
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-070 - April 27, 1989

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, 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 surgical services under the terms of the Employer Benefit Plan.

Background Facts

On July 20, 1988, the Employee underwent the operative removal of a ureteral stone by mechanical manipulation. He was then transferred to another unit where multiple stones in the left kidney were destroyed using extracorporeal shockwave lithotripsy (crushing a stone into very small pieces that can be eliminated in the urine). The Employer paid in full the charge for the lithotripsy. The Employer determined that, because both procedures were performed during the same operative session, the removal of the ureteral stone was an incidental procedure, and it issued payment at fifty percent of the surgeon's charge for that procedure. The Employee contends that the surgeon's charge for the removal of the ureteral stone should be paid in full.

Dispute

Is the Employer responsible for full payment of the surgeon's charge for the removal of the ureteral stone?

Positions of the Parties

Position of the Employee: The Employer is responsible for full payment of the surgeon's charge for the removal of the Employee's ureteral stone because it was one of two separate procedures.

Position of the Employer: The Employer has not responded to repeated correspondence from Funds' staff requesting its position in this dispute.

Pertinent Provisions

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

(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.

When surgical services consist of necessary major surgery (primary) and the physician performs surgery additional to the primary surgery (incidental surgery), benefits payment for the incidental surgery will be provided but at a rate 50% lower than the physician's normal charge had he performed only the incidental surgery.

Discussion

Article III. A. (3) (a) of the Employer Benefit Plan states that when a physician performs incidental surgery in addition to primary surgery, benefits for the incidental surgery are provided at a rate fifty percent lower than the physician's normal charge had he performed only the incidental surgery. Q&A 81-91 (copy enclosed herein) defines incidental surgery as an operative procedure performed subsequent to a primary surgical procedure, during the same operative session, through the same incision and in the same operative field.

A Funds' medical consultant has reviewed the information presented in this case and advised that the removal of the ureteral stone by mechanical means and the removal of the kidney stones by means of lithotripsy are discussed in the same operative report, but they are separate procedures performed in different areas of the hospital at different times for two different problems. Therefore, neither of the procedures performed in this case can be considered incidental surgery as defined in Q&A 81-91. The removal of Employee's ureteral stone is a separate surgical procedure covered under Article III. A. (3) (a) of the Employer Benefit Plan and is not subject to the fifty percent reduction in payment.

Opinion of the Trustees

The Employer is responsible for full payment of the reasonable and customary charge for the removal of the Employee's ureteral stone.