

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-222 - October 28, 1986

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 provision of health benefits for eye surgery under the terms of the Employer Benefit Plan.

Background Facts

In December 1985 the Employee had radial keratotomy surgery, a procedure used to correct nearsightedness in individuals who have difficulty wearing eyeglasses or contact lenses, performed on his right eye, and the Employer's insurance carrier paid all of the amount charged for the procedure as well as for the associated hospitalization. On March 12, 1986, the Employee was hospitalized for performance of radial keratotomy on his left eye.

The Employer's insurance carrier denied payment of benefits for the later surgery on the grounds that the procedure was not covered by the Employer Plan. The Employer has affirmed the denial of benefits on the grounds that the procedure is experimental and is not essential for the Employee's care. The Employer further stated that the previous surgery performed in December 1985 was reimbursed in error.

Dispute

Is the Employer responsible for payment of the surgery and hospital charges associated with the eye surgery performed on March 12, 1986?

Position of the Parties

Position of the Employee: The Employer is responsible for payment of the charges resulting from the eye surgery.

Position of the Employer: The Employer is not responsible for paying benefits for the Employee's eye surgery because it is experimental in nature and is not essential for the beneficiary's care.

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Pertinent Provisions

Article III.A. (II)(a) 24 of the 1984 Employer Benefit Plan states in part:

(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 and therapy which are experimental in nature.

Article III.A. (9)(c) 5 states in part:

(9) Vision Care Program

(c) Exclusions include:

5. experimental services or supplies.

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Discussion

Under the provisions of Article III.A. (11)(a) 24 of the 1984 Employer Benefit Plan, benefits are not provided for charges for treatment with new technological medical devices and therapies which are experimental in nature. Article III.A. (9)(c) 8 excludes experimental services or supplies from the Vision Care Program. Radial keratotomy surgery is regarded as experimental in nature by Medicare, the American Academy of Ophthalmology and the UMWA 1980 and 1974 Benefit Plans. In addition, as stated by the Employee's surgeon, the surgery was performed as part of a "clinical investigation plan" designed to study the effects of the procedure.

Radial keratotomy is not a covered service under the Employer Benefit Plan. Prior to receiving any indication from his Employer that his surgery would be covered, the Employee embarked upon a course of treatment which, according to his doctor, included surgery on both eyes. The fact that the Employer's carrier later may have paid in error for the first keratotomy does not require the Employer to pay the expenses of the second surgery when neither surgery is a covered service.

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Opinion of the Trustees

The Employer is not responsible for the payment of the surgery and hospital charges resulting from the eye surgery performed on the Employee on March 12, 1986.

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