
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-230 - December 10, 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 benefits for visual therapy and a motor skills evaluation under the terms of the Employer Benefit Plan.

Background Facts

The Employee's son, who has Down's syndrome, was treated by an optometrist for a variety of visual disturbances including "jerky" eye movement, difficulties with focusing, astigmatism and far sightedness. A program of vision therapy was instituted in order to improve the Employee's son's learning environment, and to enable him to function better in society. In addition, the Employee's son's physician prescribed an evaluation of the patient's motor skills. This evaluation was prescribed to determine the level of his medical problems and motor skill development.

The Employer has denied benefits for both the visual therapy and the motor skills evaluation by the occupational therapist.

Dispute

Is the Employer responsible for provision of benefits for the visual therapy and the motor skills evaluation provided to the Employee's son?

Position of the Parties

Position of the Employee: The Employer is responsible for the provision of benefits for the visual therapy provided to the Employee's son due to the neurological origin of the problem being treated. The Employer is also responsible for the provision of benefits for the motor skills evaluation as it was prescribed by a physician to determine the extent of the medical problem.

Position of the Employer: The Employer is not responsible for the provision of benefits for visual therapy provided to the Employee's son because it is specifically excluded from coverage

under the Employer Benefit Plan. The Employer is not responsible for the provision of benefits for the evaluation by the occupational therapist as benefits for these services are also not included by the Plan.

Pertinent Provisions

Article III. A. (9) (c) 4 of the Employer Benefit Plan states:

(9) Vision Care Program

(c) Exclusions include:

4. special procedures, such as orthoptics, vision training, subnormal vision aids, aniseikonic lenses and tonography;

Article III. A. (11) (a) 27 of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

27. Any types of services, supplies or treatments not specifically provided by the Plan.

Article III. A. (7) (b) of the Employer Benefit Plan states:

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

Discussion

According to Article III. A. (9) (c) 4 of the Employer Benefit Plan, vision training, or visual therapy, is specifically excluded from coverage. Article III. A. (11) (a) 27 of the Employer Benefit Plan states that any service not specifically provided by the terms of the Plan is excluded from coverage. The Employee contends that, due to the neurological origins of the visual disturbances, visual therapy is a covered benefit. There is no mention of visual therapy except under the vision care program of the Plan, where it is specifically excluded. Since any services not specifically provided by the Plan are excluded from coverage under Article III. A. (11) (a) 27, visual therapy is not covered.

Article III. A. (7)(b) of the Employer Benefit Plan states that benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center or in the Beneficiary's home. The Employee contends that the services provided to his son were not actually occupational therapy as such, but were instead an evaluation by an occupational therapist of a neurologically caused deficiency in motor capability. Investigation confirms that, in reality, the subject services rendered in 1988 to the 12 year old boy in this case constituted physical therapy, not occupational therapy. Such an evaluation of the child's motor skills is reasonable and necessary for the proper treatment of the child's medical problem, Down's Syndrome, and is thus a covered benefit under Article III. A. (7) (b) of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not responsible for the provision of benefits for the visual therapy but is responsible for the motor skills evaluation provided to the Employee's son.