

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-356 - November 20, 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 oral surgery for an Employee's spouse under the terms of the Employer Benefit Plan.

Background Facts

On May 15, 1990, a physician discovered that the Employee's spouse has a very narrow air passage between the oral and nasal cavities. The physician referred the spouse to a university-based sleep disorders center for further evaluation and treatment of problems related to this condition.

Various tests were performed at the center's sleep laboratory on July 30 and 31, 1990. The tests indicated that the Employee's spouse has sleep apnea (breathing ceases temporarily during sleep), very severe snoring, and extreme daytime sleepiness. The Employee's spouse was also given a trial use of a nasal continuous positive airway pressure (CPAP) device, to expand the air passage. The specialist who performed these tests has stated that she tolerated this device poorly, and she did not think she would be able to use it.

The specialist concluded that because of the Employee's spouse's apnea, her extreme daytime sleepiness and her inability to tolerate CPAP, maxillofacial surgery is indicated. The specialist referred the Employee's spouse to an ear, nose and throat (ENT) specialist and an oral surgeon in other departments at the university's medical center.

The ENT specialist and oral surgeon have recommended that the Employee's spouse undergo reconstructive surgery, including LeFort I and sagittal split osteotomy of the mandibular rami, to move her upper and lower jaws, tongue and soft palate forward in order to open the obstructed airway. The ENT specialist has stated that the surgery is intended to treat the Employee's

spouse's obstructive sleep apnea, not temporomandibular joint syndrome. The oral surgeon has stated that the proposed surgery is not cosmetic or routine dental surgery.

The Employer has denied benefits for the proposed oral surgery, stating that the proposed procedures are not among the covered oral surgical procedures listed in Article III. A.(3)(e) of the Employer Benefit Plan.

### Dispute

Is the Employer required to provide benefits for the Employee's spouse's proposed oral surgery under the terms of the Employer Benefit Plan?

### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's proposed oral surgery because it is medically necessary for the treatment of sleep apnea, a serious medical problem, which is causing her severe health risks.

Position of the Employer: The Employer is not required to provide benefits for the Employee's spouse's proposed oral surgery because the proposed procedures are not among the covered oral surgical procedures listed in Article III. A. (3)(e) of the Employer Benefit Plan.

### Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan provides:

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. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. Covered services that are medically necessary will continue to be provided, and accordingly this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Article III. A. (3)(e) of the Employer Benefit Plan states:

(3) Physicians' Services and Other Primary Care

(e) Oral Surgery

Benefits are not provided for dental services. However, benefits are provided for the following limited oral surgical procedures if performed by a dental surgeon or general surgeon:

- Tumors of the jaw (maxilla and mandible)
- Fractures of the jaw, including reduction and wiring
- Fractures of the facial bones
- Frenulectomy when related only to ankyloglossia (tongue tie)
- Temporomandibular Joint Dysfunction, only when medically necessary and related to an oral orthopedic problem
- Biopsy of the oral cavity
- Dental services required as the direct result of an accident

Discussion

The Introduction to Article III of the Employer Benefit Plan limits covered services 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)(e) of the Employer Benefit Plan states that benefits are not provided for dental services, and it specifies the limited oral surgical procedures for which benefits are provided. In addition, according to Q&A 81-15 (copy enclosed herein), charges for dental and oral surgical procedures may also be covered under the Employer Benefit Plan if the procedures are performed in a hospital as part of a treatment for an illness or injury that is otherwise a covered benefit.

A Funds' medical consultant has reviewed the information submitted in this case and advised that the proposed oral surgical procedures, LeFort I and sagittal split osteotomy of the mandibular rami, are not among the covered oral surgical procedures listed under Article III. A. (3)(e). The consultant has stated that oral surgical procedures similar to those proposed in this case and the more frequently performed uvulopalatopharyngoplasty (UPPP) are still being evaluated for their effectiveness in treating sleep apnea and that the literature indicates that patients must be carefully selected and surgery should be reserved for treating severe sleep apnea. The consultant has advised that the evaluation performed in this case indicates that the patient's apnea is mild and more conservative treatments should be tried. The medical consultant has advised that the

documentation provided does not establish that the proposed oral surgical procedures are medically necessary for the treatment of the patient's sleep apnea disorder.

Inasmuch as the proposed oral surgery in this case is not one of the covered oral surgical procedures listed in Article III. A. (3)(e), and it has not been established that it is medically necessary for the treatment of the Employee's spouse's sleep apnea disorder, the Employer is not required to provide benefits for the surgery under the terms of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for the Employee's spouse's proposed oral surgery for treatment of sleep apnea, as it is not among the covered oral surgical procedures listed under Article III. A. (3)(e) and its medical necessity has not been established.