

OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-638 - January 12, 1993

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; Elliot A. Segal, Trustee; Marty D. Hudson, 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 a portable oxygen nebulizer under the terms of the Employer Benefit Plan.

Background Facts

On August 26, 1992, the Pensioner ordered a 12 volt nebulizer from a medical supply company following the orders of his physician, who prescribed the unit so that the Pensioner could administer treatment on an as-needed basis when away from home. A letter from the Pensioner's physician, dated September 2, 1992, states that the unit is needed due to the Pensioner's episodes of paroxysmal wheezing and severe bronchospasm and breathlessness. The Pensioner received the unit from the medical supply company on September 16, 1992. The total charge for the unit was \$416.96.

The Employer denied the charge for the nebulizer, stating that the Plan only pays for medically necessary equipment suitable for home use. The Employer further stated that it felt that this nebulizer was a convenience item since the plan had previously purchased a nebulizer for the Pensioner's home use.

Dispute

Is the Employer required to provide benefits for the Pensioner's purchase of a portable nebulizer?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the purchase of the portable nebulizer, since it was prescribed by a physician.

Position of the Employer: The Employer is not required to provide benefits for the Pensioner's purchase of a portable nebulizer unit, since it was not prescribed for home use, and was intended to be a convenience item for the Pensioner. Additionally, the Employer has already paid for one home-use unit for the Pensioner so this second unit would not be medically necessary.

Pertinent Provisions

Article III. A. (6)(d) states in pertinent part:

(11) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Discussion

Article III. A. (6)(d) provides benefits for the rental or, where appropriate, the purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

The Pensioner has already received a home nebulizer unit under the Plan. This second nebulizer unit was prescribed to facilitate the Pensioner administering treatments on an as-needed basis when away from his home.

The physician's office has noted that the portable nebulizer would be appropriate for administering the prescribed medication during trips for a medical assessment at Duke University. This is a four-to-five hour trip from the patient's home, and the patient is on a four-hour medication schedule, or as needed.

However, the medication, Proventil, is also available in other forms in addition to the nebulizer solution. These forms include syrup, pills (including extended release), and aerosol, all of which are portable. Additionally, the Duke visit is only once yearly. No medical justification was provided by the physician as to why the patient could not use other forms of Proventil instead of purchasing another piece of durable medical equipment to administer this medication. Barring extraordinary circumstances, which have not been demonstrated in the record, it seems clear that the use of the portable nebulizer in this case makes it a convenience item and thus not appropriate for benefits under the Plan.

The Trustees conclude in this case that the portable nebulizer unit is not a covered benefit under Article III. A. (6)(d) of the Employer Benefit Plan.

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The Employer is not required to provide benefits for Pensioner's purchase of a portable nebulizer unit on September 16, 1992.