
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-566 - September 30, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee;
William Miller, Trustee; Elliot A. Segal, 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 surgical benefits under the terms of the Employer Benefit Plan.

Background Facts

The Employee's 14-year old daughter has been diagnosed as having severe bilateral hyperhidrosis, a condition that produces excessive sweating over both sides of her body, but particularly of her hands. This has interfered with her school work and social activities.

At the request of her treating neurosurgeon, the girl was referred to another neurosurgeon who specializes in the treatment of hyperhidrosis by a form of percutaneous thoracic sympathectomy, a stereotactic radio-frequency sympathectomy. The more common form of this surgery involves physically cutting the appropriate nerves. This-other form uses needles and radio-frequency current to decrease the nerve impulses producing the sweating. The procedure is less invasive and can produce better long-term results, since a severed nerve may rejoin. The results of the girl's operation, performed on August 14, 1991, have been described as good.

The Employer has denied all charges in connection with the surgical procedure, stating, "experimental and investigational services are not covered under your plan." These charges include \$3,600.00 for the surgeon, \$1,150.00 for the anesthesiologist, \$2,247.15 for the hospital, \$153.00 for pre-admission testing at the hospital, and \$1.00 listed as "miscellaneous provider." In all, these charges total \$7,151.15.

The Employee requests that the Trustees intervene on his behalf since his opinion of the surgery is that it is not considered experimental and, therefore, should be an eligible benefit under the Employer Benefit Plan.

Dispute

Is the Employer required to provide benefits for the Employee's daughter's surgery and related charges incurred on August 14, 1991?

Positions of the Parties

Position of the Employee: The surgical procedure performed on the Employee's daughter was necessary to treat a debilitating condition, and is not considered to be experimental in nature, and therefore should be an eligible benefit under the terms of the Employer Benefit Plan.

Position of the Employer: The surgical procedure performed on the Employee's daughter on August 14, 1991 was considered a new form of treatment for this condition and should be considered experimental or investigative in nature according to the terms of the Employer Benefit Plan.

Pertinent Provisions

Introduction to Article III states in pertinent part:

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 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) (a) 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 procedures (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. (11) (a) 24 states in pertinent part:

(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 devices and therapy which are experimental in nature.

Discussion

The Introduction to Article III of the Employer Benefit Plan states that covered services are 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 under the Plan. Additionally, the Introduction to Article III states that services that are not reasonable and necessary shall include procedures which are of unproven value or of questionable current usefulness.

A Fund's medical consultant has reviewed this file which includes the operative report of August 14, 1991 and correspondence dated July 9, 1991 and April 22, 1992 from the operating physician, as well as a letter dated July 9, 1991 from the patient's referring physician. The consultant notes that inquiries to Medicare and commercial carriers regarding stereotactic radio-frequency sympathectomy indicate that it is a covered procedure and not considered experimental. Communications with other neurosurgeons indicate that, although it may not be a common procedure, it is well recognized throughout the medical community as a treatment for hyperhidrosis and is not considered to be experimental. It is the opinion of the consultant that the procedure was medically appropriate and should be covered by the provision of Article III. A. (3) (a) of the Employer Benefit Plan.

Therefore, the Trustees conclude that since the procedure was not experimental or investigative in nature, the surgeon's charge, and all other charges related to the surgery, are eligible expenses under the terms of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is required to provide benefits for the surgery and related charges resulting from the Employee's daughter's surgery on August 14, 1991.