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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-263 - 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 the Employee's mastopexy under the terms of the Employer Benefit Plan.

Background Facts

The Employee has a history of bilateral fibrocystic breast disease and has undergone multiple breast surgeries since 1985 because of suspicious nodules in the breast. On October 9, 1987, she had bilateral mastectomies to remove fibrocystic breast tissue and underwent placement of bilateral breast implants and mastopexies (plastic reconstruction of the breast). The Employee had requested and received prior approval from the Plan Administrator for this surgery, and the Employer provided coverage for these procedures.

On July 1, 1988, the patient underwent a revision mastopexy on the right side in order to move the right nipple up and to the right. There is no record that the Employee requested prior approval for this surgery.

In a letter to the Employer's insurance carrier dated June 7, 1989, the physician who performed both surgeries stated that the reconstruction performed on October 9, 1987 was one that often requires staging to achieve the final result. He stated that the procedure performed on July 1, 1988 was a revision of the original reconstruction.

The Employer states that the breast surgery performed on July 1, 1988 was separate and distinct from the previous surgery and that the Employee did not seek or obtain prior approval for the second surgery. The Employer denied health benefits coverage for the revision mastopexy on the basis that the surgery was not necessary for the diagnosis or treatment of an illness or injury. The Employer states that the surgery was a cosmetic procedure to correct the appearance

(asymmetry) of the nipple and there is no evidence that the surgery was performed to correct scarring from any previous surgery or to correct results of an accidental injury or birth defects.

Dispute

Is the Employer required to provide health benefits coverage for the Employee's revision mastopexy which was performed on July 1, 1988?

Positions of the Parties

Position of the Employee: The Employer is required to provide health benefits for the Employee's revision mastopexy because it was part of the original reconstructive breast surgery performed on October 9, 1987, for which health benefits coverage was provided by the Employer.

Position of the Employer: The Employer is not required to provide health benefits coverage for the Employee's revision mastopexy because prior approval for this surgery was neither sought by the Employee nor obtained from the Plan Administrator. The surgery performed on July 1, 1988 was not necessary for the diagnosis or treatment of an illness or injury, but was a cosmetic procedure to improve the appearance (asymmetry) of the breast. There is no evidence that the surgery was performed to correct scarring from any previous surgery or to correct results of an accidental injury or birth defects.

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)(f) and (p) 9. of the Employer Benefit Plan state:

(3) Physicians' Services and Other Primary Care

(f) Surgical Services Limitations

Benefits are not provided for certain surgical services without prior approval of the Plan Administrator. Such surgical procedures include, but are not limited to, the following:

Plastic surgery, including mammoplasty

Reduction mammoplasty  
Intestinal bypass for obesity  
Gastric bypass for obesity  
Cerebellar implants  
Dorsal stimulator implants  
Prosthesis for cleft palate if not covered by crippled children services  
Organ transplants

(p) Services Not Covered

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

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 or are otherwise provided for in the Plan. The Introduction further states that 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) (f) of the Plan states that benefits are not provided for certain surgical services, including plastic surgery and mammoplasty, without the prior approval of the Plan Administrator. In addition, Article III. a. (3) (p) 91 states that cosmetic surgery is not covered unless it is performed to correct surgical scars or to correct results of an accidental injury or birth defects.

In this case, the Employee underwent surgical breast reconstruction on October 9, 1987. On July 1, 1988, she underwent a revision mastopexy on the right side. The Employee has not disputed the Employer's statement that prior approval was neither requested by the Employee nor granted by the Plan Administrator for the surgery on July 1, 1988.

A Funds' medical consultant has reviewed the information submitted in this case and advised that the medical documentation submitted describes a procedure to correct an asymmetry following the previous breast reconstruction. The medical consultant is of the opinion that the revision mastopexy was cosmetic in nature and that there is no medical documentation that it was required to correct previous surgical scars or the results of an accidental injury or birth

defects. Inasmuch as the Employee's revision mastopexy was cosmetic in nature and was not performed to correct surgical scars or the results of an accidental injury or birth defects, it is not a covered benefit under the Employer Benefit Plan.

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The Employer is not required to provide benefits for the Employee's revision mastopexy performed on July 1, 1988.