

OPINION OF TRUSTEES

---

In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-627 - November 18, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, 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 Norplant birth control devices and associated physician services under the terms of the Employer Benefit Plan.

Background Facts

On December 3, 1991, the Employee's spouse received a Norplant birth control device from a physician. On December 4, 1991, the Employee's dependent eighteen-year-old stepdaughter also received a Norplant birth control device. According to the Employee, in each case he was charged \$375 for the Norplant kit plus \$225 for the physician visit, pelvic exam, insertion of the implant, etc. Copies of the provider-generated insurance claim forms that the Employee included with this case state one \$600 charge for each patient. Itemizations of separate charges for multiple services were not indicated.

The Employer denied benefits, stating that the Norplant is not included under the Employer Benefit Plan's limited provisions for the coverage of services related to birth control.

Dispute

Is the Employer responsible for providing benefits for the Norplant birth control devices and related physician services provided to the Employee's spouse and dependent stepdaughter on December 3 and 4, 1991?

Positions of the Parties

Position of the Employee: The Employee inquires as to whether the Employer is required to provide benefits for the physician's services rendered in connection with the insertion or removal of Norplant birth control devices for his spouse and dependent stepdaughter on December 3 and 4, 1991 or for the cost of the implant itself.

Position of the Employer: The Employer is not required to provide benefits for the Norplant birth control devices and related physician services provided to the Employee's spouse and dependent stepdaughter on December 3 and 4, 1991 because the Employer Benefit Plan states that birth control devices and medications are not covered with limited listed exceptions and the Norplant is not a listed exception.

#### Pertinent Provisions

Article III. A. (3)(o) 9. of the Employer Benefit Plan states:

9. Birth control services and medications are not covered under the Plan, except that benefits are provided for physician services rendered in connection with the prescription of oral contraceptives, the fitting of a diaphragm or the insertion or removal of an IUD.

#### Discussion

Article III. A. (3)(o) 9. of the Employer Benefit Plan provides that physician services rendered in connection with the prescription of oral contraceptives, the fitting of a diaphragm or the insertion or removal of an IUD are covered benefits. Birth control devices and medications are not provided for under the Plan.

A Funds' medical consultant has reviewed the information submitted in this case and has advised that the Norplant device is a new method of hormonal-type therapy. Norplant was approved by the Food and Drug Administration in December, 1990 and first marketed in February, 1991. In the consultant's opinion, the Norplant is in the same category as oral contraceptives, as it is a hormonal contraceptive. It is also similar to an IUD in that it requires insertion by a health care professional. Because the Norplant device is a new device that the Funds' medical consultant feels is in the same category as oral contraceptives, the Trustees conclude that the Employer is only required to provide benefits for the physician services rendered in connection with the prescription and insertion of the devices for the Employee's spouse and stepdaughter on December 3 and 4, 1991. Additionally, subsequent removal of the devices would be a covered service. The Trustees conclude that the Employer is not required to provide benefits for the cost of the Norplant kits.

#### Opinion of the Trustees

The Employer is required to provide benefits for the physician services rendered to the Employee's spouse and stepdaughter in connection with the prescription and insertion of Norplant birth control devices on December 3 and 4, 1991. The Employer is not required to provide benefits for the cost of the Norplant kits.