

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-579 - August 26, 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 health benefits for eye surgery under the terms of the Employer Benefit Plan.

Background Facts

In March 1991, an ophthalmologist recommended that the Employee undergo a radial keratotomy, a surgical procedure in which incisions are made in the corneas to correct nearsightedness. In a letter dated March 10, 1991, the ophthalmologist stated that the patient had extremely high correction in his glasses and difficulty using glasses due to glare, distortion, and minification from the high minus correction, as well as extreme discomfort from the weight of the glasses. Further, the ophthalmologist stated that the employee is unable to use contact lenses, which would provide superior vision, because the Employee experienced discomfort with them and the Employee works underground. The ophthalmologist states that the Employee could obtain extremely good results from the radial keratotomy procedure, with a level of vision far superior to any previous level of vision experienced by the Employee with either glasses or contact lenses. Additionally, the ophthalmologist states that a high level of vision is necessary for the performance of the Employee's job.

The Employer has denied benefits for the proposed surgery on the grounds that radial keratotomy is experimental in nature and therefore ineligible under Article III. A. (9)(c) 5. and Article III. A. (11) (a) 24. of the Employer Benefit Plan.

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 myopia, 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 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. (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 RODs 84-222 and 88-408, (copies enclosed herein), 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, 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." (35-54 Medicare Coverage Issues Manual) In addition, radial keratotomy is still regarded as experimental by the UMWA 1950 and 1974 Benefit Plans.

A Funds' medical consultant has reviewed this case and has advised that the proposed procedure, a radial keratotomy, remains experimental in this country at this time. He is, therefore, of the opinion that the procedure would not be covered by the Employer Benefit Plan under the provisions excluding coverage for procedures considered experimental in nature.

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Inasmuch the proposed procedure is generally considered experimental in nature, it is not a covered surgery under the Employer Benefit Plan.

Opinion of the Trustees

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