

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-106 - May 22, 1990

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

Background Facts

On October 28, 1987, the Employee's spouse had surgery to repair a torn retina in her right eye. The charges for the surgery, including the charge for an assistant surgeon, were covered under the Employer's Benefit Plan. Subsequent to this surgery, the Employee's spouse noticed distortions in her vision caused by scar tissue on her right eye.

On January 15, 1988, the Employee's spouse underwent a trans pars plana vitrectomy and membrane peeling to remove the scar tissue. A physician (an ophthalmologist) assisted the operating ophthalmologist during the six-hour operation performed on January 15, 1988. The operating surgeon has stated that the complexity of the procedures performed on January 15, 1988 necessitated assistance from an ophthalmologist trained in vitreoretinal surgery. He also stated that such assistance significantly shortens the operative time and hospital stay, increases the success rate, and decreases the complication rate, thereby minimizing the likelihood of subsequent surgery and hospitalization.

The Employer states that the second surgery was less complicated than the first and, therefore, an assistant surgeon was not required. The Employer states that because the assistant surgeon was not required for this type of surgery, his charge does not meet the requirements for coverage under Article III. A. (3)(b) of the Employer's Benefit Plan. The Employer further states that the hold harmless provision of the Plan does not apply to this non-covered or specifically excluded charge, and the beneficiary is liable for its payment.

Dispute

Is the Employer required to pay the assistant surgeon's charge for services rendered during the surgery performed on the Employee's spouse on January 15, 1988?

Positions of the Parties

Position of the Employee: The Employer should pay the assistant surgeon's charge because the Employer paid a similar charge for services rendered during the vitreoretinal surgery performed on the Employee's spouse on October 28, 1987, and because the Employee believes that the use of the assistant surgeon was for the patient's well-being.

Position of the Employer: The Employer is not required to pay the assistant surgeon's charge because the surgery performed on January 15, 1988 was less complicated than the patient's previous surgery and did not require the services of an assistant surgeon. The Employee is liable for the charge in this case because it is a non-covered service to which the hold harmless provision does not apply.

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.

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.

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. A Funds' medical consultant sought expert review of the records in this case, including the operative report for the surgery performed on January 15, 1988. The consultant advises that the surgery performed in this case, a trans pars plana mechanical vitrectomy and membrane peeling, is one of the most difficult and highly complex eye operations, requiring the services of a trained ophthalmologist to assist the operating ophthalmologist. This operation requires a second pair of hands that are experienced in performing this procedure and working with the ophthalmologic equipment involved. Ophthalmologists generally do not perform this procedure often enough to have a sufficiently experienced technician whom they could use as an assistant; consequently, it is reasonable, prudent and in the best Interests of the patient to use an ophthalmologist as an assistant. The consultant is of the opinion that the skilled surgical assistance of an ophthalmologist was reasonable and medically necessary in this case, given the Employee's spouse's condition and the type of surgery required to treat it. Because the services of the assistant surgeon in this instance were medically necessary, the Employer is required to pay the assistant surgeon's charge.

Opinion of the Trustees

The Employer is required to pay the assistant surgeon's charge for the surgery performed on the Employee's spouse on January 15, 1988.