
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-637 - November 30, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and Robert T. Wallace.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for a mastectomy under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse underwent a modified radical mastectomy for cancer of the right breast on January 15, 1987, following bilateral breast biopsies that had revealed intraductal adenocarcinoma in that breast. These biopsies also revealed sclerosing adenosis (hardening or abnormal development of gland tissue), periductal mastitis (inflammation of cells surrounding a duct) and fibrocystic disease (characterized by the development of cystic spaces, especially in relation to a duct). Benefits were provided for this mastectomy and associated procedures.

From the time of her mastectomy until July 1992, the medical records reflect that, while her follow-up mammograms showed a diffuse increase in fibrocystic changes and extensive ductal hypertrophy (enlargement or overgrowth of tissue), her regular postoperative follow-up examinations were negative for any further cancer development.

In September 1987, the patient noted that her husband was distant and would not look at her or discuss the problem so she was considering the option of reconstructive surgery proposed by her surgeon. This surgery option was discussed again during subsequent visits but on May 11, 1988, the notes indicate that the patient was still not willing to be evaluated for reconstructive surgery. At her regular follow up visit on February 1, 1990 she indicated that her main concern at that point was tenderness in her left breast and anxiety. Her physician discussed her options: nonsteroidal anti-inflammatories or prophylactic mastectomy. As the patient was still experiencing problems with her husband's ability to cope with her cosmetic deformity, she was reluctant to discuss the latter option. The physician then suggested performing a prophylactic mastectomy with immediate reconstruction as well as reconstruction of the right breast. She elected to begin nonsteroidal anti-inflammatory therapy.

Over the next two years, her left breast pain intensified and, in December 1991, her physician again suggested prophylactic mastectomy and reconstruction. She again declined any interest in reconstructive surgery but the physician wrote to the insurance company for approval of benefits

for the mastectomy, citing as the primary reason her severe breast pain and, secondarily, her high risk for a second cancer. Following a denial of consideration for benefits by the insurance company, the patient was referred to a consultant in February 1992 for an opinion and recommendation for pain management. The consultant concurred that because of her incapacitating pain, the mastectomy was medically indicated. He further noted that a secondary, prophylactic, benefit also would be realized by the surgery. One month later, her gynecologist wrote to the Employer regarding her pain and his inability to effectively treat her gynecological problems because her breast pain was markedly increased when he attempted the usual hormonal therapy for her condition. He was of the opinion that a prophylactic mastectomy was medically indicated because of the severity of her pain.

In July 1992, the medical records reflect that the patient wanted to proceed with the mastectomy "for pain and symptoms." In a letter, dated September 15, 1992, the Employer advised the patient that its Medical Department and the insurance company had reviewed the letter from the gynecologist and concluded that the surgery was considered preventive and not necessary for the treatment of a specific injury or illness.

Dispute

Is the Employer required to provide benefits for the mastectomy?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's second mastectomy because the surgery was required by her increasing breast pain.

Position of the Employer: The Employer is not required to provide benefits for the second mastectomy because it was performed for prophylactic reasons and therefore not medically necessary.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan 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. . . .

Since the surgery was essential to the treatment of an illness, the Trustees conclude that the Employer is required to provide benefits for the Employee's spouse's mastectomy.

Opinion of the Trustees

The Employer is required to provide benefits for the Employee's spouse's mastectomy on July 20, 1992.