
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-241 - May 27, 1987

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustees;
William B. Jordan, Trustee; William Miller, Trustee; Donald R. 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 a fertilization procedure under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse, due to a long-standing history of infertility, underwent a fertilization procedure referred to as "gamete intra-fallopian transfer" (GIFT). The GIFT procedure involves injecting the woman with hormones to stimulate the development of mature eggs. The eggs are then extracted surgically, mixed with the donor's sperm, and transferred by a catheter back into the fallopian tubes for potential fertilization. This procedure is called in vivo fertilization in that the intended fertilization takes place within the body, while in vitro fertilization occurs outside the body.

In December 1984, the Employee's spouse telephoned the Employer to ascertain whether in vitro fertilization was a covered benefit. She was told that the routine lab work and the laparoscopy associated with the procedure would be paid for, but any costs related to the in vitro fertilization itself would not be covered, as it was an experimental procedure. The Employee's spouse subsequently had the GIFT procedure performed in July of 1985. She had been informed by her physician and the American Fertility Society that they do not regard the GIFT procedure, a means of in vivo fertilization, as experimental. The Employee paid the hospital's and physician's charges and then forwarded the bills to the Employer's insurance carrier, which reimbursed the Employee in full.

The Employee's spouse did not become pregnant as a result of the GIFT procedure and therefore planned to have the procedure repeated. In January 1986, she called the Employer requesting a letter stating that GIFT was a covered medical expense and that a repeat

procedure would be covered. The Employer then determined that its insurance carrier had incorrectly paid benefits for the July 1985 procedure, and both the Employer and its insurance carrier sent the Employee letters stating that payment for the first GIFT procedure had been made in error and that the procedure was not covered. The Employer asked for a complete refund and stated that procedures which are alternatives to natural fertilization are not covered under the Plan because they are neither medically necessary nor provided for in the Plan. The Employer denied coverage for all services relating to the GIFT procedure, including lab, X-ray and physician charges.

Dispute

Is the Employer responsible for providing benefits for the GIFT procedure?

Positions of the Parties

Position of the Employee: The Employee contends that the GIFT procedure facilitates natural fertilization as does artificial insemination, and therefore should be covered.

Position of the Employer: The Employer contends the GIFT procedure is not an artificial insemination procedure and is not specifically provided for by the Plan, and therefore is excluded from coverage by the Plan.

Pertinent Provisions

Article III. A. (3) (o) 7. of the Employer Benefit Plan states:

7. Benefits are provided covering artificial insemination if the service is provided by a licensed gynecologist.

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.

Discussion

Article III. A. (3) (o) 7. states that benefits are provided for artificial insemination, a procedure defined by the American College of Obstetricians and Gynecologists' handbook of Practices and Procedure as, "the introduction of semen into the vagina by artificial means". In addition, the chairman of the college's Committee on Reproductive Endocrinology has stated that the GIFT procedure is not considered to be artificial insemination. While the Plan does cover artificial insemination, in vivo and in vitro procedures are not the same as artificial insemination procedures and are therefore excluded from coverage under Article III. A. (11)(a) 27.

Opinion of the Trustees

The Employer is not responsible for coverage for the GIFT procedure and its associated costs.