

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-036 - November 22, 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 the provision of health benefits for percutaneous discectomy under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse has intractable back pain due to the prolapse (slipping) of an intervertebral disc. Her physician states that she needs a percutaneous automated discectomy, a non-invasive surgical procedure for removing herniated disc material. The Employee asks whether the Employer is responsible for providing benefits for the proposed percutaneous discectomy.

The Employer has stated that the charge for the procedure is not a covered expense under the Employer Benefit Plan because the procedure is considered experimental in nature.

Dispute

Is the Employer responsible for providing benefits for the proposed percutaneous discectomy for the Employee's spouse?

Positions of the Parties

Position of the Employee: The Employee asks whether the Employer is responsible for providing benefits for the proposed percutaneous discectomy for the Employee's spouse.

Position of the Employer: The Employer is not responsible for providing benefits for the proposed percutaneous discectomy because it is considered an experimental procedure and, as such, is specifically excluded under the terms of the Employer Benefit Plan.

Pertinent Provisions

Article III. A. (3) (a) of the Employer Benefit Plan states in pertinent 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. (11)(a) 24. of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Discussion

Under Article III. A. (3) (a) of the Employer Benefit Plan, benefits are provided for surgical services which are performed either in or out of a hospital by a physician. Article III. A. (11)(a) 24. of the Plan excludes coverage for treatment with new technological medical devices and therapy which are experimental in nature.

The Employer in this case was advised by its insurance carrier that, on the basis of opinions obtained from consultants in neurology, neurological surgery, and orthopedics, the proposed percutaneous discectomy is considered an experimental procedure.

A Funds' medical consultant has reviewed this file and information regarding percutaneous discectomy obtained from orthopedic, radiologic and neurosurgical consultants. The consultant has advised that this procedure is still considered experimental in nature because its safety and efficacy have not been established. He further states that there are alternate conventional

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therapies and procedures available to treat the Employee's spouse's condition. Inasmuch as the Employee's spouse's proposed percutaneous discectomy is considered to be experimental in nature by the medical community, it is specifically excluded from coverage under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not responsible for providing benefits for the Employee's spouse's proposed percutaneous discectomy.