
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-697 - October 21, 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 oral surgery under the terms of the Employer Benefit Plan.

Background Facts

On October 23, 1992, the Employee's twenty-year-old dependent daughter was referred by her general dentist to an oral surgeon for the treatment of partially impacted left upper and lower wisdom teeth that were causing swelling, cellulitis, and pain. The oral surgeon surgically removed the patient's two left third molars under intravenous sedation and local anesthesia. The Employee paid the oral surgeon \$210, which was half of the total amount charged of \$420.

According to the Employer, benefits for the Employee's daughter's oral surgery were denied under the dental plan because on the date of service she was past the age of eighteen, the last age of dental plan eligibility for unmarried dependent children.

The Employer denied benefits under the Employer Benefit Plan, stating that dental services are not a covered benefit.

Dispute

Is the Employer required to provide benefits for the Employee's daughter's oral surgery on October 23, 1992?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits under either the medical or dental plan for the \$210 balance due for the Employee's daughter's oral surgery on October 23, 1992 because she needed to have some emergency work done to relieve pain. The Employee

asks to be held harmless if it is determined that the Employer is not required to provide benefits for his daughter's oral surgery.

Position of the Employer: The Employer is not required to provide benefits for the Employee's daughter's oral surgery on October 23, 1992 because the oral surgical procedures performed are not listed among the covered oral surgical procedures in Article III. A. (3)(e) of the Employer Benefit Plan; because Article III. A. (11)(a) 19. excludes dental services from coverage.

Pertinent Provisions

Article III. A. (3)(e) of the Employer Benefit Plan provides:

(e) Oral Surgery

Benefits are not provided for dental services. However, benefits are provided for the following limited oral surgical procedures if performed by a dental surgeon or general surgeon:

- Tumors of the jaw (maxilla and mandible)
- Fractures of the jaw, including reduction and wiring
- Fractures of the facial bones
- Frenulectomy when related only to ankyloglossia (tongue tie)
- Temporomandibular Joint Dysfunction, only when medically necessary and related to an oral orthopedic problem.
- Biopsy of the oral cavity
- Dental services required as a direct result of an accident

Article III. A. (10)(g) 3. provides:

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

3. The Employer and the UMWA agree that the 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 for 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) 19. states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

19. Dental services.

Discussion

Article III. A.(3)(e) of the Employer Benefit Plan provides benefits for a limited number of covered oral surgical procedures. Article III. A. (11)(a) 19. excludes coverage for dental services.

A Funds' medical consultant has reviewed the medical records in this case, to include a May 29, 1993 letter from the Employee's daughter's oral surgeon, and has advised that, although the patient had her wisdom teeth extracted on an emergency basis because of pain and early infection with cellulitis, the extraction of the Employee's daughter's wisdom teeth was clearly a dental procedure and would not be an eligible expense under the Employer Benefit Plan. The consultant further states that the extraction of wisdom teeth is not among the limited covered oral surgical procedures listed in Article III. A. (3)(e) of Plan; nor was the extraction of the Employee's daughter's wisdom teeth performed in a hospital as part of the treatment for an illness or injury which is otherwise a covered benefit. Because the services rendered to the Employee's daughter do not fall within the Employer Benefit Plan's limited coverage provisions for oral surgical procedures, the Trustees conclude that the Employer is not required to provide benefits for the removal of the Employee's daughter's wisdom teeth on October 23, 1992.

Article III. A. (10)(g) 3., known as the Plan's "hold harmless" section, provides that in any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter. The Employee has also requested to be held harmless in this case. However, the hold harmless provision applies only to a provider's attempts to collect excessive charges or charges for services not medically necessary. Because the charges at issue in this case are for services not covered under the Employer Benefit Plan, hold harmless does not apply to this case.

Further, although the Employee has raised the issue of dental plan coverage for the services provided to his daughter, this is not an issue that may be addressed in a Resolution of Dispute. The opinion of the Trustees is concerned solely with whether the services in question fall within the limits of oral surgical procedures covered under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to provide benefits under the Employer Benefit Plan for the Employee's daughter's oral surgery on October 23, 1992 or to hold the Employee harmless in this case.