
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-685 – July 23, 2001

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and
Elliot A. Segal.

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

Background Facts

Desiring to have a child, and having been unsuccessful in prior attempts, the Employee and his spouse pursued the option of in vitro fertilization (IVF) as an alternative means of inducing pregnancy.

Prior to the first of two IVF procedures, the attending physician's office called a firm that termed itself a "reimbursement service," to assist in obtaining information on coverage for the procedure. On December 6, 1990, the reimbursement service wrote the Employee and his spouse, stating, "The Plan provides benefits for infertility. Advanced reproductive technology is covered." The letter also stated that physicians billing for IVF (in vitro fertilization), or GIFT (gamete intra-fallopian transfer), should attach a copy of the operative report to their billing so the insurance carrier could assign the appropriate billing code. Apparently based on the letter from the reimbursement service, and assuming that the procedure was an eligible expense under the Plan, the Employee's spouse proceeded with the IVF procedures. The Employer, however, requires pre-hospitalization authorization from ReviewPLUS, a pre-certification firm, which is noted on the Employee's health card, and there is no record this was secured. The Employee contends that the December 8, 1990 letter constitutes pre-approval for the two IVF procedure.

The initial IVF procedure on April 30, 1991 was unsuccessful. A second procedure, on November 7, 1991, apparently was successful.

The Employer denied benefits for charges in connection with the two IVF procedures as ineligible under the Employer Benefit Plan. The Employer did, however, provide benefits for hospitalization and anesthesia charges incurred on April 30, 1991, and for a portion of the surgeon's charges, which it determined were in connection with a diagnostic laparoscopy and a laparoscopic bilateral decompression of multiple ovarian cysts. The Employer notes that copies

of two other provider bills offered by the Employee cannot be related to the issue at hand and should be submitted with appropriate documentation.

The Employer cites Article III.A. (3)(o) 7. and ROD 84-241 (copy enclosed herein) in denying benefits for the IVF procedures.

Dispute

Is the Employer required to provide benefits for the IVF procedures performed on the Employee's spouse April 10, 1991 and November 7, 1991?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the Employee's spouse's IVF procedures because they were pre-certified as a covered expense by the reimbursement service.

Position of the Employer: The Employer is not required to provide benefits for any charges in connection with the Employee's spouse's IVF procedures because the Plan excludes these under Article III.A.(11)(a) 27. Secondly, the reimbursement service that stated benefits for the spouse's IVF procedures were covered under the Plan was not under contract to the Employer to perform these services, thereby negating the letter sent to the Employee on December 6, 1990. Additionally, the proper pre-certification company's name and telephone number are on the reverse of the Employee's medical plan identification card.

Pertinent Provisions

Article III. A. (3) (o) 7. of the Employer Benefit Plan states:

7. Benefits are provided covering artificial insemination if the service is provided by a licensed gynecologist.

Article III. A. (11) (a) 27. of the Employer Benefit 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:

27. Any types of services, supplies or treatments not specifically provided by the Plan.

Opinion of the Trustees

The Trustees deadlocked on this matter. Under the ROD procedures adopted pursuant to the 1998 NBCWA, the matter was referred to a neutral interest arbitrator, Thomas Tomczyk, for resolution. The arbitrator was directed to choose one of the two draft opinions proposed by the Trustees. The arbitrator's choice is printed below as the opinion of the Trustees.

Decision of the Arbitrator

The Employer is not required to provide benefits for any charges in connection with the Employee's spouse's IVF procedures because the Plan excludes these under Article III A. (11) (a) 27. Secondly, the reimbursement service that stated benefits for the spouse's IVF procedures were covered under the Plan was not under contract to the Employer to perform these services, thereby negating the letter sent to the Employee on December 6, 1990. Additionally, the proper pre-certification company's name and telephone number are on the reverse of the employee's medical plan identification card.