

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-364 - March 26, 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 health benefits coverage for a bone marrow transplant under the terms of the Employer Benefit Plan.

Background Facts

In January 1988, the Employee underwent surgery to remove a tumor (cranial plasmacytoma) involving the skull and right temporal lobe. The surgery was followed by radiation therapy that was well tolerated. The Employee's physician has stated that there were no symptoms or recurrence until May 1990 when he was seen for intermittent back pain. A Magnetic Resonance Imaging (MRI) scan revealed cellular destruction on the T-11 vertebra and a possible small lesion in the left femur area. The Employee underwent a 3-week course of radiation therapy from June 4 to June 25, 1990.

On July 25, 1990, the Employee's physician referred him to the Mayo Clinic for an evaluation to determine if chemotherapy was needed at that time. The hematologist who evaluated the Employee at the Mayo Clinic in August 1990 discovered more extensive lesions than previously noted in the skull and left femur. The discharge diagnosis was active multiple myeloma and the hematologist recommended the initiation of chemotherapy using either Alkeran and Prednisone or a similar program of chemotherapy as the best treatment approach at that time. The hematologist also advised the Employee and his physician that it would be worthwhile to have his bone marrow harvested and preserved for future use, given the likelihood of eventual progression of the disease.

The Employee's physician referred the Employee to a university-based medical center to have his bone marrow harvested before chemotherapy was initiated. The Employee contends that on August 30, 1990 a hospital representative was told by the Employer's insurance carrier that the

harvesting procedure, as well as a bone marrow transplant using marrow either from a donor (allogeneic transplant) or from the Employee (autologous transplant), would be covered in full. However, when the insurance carrier was contacted on September 25, 1990 to pre-certify the Employee's admission for the bone marrow harvest, the hospital representative was told that a bone marrow transplant and related procedures would not be covered for the Employee's diagnosis.

The Employee elected to proceed with the bone marrow harvest. The marrow that was harvested on September 26, 1990 showed myeloma involvement and was considered unusable in an autologous transplant. According to the Employee's physicians, multiple myeloma is not curable with currently available standard chemotherapy and they are now recommending an allogeneic bone marrow transplant as the best therapy available at this time. Because the Employee has no family members that would be suitable donors of bone marrow, the medical center has requested prior approval for the transplant and related costs before a donor search is initiated.

The Employer has denied benefits for the bone marrow harvest performed on September 26, 1990 and has denied prior approval for the proposed allogeneic bone marrow transplant and related charges, stating that such treatment is experimental and investigational in nature and, as such, is not covered under the Employer Benefit Plan.

#### Dispute

Is the Employer required to provide benefits for the Employee's proposed bone marrow transplant and related services?

#### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's proposed bone marrow transplant and related procedures because such treatment is not experimental and because the Employer's insurance carrier told a hospital representative that such treatment would be covered.

Position of the Employer: The Employer is not required to provide benefits for the proposed bone marrow transplant because such treatment is experimental in nature for the Employee's diagnosis of multiple myeloma. In addition, the Employer states that its insurance carrier did not at any time advise the Employee or hospital that the treatment in question would be covered.

#### Pertinent Provisions

Article III. A. (3)(f) of the Employer Benefit Plan provides:

(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

Article III. A.(11)(a) 24. of the Employer Benefit Plan provides:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Discussion

Article III. A. (3)(f) of the Employer Benefit Plan establishes that benefits are not provided for organ transplants without prior approval of the Plan Administrator. The Employee contends that the Employer should provide benefits for his proposed bone marrow transplant and related procedures because the Employer's insurance carrier stated on August 30, 1990 that such services would be covered. Nevertheless, the record clearly indicates that the Employer and the provider were notified before services were rendered on September 26, 1990 that, based on the diagnosis given, the patient's history and the intended procedures, such services were considered investigational and would not be covered.

Article III. A. (11) (a) 24. of the Plan excludes benefits for treatment with new technological medical devices and therapy which are experimental in nature. The Employer in this case was advised by its insurance carrier that, on the basis of an oncologist's review of the medical literature, a bone marrow transplant for treatment of multiple myeloma is considered investigational or experimental. In support of its position, the Employer also refers to letters from the Employee's physicians which state that the treatment approach recommended is "still considered investigational in the sense that it has not been proven to be uniformly effective" and that bone marrow transplants have not been performed on large numbers of patients with multiple myeloma because of the rarity of this condition.

The Health Care Financing Administration does not list myeloma as one of the conditions for which allogeneic or autologous bone marrow transplantation is covered under the Medicare

Program. In addition, contacts with three major insurance carriers indicate that one of the carriers considers bone marrow transplantation for a diagnosis of multiple myeloma to be experimental, while the other two carriers make coverage determinations for such treatment on the basis of a medical consultant's review of each individual case.

A Funds' medical consultant, who is a practicing oncologist, has reviewed this case and advises that studies that have been done to date indicate that bone marrow transplants have been tried with only minimal success in the treatment of myeloma. The consultant advises that bone marrow transplantation for multiple myeloma is considered experimental because its safety and efficacy has not been established. The consultant has further advised that there are more conservative therapies available to treat this patient's condition.

Inasmuch as the bone marrow transplantation proposed in this case for treatment of multiple myeloma is considered to be experimental in nature, the Employer is not required to provide benefits for such transplantation and related services.

#### Opinion of the Trustees

The Employer is not required to provide benefits in this instance for the Employee's proposed bone marrow transplant and related services.