
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-043 - February 28, 1989

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 benefits for an assistant surgeon's services under the terms of the Employer Benefit Plan.

Background Facts

The Employee's seven-year-old dependent son had enlarged tonsils and adenoids with recurrent throat and ear infections. The child's physician stated in the clinical resume that the child had been in good health and was expected to tolerate a tonsillectomy and adenoidectomy under general anesthesia without difficulty. The tonsillectomy and adenoidectomy were performed on August 7, 1987. A physician assisted the operating surgeon during the surgery. The operating surgeon has indicated that he was required to use an assistant surgeon because hospital regulations state that "[t]he operating surgeon shall have a qualified physician assistant at all major operations."

The Employer denied coverage for the assistant surgeon's charges stating that it considers such service to be a non-covered benefit. It further stated that, because the service is not covered under the Plan, it has no responsibility to hold the Employee harmless.

The representative for the Employee states that the denial of benefits for the assistant surgeon's services is not disputed. The representative contends, however, that the denial is based on a decision that the services of the assistant surgeon were not medically necessary in this case. The representative claims that the Employer is responsible for holding the Employee harmless from efforts by the provider to collect charges for services that have been deemed not medically necessary.

Dispute

Is the Employer responsible for holding the Employee harmless from efforts by the assistant surgeon to collect charges for services rendered during the Employee's child's tonsillectomy and adenoidectomy?

Positions of the Parties

Position of the Employee: The Employer is responsible for holding the Employee harmless from efforts by the assistant surgeon to collect charges for services rendered during the Employee's child's tonsillectomy and adenoidectomy because such services were not medically necessary.

Position of the Employer: The Employer is not responsible for holding the Employee harmless because the use of an assistant surgeon for a tonsillectomy is not a covered benefit under the Employer Benefit Plan.

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 art 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. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

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

(3) Physicians' Services and Other Primary Care

(b) Assistant Surgeons

If the Beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating physician in the

performance of such surgical services when the condition of the Beneficiary and type of surgical service require such assistance.

Article III. A. (10) (g) 3. of the Employer Benefit Plan states:

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

3. 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

The Introduction to Article III of the Employer Benefit Plan states that 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. Article III. A. (3)(b) of the Plan states that if a Beneficiary is an inpatient in a hospital, benefits will be provided for the services of a physician who actively assists the operating physician in the performance of surgical services when the condition of the Beneficiary and the type of surgical service performed require such assistance. In effect, the requirements set forth in Article III. A. (3) (b) limit coverage for the services of an assistant surgeon to those situations where such services are medically necessary to maintain the well-being of a patient. Whether the services are medically necessary is determined by a review of the type of surgical service performed and the condition of the patient.

While the hospital in this case may have a rule requiring a physician to assist at major surgeries, that rule does not make the services medically necessary under the Employer Benefit Plan. A Funds' medical consultant has reviewed this file and advised that the procedure as described in this case was a routine tonsillectomy and adenoidectomy. The consultant stated that it is generally accepted that a routine tonsillectomy and adenoidectomy is not the type of surgical procedure that requires the services of an assistant surgeon. The consultant stated that he finds no evidence of any special circumstances that would indicate that it was medically necessary for an assistant surgeon to be present at the surgery performed in this case. Therefore, neither the

type of surgery performed in this case nor the patient's condition made it medically necessary for the assistant surgeon to attend the surgery performed.

Article III. A. (10)(g) 3. of the Employer Benefit Plan provides that the Plan Administrator shall attempt to negotiate with or defend the Employee against providers who seek to collect charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with such charges, but may be liable for services that are not provided under the Plan. This is known as the Plan's "Hold Harmless" provision.

The Employer has refused to hold the Employee harmless in this case. The Employer claims that the dispute here is similar to ROD 84-467 (copy enclosed herein) in which the Trustees determined that the Employer had no responsibility to hold the Employee harmless. However, the Employer's reliance on ROD 84-467 is misplaced. There, the Employee's spouse had been admitted to the hospital for diagnostic evaluation and testing. The decision found that the services were not medically necessary and also noted that inpatient confinements for diagnostic evaluations were specifically excluded by Article III. A. (11) (a) 16. of the Employer Benefit Plan. The Trustees held that, in such circumstances, the Employer had no obligation to hold the Employee harmless.

Here, on the other hand, the assistant surgeon's services are not specifically excluded from coverage. Indeed, such services are covered unless not medically necessary. It has been determined in this case that the services were not medically necessary. The hold harmless provision applies when services are not medically necessary. Consequently, the Employer must hold the Employee harmless.

Opinion of the Trustees

The Employer is responsible for holding the Employee harmless from efforts by the assistant surgeon to collect the charges for services that in this case were not medically necessary.