

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-675 - August 5, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee; Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits for eye services and testing under the terms of the Employer Benefit Plan.

Background Facts

The Employee's dependent daughter was diagnosed early in life with congenital left exotropia and hypotropia (an outward and downward deviation of the visual axis of the left eye). Her ophthalmologist stated that, at the parents' request, this defect has been left alone and no ocular muscle surgery was performed because the cosmetic appearance is acceptable, but that the physicians have been following the patient's other eye condition, abnormal optic nerves.

On January 31, 1992, the ophthalmologist took fundus photos and performed visual fields testing on the Employee's daughter. On February 12, 1992, the ophthalmologist conducted a consultation and additional visual fields testing. The ophthalmologist stated in a letter dated May 20, 1993 that the testing was conducted for documentation. The optic nerves appeared swollen, which could be a symptom of a brain tumor, and there was a question of what would happen over time. The eventual diagnosis was congenital anomalous optic nerves.

The Employer paid \$120 of a \$200 charge for the consultation on February 12, 1992, rejecting the balance as excessive charges, and denied benefits for the fundus photos and visual fields testing on January 31 and February 12, 1992, stating that these tests are not specifically covered under the Employer Benefit Plan.

Dispute

Is the Employer required to provide full benefits for the eye care services provided to the Employee's dependent daughter on January 31 and February 12, 1992?

Positions of the Parties

Position of the Employee: The Employee asks whether the Employer is required to provide full benefits for the eye care services provided to his daughter on January 31 and February 12, 1992.

Position of the Employer: The Employer is not required to provide benefits for the fundus photos and visual fields testing provided to the Employee's daughter on January 31 and February 12, 1992 because these tests are not specifically covered under the Employer Benefit Plan.

Further, the Employer is not required to provide benefits for the unpaid balance of the February 12, 1992 consultation charge because the charges were excessive and therefore not payable under the Plan.

#### Pertinent Provisions

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

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan....

Article III. A. (3)(o) 2. of the Employer Benefit Plan states:

(3) Physicians' Services and Other Primary Care

(o) Primary Medical Care - Miscellaneous

2. Benefits are provided for immunizations, allergy desensitization injections, pap smears, screening for hypertension and diabetes, and examinations for cancer, blindness, deafness, and other screening and diagnostic procedures when medically necessary.

1981 Contract Q&A #81-65 states in pertinent part:

Subject: Vision Care

References: Amended 1950 and 1974 Benefit Plans and Trusts, Article III, Sections A (1), (2), (3), (4), (8), (9), and (11) (a) 22

Question:

1. What benefits are provided for eye care under the Plan, other than routine eye care provided in Section A (9), Vision Care Program?

Answer:

1. Benefits are provided for the following:

- o Eye examinations (but not refractions) and the full cost of corrective glasses or contact lenses when medically required because of a surgically caused refractive error.
- o Eye surgery and other treatment of eye illnesses and injuries
- o Eye specialists' care
- o Replacement lenses or eyeglasses for eye surgery patients, as provided in Article III, Section (11).

Article III. A. (10)(g) 2. of the Employer Benefit Plan states:

The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Article III. A. (11)(a) 12. of the 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:

12. Excessive charges.

Discussion

The Introduction to Article III of the Employer Benefit Plan provides coverage for 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. Article III. A. (3)(o) 2. provides benefits for examinations for blindness and other diagnostic procedures when medically necessary. Q&A 81-65 states that benefits are provided for the treatment of eye illnesses and injuries.

The Employee's daughter's ophthalmologist took fundus photos and performed visual fields testing for the evaluation of abnormal optic nerves, which appeared swollen and could have been

caused by a brain tumor. A Funds' medical consultant has reviewed this case to include the May 20, 1993 letter from the ophthalmologist and advised that the fundus photos were done to document the swollen appearance of the Employee's daughter's optic nerves as a baseline to avoid more expensive interventions in the future if there is no change in their appearance. The consultant has also advised that the visual fields tests were performed to be sure that the abnormal optic nerves do not present decreased fields of vision or blind spots. He is of the opinion that the tests were medically necessary and appropriate given the patient's presentation. Because the fundus photos and visual fields tests were medically necessary for diagnostic purposes related to the patient's eye abnormalities, the Trustees conclude that these tests are covered under the Employer Benefit Plan.

The Employer denied \$80 of a \$200 charge for the consultation provided to the Employee's daughter on February 12, 1992 as excessive charges, which are excluded from coverage under Article III. A. (11)(a) 12. of the Plan. Under Article III. A. (10)(g) 3., the "hold harmless" provision of the Plan, the Plan Administrator shall act to resolve matters involving excessive charges of a provider. In this case, the Employer is required to implement hold harmless procedures to protect the Employee from the charges determined to be excessive resulting from the provider's consultation fee.

#### Opinion of the Trustees

The Employer is required to provide benefits for the Employee's daughter's fundus photos and visual fields testing on January 31 and February 12, 1992 and to hold the Employee harmless for the excessive charges for the consultation on February 12, 1992.