

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-139 - September 26, 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 a Jay cushion under the terms of the Employer Benefit Plan.

Background Facts

The Pensioner's thirty-one year old dependent daughter has spastic quadraparesis (partial paralysis of all four limbs) and is confined to a wheelchair. Her physician has prescribed a Jay cushion, a gel-filled contoured cushion, to prevent and heal decubitus ulcers (pressure sores), to avoid hospitalizations due to pressure sores and to improve her posture. A standard Jay cushion was modified slightly for the Pensioner's daughter at no extra charge.

The Employer denied benefits for the Jay cushion.

Dispute

Is the Employer required to provide benefits for the Jay cushion prescribed for the Pensioner's dependent daughter?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the Jay cushion because it is medically necessary.

Position of the Employer: The Employer is not required to provide benefits for the Jay cushion because it is not primarily and customarily used to serve a medical purpose and would be useful in the absence of an illness or injury.

### 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. (6) (d) of the Employer Benefit Plan states:

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Q&A #81-38 states:

Subject: Medical Equipment and Supplies

References: Amended 1950 & 1974 Benefit Plans & Trusts,  
Article III, Sections A (6) (d) and (e), and A (7) (a) and (d)

Question:

What medical equipment and supplies are covered under the Plan?

Answer:

A. Under the Home Health Services and Equipment provision, benefits are provided for the rental and, where appropriate as determined by the Plan Administrator, purchase of medical equipment and supplies (including items essential to the effective use of the equipment) suitable for home use when determined to be medically necessary by a physician. These supplies and equipment include, but are not limited to, the following:

1. Durable Medical Equipment (DME) which (a) can withstand use (i.e., could normally be rented), (b) is primarily and customarily used to service a medical purpose, (c) generally is not useful to a person in the absence of an illness or injury, and (d) is appropriate for use in the home. Examples of covered DME items are canes, commodes and other safety bathroom equipment, home dialysis equipment, hospital beds and mattresses, iron lungs, orthopedic frames and traction devices, oxygen tents, patient lifts, respirators, vaporizers, walkers and wheelchairs.
  2. Medical supplies necessary to maintain homebound or bedridden Beneficiaries. Examples of covered supplies are enema supplies, disposable sheets and pads (also called "Chux" or "blue pads"), supplies for home management of open or draining wounds, heating pads (for therapeutic use only) and insulin needles and syringes.
  3. Oxygen, as specified in Article III, Section A (6) (e).
- B. Under the Other Benefits provision, benefits are provided for the following:
1. Orthopedic and prosthetic devices prescribed by a physician when medically necessary, including items necessary for their effective use. These include, but are not limited to, the following items:
    - prosthetic devices replacing internal or external body parts (other than dental), such as cardiac pacemakers, maxillofacial devices and devices replacing all of the ear or nose, and waste collection and retention devices for incontinent people (e.g., catheters, ostomy bags and supplies)
    - prosthesis following breast removal, including surgical brassieres
    - leg, arm, back and neck braces
    - trusses
    - stump stocking and harnesses (see Article II Section A (7) (a) 5)
    - surgical stockings (see 1981 Contract Q&A #46)
    - orthopedic shoes and corrections (see Article II Section A (7) (a) 7 and 8)
  2. Hearing aids (see Article III Section A, (7) (d)).
- C. Items of a convenience nature or those that do not require professional judgment, recommendations or instructions to purchase or use are not covered benefits. Examples of such items are: ordinary support (panty) hose, garter belts, disposable paper cups or towels, cotton balls, cotton swabs, bandaids, exercise equipment, and foot pads for bunions or calluses.

Covered items under A and B above are not subject to copayment.

#### Discussion

The Introduction of 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. Article III. A. (6) (d) of the Employer Benefit Plan provides benefits for medical equipment suitable for home use when determined to be medically necessary by a physician.

The Employer contends that the Jay cushion prescribed for the Pensioner's daughter is a convenience item which does not meet the definition of durable medical equipment because it is not primarily and customarily used to service a medical purpose and generally could be useful to a person in the absence of an illness or injury. Q&A 81-38 states that covered equipment includes, "Durable Medical Equipment (DME) which (a) can withstand use (i.e., could normally be rented), (b) is primarily and customarily used to service a medical purpose, (c) generally is not useful to a person in the absence of an illness or injury, and (d) is appropriate for use in the home." The Jay cushion purchased for the Pensioner's dependent daughter meets all four criteria. First, it can withstand repeated use. Second, it is primarily and customarily used for a medical purpose--to prevent skin breakdown and posture-related problems. The Jay cushion is a fluid-filled pad on a molded urethane base. It conforms to the body contours to aid circulation and reduce pressures that cause pressure sores. It also reduces the major posture problems encountered by wheelchair users: leaning which can lead to scoliosis, slouching which causes coccyx sores, back pain and leg rotation. Third, a Jay cushion provides protection for skin tissue that would not be useful to persons who are not confined to a wheelchair or who are not otherwise at risk of developing decubitus ulcers. Fourth, the Jay cushion can be used safely without the assistance of professional personnel and is therefore suitable for home use.

Although an item of DME may meet the criteria outlined in Q&A 81-38, it is covered under Article III. A. (6) (d) of the Employer Benefit Plan only if it is medically necessary for the treatment of an illness or injury. A Funds' medical consultant has reviewed the information presented in this case. The consultant has advised that decubitus ulcers are a serious medical problem for any patient who is confined to a wheelchair and that the type of cushion prescribed for the Employee's disabled daughter is the recognized standard of care for wheelchair patients to avoid the complications of decubitus ulcers. According to the consultant, the contouring of the Jay cushion also provides stability for patients, such as the Pensioner's daughter, who are unable to maintain erect posture; Jay cushions are not generally useful to persons who are not wheelchair confined. The medical consultant is of the opinion that, because the Employee's daughter is wheelchair-bound, the Jay cushion is medically necessary for the treatment of the Pensioner's daughter's spastic quadraparesis and specifically for the healing and prevention of decubitus ulcers and problems resulting from poor posture. Inasmuch as the Jay cushion is an item of durable medical equipment which may be covered under the Plan, and its medical necessity has been established in this case, the Employer is required to provide benefits for the Jay cushion prescribed for the Pensioner's daughter.

#### Opinion of the Trustees

The Employer is required to provide benefits for the Jay cushion prescribed for the Pensioner's dependent daughter.