
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-313 - September 25, 1991

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 treatment of obesity for an Employee under the terms of the Employer Benefit Plan.

Background Facts

Following unsuccessful attempts at weight loss on his own, the Employee was advised by his physician to enroll in a supervised weight loss program. The Employee is 6 feet 2 inches tall and weighed 375 pounds prior to enrolling in the weight loss program. The Employee's physician has stated that the Employee's excessive weight aggravates his medical problems of high cholesterol and high blood pressure in spite of medication and imposes a health hazard. The Employer denied the Employee's request for prior approval for the weight loss program.

Upon enrolling in the weight loss program, the Employee was seen by the program's physician for a physical examination that consisted of blood chemistry tests, electrocardiogram, consultation and evaluation. The Employee was then placed on nutritional supplements, including potassium and vitamins, for five months (February 2 - July 3, 1989) and was monitored at least once a week by either a registered or licensed practical nurse or a staff behavior counselor.

The Employer has refused to provide benefits for the services, supplies and treatment provided by the weight loss program.

Dispute

Is the Employer required to provide health benefits for the Employee's participation in a weight loss program which included a medical evaluation, counseling and nutritional supplements?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's weight loss program because it is medically necessary for the Employee's physical well-being.

Position of the Employer: The Employer is not required to provide benefits for the Employee's weight loss program and the Employee's request for prior approval was properly denied. Although the Employee meets the weight requirements for treatment of obesity under the Employer Benefit Plan, there is no documentation establishing the medical necessity of treatment for obesity. In addition, the weight loss program in which the Employee participated is not covered under the Plan because the services are not directly supervised by a physician, the program is generally not recognized by the medical community as safe and effective, and the program includes the use of protein supplements that can cause additional medical problems.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan provides in pertinent 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)(h) and (j) of the Employer Benefit Plan provide in pertinent part:

(3) Physicians' Services and Other Primary Care

(h) Home, Clinic and Office Visits

Benefits are provided for services rendered to a Beneficiary at home, in a clinic (including the outpatient department of a hospital) or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Article III. A. (4) of the Employer Benefit Plan provides in pertinent part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident or (ii) licensed dentist for treatment following the performance of those oral surgical services set forth in (3)(e). The initial amount dispensed shall not exceed a 30 day supply. Any original prescription may be refilled for up to six months as directed by the attending physician. The first such refill may be for an amount up to, but no more than, a 60 day supply. The second such refill may be for an amount up to, but no more than, a 90 day supply. Benefits for refills beyond the initial six months require a new prescription by the attending physician.

Article III. A. (11) (a) 25. and 27. of the Employer Benefit Plan provide:

(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.

27. Any types of services, supplies or treatments not specifically provided by the Plan.

Discussion

Article III. A. (11) (a) 25. of the Employer Benefit Plan excludes coverage for the treatment of obesity unless the beneficiary has a pathological, morbid form of severe obesity, which is defined as 200% or more of desirable weight. According to the 1983 Metropolitan Insurance Company's Height and Weight Tables, the desirable weight for a male who is 6 feet 2 inches tall and has a large frame size ranges from 172-197 pounds. Based on the above-cited Table the Employee's weight would have to be 344 pounds at a minimum to meet the Employer Benefit Plan definition of pathological morbid form of severe obesity. Thus, the Employee's weight of 375 pounds meets the Plan's definition of severe obesity.

The Employee in this case seeks benefits for participation in a weight loss program, which included a medical evaluation by a physician, monitoring by nurses two or three times a week, diet counseling and nutritional supplements.

The Introduction to Article III of the Employer Benefit Plan limits covered services to those 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. Article III. A. (3)(h) of the Employer Benefit Plan provides benefits for services provided by a physician for the treatment of illnesses or injuries. In addition, Article III. A. (3)(j) of the Plan provides benefits for laboratory tests and x-rays when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury. According to the information submitted, the physician services relative to the Employee's weight loss program consisted of an electrocardiogram, blood studies and a physical exam. A Funds' medical consultant has reviewed the information submitted in this case and has advised that the medical records document mild to moderate hypertension and a history of an elevated cholesterol level. The consultant has advised that, given these conditions, the initial physician evaluation, laboratory work and EKG are services that were medically reasonable and necessary in connection with the Employee's treatment for obesity. Accordingly, the physician services relative to the Employee's weight loss program are covered under the provisions of Article III. A. (3)(h) and III. A. (3)(j) of the Employer Benefit Plan.

Under Article III. A. (4) (a) of the Employer Benefit Plan, benefits are provided only for those drugs which by Federal or State law require a prescription. The Trustees have previously concluded in RODs 81-561, 84-098, 84-502 and 84-504 (copies enclosed herein) that benefits are not provided under the Employer Benefit Plan for nutritional supplements which do not require a prescription. The Employee's nutritional supplements in this case do not require a prescription for purchase. Thus, benefits are not provided for the Employee's nutritional supplements under the Employer Benefit Plan.

Article III. A. (11) (a) 27. of the Employer Benefit Plan excludes from coverage any type of service, supplies, or treatments not specifically provided by the the Plan. Because there is no provision in the Plan that allows for coverage of the services provided in this case by the weight loss program's nurses and behavioral counselors, the Employer is justified in denying benefits for these services;

Opinion of the Trustees

The Employer is required to provide benefits for the physician services relative to the treatment of the Employee's obesity. However, the Employer is not required to provide benefits for the Employee's nutritional supplements and the non-physician services provided by the weight loss program.