
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-412 - October 22, 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 the services of a physician's assistant under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was operated on as an outpatient for carpal tunnel syndrome of the right hand on October 4, 1990, and for carpal tunnel syndrome of the left hand on November 10, 1990. The syndrome is a complex of symptoms resulting from nerve compression, with pain and burning or tingling in the fingers and hands. In both operations, the neurosurgeon who performed the surgery was assisted by a physician's assistant.

The Employer provided coverage for the services of the neurosurgeon and associated hospital costs. The Employer denied coverage for the services of the physician's assistant, stating that the services of an assistant surgeon are covered under the Employer Benefit Plan only if the beneficiary is an inpatient and the condition of the beneficiary and type of surgical service require such assistance. The Employer also refused to hold the beneficiary harmless from the surgeon's attempts to collect the charges for the physician's assistant's services.

Dispute

Is the Employer required to hold the Employee harmless from efforts by the surgeon to collect charges for the use of a physician's assistant during the Employee's spouse's two operations for carpal tunnel syndrome?

Positions of the Parties

Position of the Employee: The Employee asks that the Employer hold him harmless from efforts by the neurosurgeon to collect charges for the use of a physician's assistant during the Employee's wife's two operations for carpal tunnel syndrome.

Position of the Employer: The Employer is not responsible for holding the Employee harmless because the use of an assistant surgeon during outpatient surgery is not a covered benefit under the Employer Benefit Plan and, furthermore, the surgeon has already been paid in excess of the reasonable and customary charges for his services in connection with the carpal tunnel syndrome surgeries.

Pertinent Provisions

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

Article III - Benefits

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) (b) and (o) 4. of the Employer Benefit Plan state:

(3) Physicians' Services and Other Primary Care

(b) Assistant Surgeons

If the Beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating physician in the performance of such surgical services when the condition of the Beneficiary and type of surgical service require such assistance.

(o) Primary Medical Care - Miscellaneous

4. Benefits are provided for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician.

Article III. A. (10)(g) 3. of the Employer Benefit Plan states:

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

3. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Discussion

Article III. A. (3) (b) of the Employer Benefit Plan states that if a Beneficiary is an inpatient in a hospital, benefits will be provided for the services of a physician who actively assists the operating physician in the performance of surgical services when the condition of the Beneficiary and the type of surgical service require such assistance. The Employer has denied benefits for the services of a surgical assistant in this case on the grounds that such services are covered only for inpatient surgery, as stated in Article III. A. (3) (b). However, Article III. A. (3) (b) pertains to the services of an assisting physician, and the records in this case clearly indicate that the assistant was not a physician, but a physician's assistant. Article III. A. (3) (b) is therefore not applicable to the facts in this case.

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. Article III. A. (3)(o) 4. of the Plan provides benefits for physician extender care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician.

A Funds' medical consultant has reviewed this case and has advised that the carpal tunnel procedures performed on October 4, 1990 and on November 10, 1990 do not require the services of a physician's assistant. According to the consultant, it is customary for the outpatient surgical department of a hospital to provide the appropriate staff to enable the surgeon to perform this procedure without an additional assistant. The consultant has advised that there is no documentation to indicate that such staff were not available in this instance or that the physician's assistant's services were otherwise medically necessary in this case. Because the medical necessity of the physician's assistant's services has not been established, the Employer is not required to provide benefits for such services under the Employer Benefit Plan.

Article III. A. (10)(g) 3. of the Plan provides that the Plan Administrator shall attempt to negotiate with or defend the Employee against providers who seek to collect charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with such charges, but may be liable for services that are not provided under the Plan. This is known as the Plan's "hold harmless" provision.

The Employer has refused to hold the Employee harmless in this case, stating that the use of an assistant for outpatient surgery is not a covered benefit under the Employer Benefit Plan. However, as noted above, physician extender care rendered under the supervision of a physician is covered, unless it is deemed not medically necessary. Inasmuch as the use of a physician's assistant in this case was not medically necessary, the Employer must hold the Employee harmless.

Opinion of the Trustees

The Employer is required to hold the Employee harmless from efforts by the surgeon to collect charges for the physician's assistant's services that in this case were not medically necessary.