
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-656 - January 27, 1993

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; Marty D. Hudson, 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 experimental or investigational procedures under the terms of the Employer Benefit Plan.

Background Facts

The Employee's spouse was diagnosed as having ovarian cancer. As part of her treatment regimen her attending physician performed a variety of diagnostic tests intended to assess her physical condition. Among these studies was a pathology test known as CA 19-9, or Carbohydrate Antigen CA 19-9. Each CA 19-9 test costs \$110.00. The charges for these tests were submitted to the Employer for payment, and subsequently denied as experimental or investigational in nature.

Dispute

Is the Employer required to provide benefits for the Employee's spouse's CA 19-9 Carbohydrate Antigen tests?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's CA 19-9 Carbohydrate Antigen tests since diagnostic testing is covered by the Employer Benefit Plan. Additionally, the Employee states that the tests were covered by the Plan when performed at one facility, and denied when performed at another.

Position of the Employer: The Employer is not required to provide benefits for diagnostic testing determined to be experimental or investigative in nature.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

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 for 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 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 be construed to detract from plan coverage or eligibility as described in this Article.

Article III. A. (2)(c) of the Employer Benefit Plan states:

(c) Laboratory Tests and X-rays

Benefits are provided for laboratory tests and x-ray services performed in the outpatient department of a hospital which provides such services and when they have been ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Article III. A. (3)(j) states:

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Such benefits will not cover laboratory tests and x-rays ordered in connection with a routine physical examination, unless the examination is considered medically necessary 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

The Introduction of Article III of the Employer Benefit Plan states that 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 Introduction further states that the fact that a procedure or level of care is prescribed by a physician does not mean that it is reasonable or necessary or that it is covered under the Plan. Article III. A. (2)(c) states that benefits are provided for laboratory tests performed in the outpatient department of a hospital when they have been ordered by a physician for the diagnosis and treatment of a definite condition, illness or injury. Article III. A. (3)(j) provides the same benefits when the tests are performed in a licensed laboratory. Article III . A. (11) (a) 24. excludes charges for treatment with new medical devices and therapy which are experimental in nature.

The Food and Drug Administration (FDA) states that the test known as CA 19-9 is not approved for use at this time. Medicare coverage guidelines state that the test is considered investigational and therefore not eligible for Medicare coverage.

As noted in Article III. A. (11)(a) 24, the Plan does not provide benefits for new medical devices and therapies which are experimental in nature. Since the FDA has stated that the test is not approved for use at this time, and Medicare guidelines state the test is investigational, the CA 19-9 Carbohydrate Antigen test is not covered under the Employer Benefit Plan.

The Employee has raised the issue that the Employer provided benefits for this test when performed at a different facility. The documentation in the file confirms that the test was performed at the local medical center as well as the physician's office, although none of the Explanations of Benefits included in the file substantiate that benefits were paid for this test. In any case, the fact that the Employer may have previously paid for this test is of no consequence as it is not a covered benefit under the Plan.

Therefore, the Trustees conclude that the Employer is not required to provide benefits for the administration and interpretation of the CA 19-9 Carbohydrate Antigen test.

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