
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 84-583 - May 24, 1988

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 anesthesia services provided under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was scheduled for an outpatient diagnostic surgical procedure, a laparoscopy, which required the administration of anesthesia. An anesthesiologist performed a preoperative evaluation the day before the operation was to be performed and found no contraindication to surgery; however, the next morning he discovered that the patient had an acute upper respiratory tract infection. Since the infection was a contraindication to elective surgery, the Employee's spouse's laparoscopy was cancelled. The anesthesiologist billed the Employee \$168.00 for a comprehensive consultation. The Employee claims that the Employer is responsible for the provision of health benefits for the consultation or for holding him harmless from the provider's attempt to collect charges for the consultation.

The Employer denied the payment of benefits for the anesthesiologist's claimed comprehensive consultation because anesthesia was never administered. The Employer states that according to Article III. A. (3)(d) of the Employer Benefit Plan, health benefits are only provided for the administration of anesthesia. The Employer states that in its local area, it is customary for an anesthesiologist's preoperative visit charges to be included in the total fee billed after the anesthesia has been administered. In support of its position, the Employer has submitted a letter from the administrator of an anesthesiologist's group practice indicating that group does not charge a consultation fee for preoperative services when a surgical procedure is canceled.

Dispute

Is the Employer responsible for the payment of the anesthesiologist's charges for a preoperative consultation?

Positions of the Parties

Position of the Employee: The Employer is responsible for the payment of the consultation charges or should hold the Employee harmless from the anesthesiologist's attempt to collect charges for a comprehensive consultation.

Position of the Employer: The Employer is not responsible for the payment of the anesthesiologists charges for a comprehensive consultation because the anesthesiologist never administered the anesthesia. Preoperative visits are customarily covered in the Employer's area as part of the total anesthesiologist's fee, but only if anesthesia has been administered.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

Article III Benefits

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care.

Article III. A. (3)(d) of the Employer Benefit Plan provides:

(d) Anesthesia Services

Benefits are provided for the administration of anesthetics provided either in or out of the hospital in surgical or obstetrical cases, when administered and billed by a physician, other than the operating surgeon or his assistant, who is not an employee of, nor compensated by, a hospital, laboratory or other institution.

Article III. A. (3)(1) of the Employer Benefit Plan states:

(1) Medical Consultation

Benefits are provided for services rendered, at the request of the attending physician in charge of the case, by a physician who is qualified in a medical specialty necessary in connection with medical treatment required by a Beneficiary.

Article III. A. (10)(g)(2) of the Employer Benefit Plan states:

2. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Discussion

Article III. A. (3)(d) of the Employer Benefit Plan states that benefits are provided for the administration of anesthesia. The Employer claims that it is customary for an anesthesiologist's preoperative visit to be included in the global charge for anesthesia services, but that no benefits are provided for such a visit when a surgical procedure is canceled and no anesthesia is administered. A letter from one anesthesiology group is not sufficient evidence to establish the customary practice of anesthesiologists in the community where the service was provided. Furthermore, although the global charge for anesthesia services is generally intended to encompass the related services (including the pre-operative visit), the anesthesiologist in this case cannot bill the global charge since no anesthesia was administered, and must therefore bill only for that portion of the global charge pertaining to the services rendered. The anesthesiologist in this case did not bill for administration of anesthesia; rather, he provided and billed for a consultation. Whether or not he billed for the appropriate level of care must be determined by the Plan Administrator.

Article III. A. (3)(l) of the Employer Benefit Plan states that benefits are provided for medical consultation services rendered by a physician who is qualified in a medical specialty in connection with medical treatment required by a Beneficiary. The Employee's spouse required the services of an anesthesiologist. The anesthesiologist performed a comprehensive consultation prior to the Employee's spouse's scheduled surgery even though the surgery was

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cancel led, and he did not ultimately administer anesthesia. Therefore, the Employer is responsible, in accordance with Article III. A. (3)(1) of the Plan, for payment of the charges for the Employee's spouse's preoperative consultation, at the reasonable and customary rate for the appropriate level of service. Hold harmless procedures should be applied if a portion of the charge is denied.

Opinion of the Trustees

The Employer is responsible for payment of charges for the anesthesiologist's consultation, at the reasonable and customary rate for the appropriate level of service.