

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-575 - August 13, 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 benefits for transdermal nicotine patches under the terms of the Employer Benefit Plan.

Background Facts

On March 19 and March 23, 1992 the Employee's spouse purchased transdermal nicotine patches (in this case, Nicoderm) costing \$54.99 and \$50.59 respectively, which her physician prescribed as part of a smoking cessation program under his supervision. The Employer has denied benefits for these prescriptions.

Dispute

Is the Employer required to provide benefits for the transdermal nicotine patches?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the transdermal nicotine patches as they were prescribed by a physician to treat an illness, and require a physician's prescription to dispense.

Position of the Employer: The Employer is not required to provide benefits for the transdermal nicotine patches since this medication is not used to treat an illness or injury as mandated in Article III. A. (4) (a) of the Employer Benefit Plan.

Pertinent Provisions

The National Bituminous Coal Wage-Agreement of 1988 provides at Article XI, Section (f):

The Trustees shall have the right to investigate fully any and all disputed claims in order to establish consistency of coverage and of the awarding of claims and benefits. Article III. A. (4) (a) of the Employer Benefit Plan states in pertinent part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident....

...

Article III. A. (7)(f) states in pertinent part:

(7) Other Benefits

(f) Outpatient Mental Health. Alcoholism and Drug Addiction

Benefits are provided for:

Psychotherapy, psychological testing, counseling, group therapy and alcoholism and drug rehabilitative programs where free care sources are not available and when determined to be medically required by a physician.

...

Article III. A. (11)(a) 24. 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. (4) (a) of the Employer Benefit Plan, benefits are provided for prescription drugs (only those drugs which by Federal or State Law require a doctor's written prescription to dispense), that are dispensed by a licensed pharmacist and prescribed by a physician for treatment or control of an illness or non-occupational accident.

In this case, the transdermal nicotine patches are being used to treat an addiction to nicotine. Benefits for out-patient treatment of other chemical dependencies, such as alcoholism and drug abuse, are provided under Article III. A. (7)(f), and the Surgeon General's 1988 report establishes that nicotine is a highly addictive substance, comparable in its physiological and psychological properties to other addictive substances of abuse. Additionally, the patches were prescribed by a physician, this medication requires a physician's prescription to dispense, and it was dispensed by a licensed pharmacist, as required under Article III. A. (4) (a). The drug is approved by the Food & Drug Administration for this particular indication and is not considered experimental in nature. Therefore, the provisions of Article III. A. (11) (a) 24. do not apply in this case.

Article XI, Section (f) of the National Bituminous Coal Wage Agreement of 1988 empowers the Trustees "to investigate disputed claims in order to establish consistency of coverage and the awarding of claims and benefits." The Trustees have interpreted the similar coverage provisions of the 1950 and 1974 Benefit Plans and Trusts to include coverage of prescription drugs for the treatment of chemical dependency, including alcohol and nicotine addiction, where such treatment is medically necessary. In order to establish consistent coverage within the Benefit Trusts and between the Benefit Trusts and the Employer Benefit Plans, transdermal nicotine patches are eligible for coverage as a prescription drug when properly prescribed by a physician and medically necessary for the treatment of an FDA-approved medical indication.

In view of the recent emergence of this drug, the Funds will continue to monitor the efficacy of its use. Presently, Funds' guidelines would limit treatment not to exceed four months, but these guidelines will continue to be reviewed and at such time as sufficient experience has been accumulated, the guidelines will be subject to revision.

Inasmuch as the Employee's spouse received a prescription from her physician for transdermal nicotine patches as part of the treatment of nicotine addiction, a chemical dependency for which benefits are provided under the Employer Benefit Plan, and the prescription is approved by the Food and Drug Administration for this indication and is not considered experimental, the Employer is required to provide benefits consistent with Article III. A. (4) (a) and (7)(f) of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is required to provide benefits for the transdermal nicotine patches prescribed for the Employee's wife and purchased on March 19 and March 23, 1992.