

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-350 - May 27, 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 for breast reconstruction under the terms of the Employer Benefit Plan.

Background Facts

About five years ago, the Employee's wife underwent bilateral partial mastectomies for fibrocystic disease and approximately 65% of her breast tissue was removed. Subsequently, the fibrocystic disease spread, necessitating the surgical removal of the remaining tissue. This surgery was performed on September 27, 1985 at which time first-stage breast reconstruction was also performed. After the tissue was allowed to heal, second-stage breast reconstruction (specifically, reconstruction of the nipples and surrounding tissue) was completed with a third operation on May 7, 1986. The Employer denied the provision of benefits for the third surgery stating that it was performed for cosmetic reasons.

Dispute

Is the Employer responsible for the provision of benefits for reconstructive breast surgery performed on the Employee's spouse on May 7, 1986?

Position of the Parties

Position of the Employee: The Employer is responsible for the provision of benefits for the reconstructive breast surgery as these are medical services covered under the Plan.

Position of the Employer: The Employer is not responsible for the provision of benefits because reconstructive breast surgery was not medically necessary but was performed for cosmetic reasons.

Pertinent Provisions

The introduction to Article III of the Employer Benefit Plan states in part:

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury....

Article III. A. (3)(p) 9. of the Employer Benefit Plan states:

(p) Services Not Covered

9. Cosmetic surgery, unless pertaining to surgical scars or to correct results of an accidental injury or birth defects.

Discussion

The introduction to Article III of the Employer Benefit Plan states that the Plan covers those services that are necessary for the diagnosis or treatment of an illness. Article III. A. (3)(p) 9. states that cosmetic surgery is covered under the Plan when it is performed to correct surgical scars.

The initial surgery performed on the Employee's spouse was due to her fibrocystic disease. The third operation performed was to reconstruct the nipple and surrounding tissue after her breasts and nipples had been surgically removed; this surgery was the second stage of breast reconstruction which cannot be accomplished in one stage because the tissue requires time to heal between stages. A Funds' medical consultant has reviewed the data in this case and is of the opinion that the third surgery on May 7, 1986 was performed to revise a surgical scar of the right breast and to reconstruct bilateral nipples removed in the previous operation. As the Plan specifically covers cosmetic surgery pertaining to surgical scars, the reconstructive breast surgery performed on May 7, 1986 is a covered benefit.

Opinion of the Trustees

The Employer is responsible for provision of benefits for the reconstructive breast surgery performed on the Employee's spouse on May 7, 1986.