
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-331 - April 30, 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 a computerized speech synthesizer under the terms of the Employer Benefit Plan.

Background Facts

The Employee's dependent daughter is unable to communicate orally or with sign language due to cerebral palsy, with associated neurological and respiratory impairments. Evaluations by speech pathologists and a teacher of the multi-handicapped indicate that she has the appropriate cognitive abilities to use a computerized speech synthesizer, (i.e., the Light Talker) to communicate with others in her environment. The communication device was prescribed by the child's physician; however, payment for it was denied by the Employer.

Dispute

Is the Employer responsible for providing benefits for the computerized speech synthesizer?

Position of the Parties

Position of the Employee: The Employer is responsible for paying benefits for the computerized speech synthesizer because it is a reasonable treatment for his daughter's illness, cerebral palsy, and because it is a prosthetic device which will replace her nonfunctional larynx.

Position of the Employer: The Employer is not responsible for paying benefits for the computerized speech synthesizer because the device is not a prosthesis in that it enhances communication, but does not replace the larynx,

Pertinent Provisions

Article III. A. (7) (a) of the Employer Benefit Plan states in part:

(7) Other Benefits

(a) Orthopedic and Prosthetic Devices

Benefits are provided for orthopedic and prosthetic devices prescribed by a physician when medically necessary.

The following types of equipment are covered:

1. Prosthetic devices which serve as replacement for internal or external body parts, other than dental.

These include artificial eyes, noses, hands (or hooks), feet, arms, legs and ostomy bags and supplies.

Article III. A. (6)(d) of the Employer Benefit Plan states:

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Q&A 81-38 states in part:

Subject: Medical Equipment and Supplies

References: Amended 1950 & 1974 Benefit Plans & Trusts,
Article III, Section A (6) (d) and (e), and A (7) (a) and (d)

Question:

What medical equipment and supplies are covered under the Plan?

Answer:

- A. Under the Home Health Services and Equipment provision, benefits are provided for the rental and, where appropriate as determined by the Plan Administrator, purchase of medical equipment and supplies (including items essential to the effective use of the equipment) suitable for home use when determined to be medically necessary by a physician. These supplies and equipment include, but are not limited to, the following:
1. Durable Medical Equipment (DME) which (a) can withstand use (i.e., could normally be rented), (b) is primarily and customarily used to service a medical purpose, (c) generally is not useful to a person in the absence of an illness or injury, and (d) is appropriate for use in the home. Examples of covered DME items are canes, commodes and other safety bathroom equipment, home dialysis equipment, hospital beds and mattresses, iron lungs, orthopedic frames and traction devices, oxygen tents, patient lifts, respirators, vaporizers, walkers and wheel chairs...
- B. Under the Other Benefits provision, benefits are provided for the following:
1. Orthopedic and prosthetic devices prescribed by a physician when medically necessary, including items necessary for their effective use. These include, but are not limited to, the following items:
 - prosthetic devices replacing internal or external body parts (other than dental), such as cardiac pacemakers, maxillofacial devices and devices replacing all of the ear or nose, and waste collection and retention devices for incontinent people (e.g., catheters, ostomy bags and supplies)
 - prosthesis following breast removal, including surgical brassieres
 - leg, arm, back and neck braces
 - trusses
 - stump stocking and harnesses (see Article III Section A (7) (a) 5)
 - orthopedic shoes and corrections (see Article III Section A (7) (a) 7 and 8)

Discussion

Under Article III. A. (7) (a) of the Employer Benefit Plan, benefits are provided for physician - prescribed, medically necessary, prosthetic devices which serve as replacement for internal or external body parts, other than dental.

The Light Talker is a device which would enable the Employee's daughter to communicate by translating pre-typed text to computer synthesized speech. Although it provides an alternative form of communication, it is not considered a prosthesis because it does not mimic or enhance the patient's own speech function. A throat-contacting electronic speech aid which replaces the function of the vocal cords in a patient whose larynx has been surgically removed is an example of a prosthesis which replaces the patient's own speech function. The Light Talker does not serve a similar purpose.

Article III A. (6) (d) of the Employer Benefit Plan provides benefits for the purchase of medically necessary durable medical equipment. Q&A 81-38 lists, as one criterion for covered durable medical equipment, that the equipment must be "primarily and customarily used to service a medical purpose." The Light Talker serves as a medium for communication. In this particular case, no documentation has been submitted to establish the diagnostic or therapeutic function it might perform. Therefore, its medical necessity has not been established and it does not meet the criteria to be covered as an item of durable medical equipment.

The Light Talker computerized speech synthesizer is neither a prosthesis nor an item of durable medical equipment and therefore is not a covered benefit under the Employer Benefit Plan. It is noted that other resources available to the Complainant may not have been exhausted.

Opinion of the Trustees

The Employer is not responsible for providing benefits for the computerized speech synthesizer.