

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-408 - September 12, 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 for eye surgery under the terms of the Employer Benefit Plan.

Background Facts

In January 1991, an ophthalmologist recommended that the Employee undergo radial keratotomy surgery, a procedure in which incisions are made in the cornea to correct nearsightedness. In a letter submitted to the Employer's insurance carrier, the ophthalmologist stated that, without correction, the Employee has less than 20/200 vision and is legally blind; with glasses, his vision is normal. The ophthalmologist stated that the Employee is a good candidate for the proposed surgical procedure and that there is a good chance he will have close to normal or normal vision after the proposed surgery, without correction.

The Employer has denied benefits for the proposed surgery.

Dispute

Is the Employer required to provide benefits for the Employee's proposed eye surgery?

Positions of the Parties

Position of the Employee: The Employee asks whether the Employer is required to provide benefits for the proposed eye surgery.

Position of the Employer: The Employer is not required to provide benefits for the proposed eye surgery because it is an elective procedure of unproven value that is not medically necessary for the treatment of an illness or injury and its use is considered experimental.

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 coverage or eligibility as described in this Article III.

Article III. A. (3) (a) of the Employer Benefit Plan states in pertinent part:

(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.

Article III. A. (9)(c) 5. of the Employer Benefit Plan states in pertinent part:

(9) Vision Care Program

(c) Exclusions include:

5. experimental services or supplies.

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

(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

Under Article III. A. (3) (a) of the Employer Benefit Plan, benefits are provided for surgical services essential to a beneficiary's care for the treatment of illnesses, injuries, fractures or dislocations, and which are performed either in or out of a hospital by a physician. The Introduction to Article III of the Plan limits covered services to those that are reasonable and necessary for the diagnosis or treatment of an illness or injury and that are given at the appropriate level of care or are otherwise provided for in the Plan. The Introduction further states that services that are not reasonable and necessary shall include procedures that are of unproven value or of questionable current usefulness. In addition, Article III. A. (9)(c) of the Plan excludes benefits under the vision care program for experimental services, and Article III. A. (11) (a) 24. states that benefits are also not provided for treatment with new technological medical devices and therapy that are experimental in nature.

The Employer has stated that the proposed surgical procedure, radial keratotomy, is not medically necessary in this case, but is an elective procedure of unproven value that is considered experimental. In ROD 84-222 (copy enclosed herein), which was decided in October 1986, the Trustees determined that radial keratotomy was regarded as experimental by Medicare, the American Academy of Ophthalmology and the UMWA 1950 and 1974 Benefit Plans and, therefore, it was not a covered benefit under the Employer Benefit Plan.

Under current Medicare regulations, refractive keratoplasty in any form, including radial keratotomy, is not covered because it is still under investigation, and has not been subjected to adequate scientific evaluation in humans. In addition, radial keratotomy is still regarded as experimental by the UMWA 1950 and 1974 Benefit Plans. An assessment of radial keratotomy for myopia was published by the American Academy of Ophthalmology in September 1988. As noted by the Employer, this publication concludes that the operation of radial keratotomy is undergoing evolution and development. The assessment also indicates that current techniques of radial keratotomy do not allow accurate prediction of the outcome in individual eyes and that the predictability achieved in fitting eyeglasses and contact lenses is more accurate.

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A Funds' medical consultant has reviewed this case and has advised that the proposed surgery of radial keratotomy is not medically necessary to correct the Employee's vision of 20/200 because that impairment is currently corrected by conventional treatment. The consultant also states that this procedure is still considered experimental in nature because its safety and efficacy have not been established.

Inasmuch as the proposed surgery of radial keratotomy is not medically necessary for treatment of the Employee's visual impairment and is considered experimental in nature, it is not a covered service under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for the Employee's proposed eye surgery.