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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-114 - November 17, 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 benefits for multiple surgical reductions of the Employee's spouse's legs under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse underwent gastric bypass surgeries for treatment of morbid obesity on January 21, 1983 and February 18, 1985. Following significant weight loss, the Employee's spouse underwent surgeries to remove excessive skin and fat on her arms on July 16, 1986 and October 8, 1986. On January 2, 1987, she underwent similar surgery on her legs.

The Employer provided benefits for the Employee's spouse's gastric bypass surgeries. The Employer determined that the later surgeries to remove excessive skin were not medically necessary but were performed for cosmetic reasons. However, the Employer provided benefits for the cosmetic surgeries after it determined that the Employee had acted with the understanding that the procedures were covered expenses under the Employer Benefit Plan. The Employee was notified on August 26, 1987 that benefits would not be provided for that type of surgery in the future.

In a letter dated October 18, 1988, a physician who specializes in plastic and reconstructive surgery requested prior approval for a series of surgical reductions of the excessive skin and fat on the Employee's spouse's legs. He recommended that a surgical procedure be performed every four to six months over a two or three year period, each procedure requiring general anesthesia and a five to seven day hospitalization. The physician states that the excessive skin and fat on the patient's legs causes irritation and chafing and interferes with her ability to ambulate. He also states that the excessive skin and fat, in conjunction with severe venous varicosities, contribute to fluid retention in the Employee's spouse's legs which she has been unable to control with support

stockings. The Employee's spouse had laboratory work done on November 28, 1988 in preparation for the proposed surgical reductions.

The Employer has denied benefits for the proposed multiple surgical reductions and the related laboratory work performed on November 28, 1988.

### Dispute

Is the Employer required to provide benefits for the Employee's spouse's proposed surgical reductions and related services including laboratory work done on November 28, 1988?

### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the proposed surgeries and related charges, because such procedures are a direct result of the bypass operations that were covered by the Employer and because it is medically necessary to continue the surgical procedures.

Position of the Employer: The Employer is not required to provide benefits for the Employee's spouse's proposed surgeries because such surgeries would be cosmetic in nature and, therefore, excluded from coverage under the Employer Benefit Plan.

### Pertinent Provisions

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

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)(p) 9. of the Employer Benefit Plan states:

(3) Physicians' Services and Other Primary Care

(p) Services Not Covered

9. Cosmetic surgery, unless pertaining to surgical scars or to correct results of an accidental injury or birth defects.

Article III. A. (11)(a)25. 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:
25. Charges for treatment of obesity, except for pathological, morbid forms of severe obesity (200% or more of desirable weight) when prior approval is obtained from the Plan Administrator.

#### Discussion

The Introduction to Article III of the Employer Benefit Plan states that covered services are those that are reasonable and necessary for the diagnosis or treatment of an illness. Article II. A. (J)(p) 3. states further that cosmetic surgery is not covered unless it is performed to correct surgical scars or to correct results of an accidental injury or birth defect.

A Funds' medical consultant has reviewed the documentation in this case; and advised that, in his opinion, the patient's circulatory problems are varicosities can be treated without the proposed surgical intervention. The consultant advised that the information submitted is insufficient to establish that the proposed surgeries are medically necessary to treat an illness, and it is insufficient to establish that the surgeries are to be performed for other than cosmetic reasons. The Employee has also claimed that the proposed surgeries are a direct result of the bypass operations that were covered procedures. However, the condition necessitating the proposed surgeries results from the Employee's spouse's obesity and not from the bypass surgery. Furthermore, the proposed surgeries do not treat the Employee's spouse's obesity but instead cosmetically improve the Employee's spouse's physical characteristics subsequent to per treatment for obesity. There is no indication that the surgery is proposed to correct surgical scars or the results of an accidental injury or birth defects. Therefore, the proposed multiple surgical reductions of the Employee's spouse's legs are not covered benefits under the Employer Benefit Plan.

#### Opinion of the Trustees

The Employer is not required to provide benefits for the Employee's spouse's proposed surgical reductions and related services including laboratory work done on November 28, 1988.