

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-312 - September 29, 1987

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 coverage for oral surgery under the terms of the Employer Benefit Plan.

Background Facts

The Employee had a complete cleft lip and cleft palate which were treated surgically at a very early age. Over the years, however, this condition led to the partial collapse of his maxilla (upper jaw bone), which in turn led to severe malocclusion, the formation of two nasal fistulae and secondary pain in the left temporomandibular joint. The nasal fistulae provided passages for the transfer of air, fluids and possibly other particles from the Employee's oral cavity into the nose and subsequently into the lungs. The Employee's physician, an oral surgeon, treated these conditions conservatively for over two years and then determined, based on the Employee's worsening condition, that surgery would be required to close the existing fistulae and to build up and reposition the maxilla to correct the malocclusion, to relieve the pain in the temporomandibular joint and to prevent recurrence of the nasal fistulae.

When prior approval for the surgery was sought, the Employer informed the Employee on November 6, 1985, prior to surgery, that full benefits would be provided under the Employer Benefit Plan for the closure of the nasal fistulae but that benefits for the segmental maxillary osteotomy to build up and reposition the maxilla would have to be provided under the Employer Dental Plan. The proposed surgery was performed on January 21, 1986. The Employer has paid benefits for the fistulae repair and for the hospitalization associated with the surgery, because repair of the fistulae is covered under the Employer Benefit Plan. The Employee is seeking full payment of benefits for the oral surgeon's charges associated with the maxillary osteotomy.

Dispute

Is the Employer responsible for payment of benefits for the maxillary osteotomy performed on the Employee?

Positions of the Parties

Position of the Employee: The Employer is responsible for payment of benefits for the maxillary osteotomy because it is a covered service under the Employer Benefit Plan.

Position of the Employer: The Employer is not responsible for paying benefits for the maxillary osteotomy because it is not a covered oral surgical procedure under Article III. A. (3)(e) of the Employer Benefit Plan.

Pertinent Provisions

Article III. A. (3)(a) of the Employer Benefit Plan states in part:

(3) Physicians' Services and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedure (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

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

Oral Surgery

Benefits are not provided for dental services. However, benefits are provided for the following limited oral surgical procedures if performed by a dental surgeon or general surgeon:

- Tumors of the jaw (maxilla and mandible)
- Fractures of the jaw, including reduction and wiring
- Fractures of the facial bones
- Frenulectomy when related only to ankyloglossia (tongue tie)
- Temporomandibular Joint Dysfunction, only when medically necessary and related to an oral orthopedic problem
- Biopsy of the oral cavity
- Dental services required as the direct result of an accident

Q&A 81-15 states:

Subject: Dental and Oral Surgical Services

References: Amended 1950 & 1974 Benefit Plans & Trusts, Article III, Section A (3) (e)

Other: 1981 Contract Q&A #81-16

Question:

Are the following dental and oral surgical procedures covered under the Plan:

- a. extraction of teeth?
- b. gingivectomy, alveolectomy, operculectomy?
- c. gingivoplasty, alveoplasty, vestibuloplasty?
- d. treatment for abscessed teeth?
- e. resection of prognathic mandible?
- f. mandibular bone staple?
- g. orthodontics?

Answer:

The dental and oral surgical procedures listed above, when performed in a hospital, are covered only when they are part of a treatment for an illness or injury which is otherwise a covered benefit. Examples of this would be: (1) the extraction of teeth during emergency treatment of extensive facial damage resulting from an auto accident; (2) the extraction of teeth during treatment of cancers of the head and mouth; and (3) the insertion of a mandibular bone staple to repair a fractured jaw.

Except as provided in the above paragraph, none of these seven procedures is covered under the Plan.

#### Discussion

Article III. A. (3)(a) of the Employer Benefit Plan provides benefits for medically necessary surgical services. Article III. A. (3)(e) specifies the limited oral surgical procedures for which benefits are provided under the Plan. In addition, according to Q&A 81-15, certain dental and oral surgical procedures are covered under the Employer Benefit Plan when performed in a hospital as part of the treatment for an illness or injury which is otherwise a covered benefit. The principle of Q&A 81-15 has been applied by the Trustees in numerous instances to services such as endodontic care, mandibular bone graft, treatment of dental caries and maxillary osteotomy.

The Employee's physician states that the Employee's complete cleft palate resulted in the collapse of his maxilla and, in turn, the formation of the nasal fistulae. The Plan Administrator granted prior approval and coverage for the hospitalization and surgery to close the Employee's two nasal fistulae. The maxillary osteotomy in question was not performed to address temporomandibular joint dysfunction; it was performed to correct the Employee's nasal fistulae. A Funds' medical consultant has reviewed the medical evidence submitted and is of the opinion

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that the maxillary osteotomy was medically necessary to prevent the reformation of the nasal fistulae. Inasmuch as the maxillary osteotomy was performed in this particular case as part of the treatment for the nasal fistulae which is otherwise a covered benefit, it is covered under the provisions of Article III. A. (3)(e) as interpreted by the Trustees in Q&A 81-15 and consistent with past applications of Q&A 81-15.

Opinion of the Trustees

Given the particular circumstances in this case, the Employer is responsible for the provision of benefits for the physician's reasonable and customary charges for his services to perform the Employee's maxillary osteotomy.