

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 84-424 - December 18, 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 nasal surgery under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse had otitis media (an inflammation of the middle ear) with perforation of the eardrum, a markedly deviated nasal septum with severe hypertrophy of the nasal turbinates and a deformity of the nasal pyramid. In 1978, she had unsuccessful surgery which left her with a deformity of the nose. In 1984, an injury sustained in an automobile accident aggravated her ability to breathe through the nose.

An ear, nose and throat specialist determined that in order to permanently correct her ear problem, the Employee's spouse would first have to have an operation on her nose to establish normal breathing through the nose. Later, she would have to undergo tympanoplasty, to repair the ear drum. The physician performed an external septoplasty (surgical repair of the nasal septum), partial turbinectomy (surgical excision of a nasal concha), and functional rhinoplasty (functional reconstruction of the nasal pyramid).

The physician states that the purpose of the surgery was not to achieve an aesthetic correction but to improve the function of the nose in preparation for the scheduled tympanoplasty. The physician maintains that the Employee's spouse's aesthetic appearance has not been significantly changed. The physician stated that he did not charge for the functional rhinoplasty because it was the same operation as the correction of the nasal septum.

The Employer initially paid the physician's fees and denied the hospital charges but now is attempting to recover the physician's fees because it says all or part of the Employee's spouse's surgery was cosmetic in nature.

Dispute

Is the Employer responsible for the provision of health benefits for the nasal surgery performed on the Employee's spouse?

Positions of the Parties

Position of Employee: The Employer is responsible for the provision of benefits for the nasal surgery performed on the Employee's spouse because the surgery was medically necessary.

Position of the Employer: The Employer is not responsible for the provision of health benefits for the nasal surgery performed on the Employee's spouse because the surgery was performed for cosmetic reasons.

Pertinent Provisions

The Introduction of 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)(a) 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)(p) 9. 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. Benefits are provided under Article III. A. (3)(a) for surgical services for the treatment of illnesses, injuries, fractures or dislocations. However Article III. A. (3)(p) 9. specifically excludes benefits for cosmetic

surgical services unless the surgery pertains to surgical scars or to the correction of the results of an accidental injury or birth defect.

The Funds' medical consultant has concluded that the nasal surgery in question was performed to repair damage from an accidental injury to the nose. The consultant advises that difficulties with breathing through the nose due to severe swelling of the turbinates and/or deviation of the nasal septum can, as in this case, cause chronic problems with the sinuses and the middle ear and that the operative report indicates that any cosmetic improvement obtained was done as part of good surgical technique to treat the Employee's spouse's medical problems.

Since the Employee's spouse's nasal surgery was reasonable and necessary for the treatment of both her illness and her accidental injury, the physicians, professional fees and the charges for hospitalization are covered benefits under the Employer Benefit Plan.

#### Opinion of the Trustees

The Employer is responsible for the provision of health benefits for the nasal surgery performed on the Employee's spouse.