets and general nursing care) and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

Medically necessary services provided in a hospital include the following:

* * *

Physical Therapy

* * *

Article III, Section A (2) (e) of the Employer's Benefit Plan provides:

- (2) Out-Patient Hospital Benefits
 - (e) Physiotherapy

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

Article III, Section A (5) (a) (3) of the Employer's Benefit Plan provides:

- (5) Skilled Nursing Care and Extended Care Units
 - (a) Skilled Nursing Care Facility

Upon determination by the attending physician that confinement in a licensed skilled nursing care facility is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:

- (3) physical, occupational, inhalation and speech therapy, either provided or arranged for by the facility.

Article III, Section A (6) (D) of the Employer's Benefit Plan provides:

- (6) Home Health Services & Equipment
 - (b) Physical and Speech Therapy

Benefits are provided for physical and speech therapy services at home when prescribed by a physician to restore functions lost or reduced by illness or injury. Such services must be performed by qualified personnel. When the Beneficiary has reached his or her restoration potential, the services required to maintain this level do not constitute covered care.

Article III, Section A (7) (D) of the Employer's Benefit Plan provides:

- (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 must be justified on the basis of diagnosis, medical recommendation and attainment of maximum retraction.

Discussion

The Employer's Benefit Plan contains several separate provisions that cover benefits for physical therapy in various settings: Article III. A. (I) (a) provides benefits for physical therapy in an in-patient hospital setting; Article III. A. (2) (e) provides physical therapy benefits in an out-patient hospital setting; Article III. A. (5) (a) (3) provides physical therapy benefits in a skilled nursing facility; and Article III. A. (6) (D) provides physical therapy as a home health service. Article III. A. (7) (D) is a more general section that provides physical therapy in a hospital, skilled nursing facility, treatment center, or in the beneficiary's home. Article III. A. (6) (b)1 the section providing physical therapy as a home health service, is the only specific provision that mentions "restoration" or "functions lost or reduced by illness or injury." The requirement in Article III. A. (7) (D) of "maximum restoration," therefore, is a reference to physical therapy as a home health service, not as an out-patient hospital benefit.

The Employee's son's physical therapy is performed in the outpatient department of a hospital. Therefore his eligibility for the benefit should be governed by Article III. A. (2) (e) and not Article III. A. (6) (D), as suggested by the Employer. Article III. A. (2) (e) requires that physiotherapy treatments performed in the out-patient department of a hospital must be prescribed and supervised by a physician.

The Employee's son's physical therapy was prescribed by a physician and is administered by a licensed physical therapist in a hospital out-patient department. This therapy is justified based on the diagnosis, the physician's recommendation that physical therapy should be continued, and the opinions of the therapist and the physician that the child has not reached a level of maximum benefit from such therapy.

Because the provisions of the Employer's Plan pertaining to out-patient physical therapy benefits have been satisfied in this case, the Employer is responsible for payment of the charges relative to the Employee's son's physical therapy.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for payment of the charges for the Employee's son's physical therapy treatment.