
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-402 - October 29, 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 breast reconstruction surgery under the terms of the Employer Benefit Plan.

Background Facts

In January 1991, the Pensioner's eighteen-year-old daughter was seen by a specialist in plastic and reconstructive surgery. The specialist concluded that the Pensioner's daughter has a developmental abnormality with underdevelopment of the left breast and some deformity of the right breast. The specialist has stated that this condition is probably a congenital anomaly, and it will not improve with the passage of time. The surgeon recommended a two-stage, possibly three-stage, reconstruction of both breasts. According to his assessment, the Pensioner's daughter's emotional well-being is dependent upon improvement of her self-image and the surgery is thus indicated for other than cosmetic reasons. The Pensioner requested prior approval from the Plan Administrator for the proposed surgery.

The Employer denied the request for prior approval for the surgery, stating that the surgery is cosmetic in nature and therefore is not a covered expense under the Employer Benefit Plan.

After prior approval was denied, the Pensioner submitted a psychiatric evaluation and a letter from the family physician in support of the proposed surgery. The psychiatrist's diagnostic impression was that the Pensioner's daughter has an adjustment disorder with depressed mood. It is the psychiatrist's opinion that she is experiencing significant emotional turmoil because of the asymmetry of her breasts and that the proposed surgery is necessary for her psychiatric well-being and future emotional growth. The family physician stated that the Pensioner's daughter has been showing signs of physical and psychosomatic problems, including repeated bouts of stomachache, abdominal cramps and overeating due to chronic nervousness, all of which he believes are related to the developmental problem with her breasts and her self-image problems.

It is the family physician's opinion that it would be in the Pensioner's daughter's best Interests, physically as well as mentally, to undergo the proposed surgery.

The Employer has maintained its denial of prior approval for the Pensioner's daughter's proposed breast reconstruction surgery.

Dispute

Is the Employer required to provide benefits for the Pensioner's daughter's proposed breast reconstruction surgery?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the Pensioner's daughter s proposed breast reconstruction surgery because the developmental problem with her breasts is causing psychological problems which her doctors have confirmed.

Position of the Employer: The Employer is not required to provide benefits for the Pensioner's,daughter's proposed breast reconstruction surgery because the information provided does not establish any medical necessity for the surgery, or that the surgery is required for other than cosmetic reasons -- to correct the asymmetry of the breasts. The Employer states that the surgery is cosmetic in nature and, even though it may be performed to relieve emotional turmoil, it is not required to correct scarring from any previous surgery or to correct the 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) (a), (f) and (p) 9. of the Employer Benefit Plan state:

(3) Physicians' Services-and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedure (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

...

(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. Article III. A. (3) (a) states that benefits are provided for surgical services essential to a Beneficiary's care for the treatment of illnesses, injuries, fractures or dislocations. Article III. A. (3)(f) of the Plan states that benefits are not provided for certain surgical services such as plastic surgery, including mammoplasty, without prior approval of the Plan Administrator. In addition, Article III. A. (3)(p) 9. 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.

A Funds' medical consultant has reviewed the information submitted in this case, including photographs and letters from the Pensioner's daughter's physicians. The consultant has advised that the statements concerning the patient's psychological problems of loss of self-esteem and adjustment disorder with depressed mood do not establish that the proposed reconstruction of her breasts is medically necessary for the treatment of an illness. Thus, it has not been established that the proposed surgery would be performed for other than cosmetic reasons. A physician, who specializes in obstetric and gynecologic medicine, has also reviewed the information

Opinion of Trustees
Resolution of Dispute
Case No. 88-402
Page 4

submitted in this case and has advised that the Pensioner's daughter's unilateral breast underdevelopment is a birth defect. According to the physician, this condition is determined genetically and is due to a defect in development that occurs in utero.

Inasmuch as the Pensioner's daughter's proposed surgery is cosmetic surgery to correct the result of a birth defect, the Employer's denial of prior approval is not justified in this case. Under the circumstances presented here, the Employer is required to provide benefits for the proposed breast reconstruction surgery.

Opinion of the Trustees

The Employer is required to provide benefits for the Pensioner's daughter's proposed breast reconstruction surgery.