
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-448 - May 6, 1992

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 occupational therapy under the terms of the Employer Benefit Plan.

Background Facts

The Pensioner's spouse underwent surgical treatment for right carpal tunnel syndrome on January 26, 1990. Her physician has stated that when he saw her again, in April 1990, she was having postoperative problems using her fingers to perform necessary daily activities. He was also concerned that she had early reflex sympathetic dystrophy and he referred her to the hand clinic in the occupational therapy department at a nearby hospital with a prescription for range of motion, vibration and desensitization exercises. The therapy was provided under the supervision of her physician, twice a week, on an outpatient basis from April 27, 1990 until May 24, 1990.

The Employer has denied benefits for the Pensioner's spouse's hand therapy.

Dispute

Is the Employer required to provide benefits for the hand therapy the Pensioner's spouse received from April 27, 1990 through May 24, 1990?

Positions of the Parties

Position of the Pensioner: The Pensioner asks whether the hand therapy his spouse needed following surgery for carpal tunnel syndrome is covered under the Employer Benefit Plan.

Position of the Employer: The Employer is not required to provide benefits for the services in question because it is occupational therapy and occupational therapy is not covered under the Employer Benefit Plan. The Employer has cited ROD No. 88-164 as supporting its position.

Pertinent Provisions

Article III. A. (2)(e) and (7) (b) of the Employer Benefit Plan states:

(2) Outpatient Hospital Benefits

(e) Physiotherapy

Benefits are provided for physiotherapy treatments performed in the outpatient department of a hospital. Such therapy must be prescribed and supervised by a physician.

(7) Other Benefits

(b) Physical Therapy

Benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. Such therapy must be prescribed and supervised by a physician and administered by a licensed therapist. The physical therapy treatment must be justified on the basis of diagnosis, medical recommendation and attainment of maximum restoration.

Discussion

Article III A (2)(e) of the Employer Benefit Plan states that benefits are provided for physiotherapy treatments performed in the outpatient department of a hospital.

Article III. A. (7) (b) of the Employer Benefit Plan states that benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. The Pensioner's spouse's physician has stated that the prescribed hand therapy provided in this case requires a high level of training and skill and can be provided by either a physical therapist, or an occupational therapist, with specialized training. Neither Article III. A. (2)(e) nor (7) (b) states that the "physiotherapy" or "physical therapy" must be performed by a "physical therapist", only a "licensed therapist."

A Funds' medical consultant has reviewed the information submitted, including records from the patient's physician, the initial evaluation by the occupational therapist, progress notes, and a final evaluation. The medical consultant has advised that the patient was referred to a hand specialist for therapy. The Funds' consultant further advises that, regardless of the terms actually used, the

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treatment given was, in his opinion, physical therapy and medically necessary, resulting as it did in significant improvement in the patient's hand function.

Reliance on ROD 88-164 by the Employer is misplaced. That dispute involved coverage for services that were provided to a patient in a skilled nursing facility. These included physical, occupational, and speech therapy, and some were determined to be at a maintenance, rather than restorative level.

Inasmuch as the treatment provided to the Pensioner's spouse was physical therapy that was restorative in its nature and medically necessary, prescribed by a physician, and provided in an outpatient hospital setting, the Employer is required to provide benefits.

Opinion of the Trustees

The Employer is required to provide benefits for the hand therapy provided the Pensioner's spouse from April 27, 1990 to May 24, 1990.