

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-723 - December 15, 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 a radial keratotomy under the terms of the Employer Benefit Plan.

Background Facts

On October 2, 1991 the Employee had a radial keratotomy performed on his left eye, and on October 9, 1991 had the same procedure done on his right eye. Radial keratotomy is a surgical procedure in which incisions are made in the cornea of the eye to correct myopia (nearsightedness). The Employer provided benefits of \$1,800 apiece for the procedures, for a total of \$3,600. The claims administrator's records indicate that the surgeon forwarded the first \$1,800 check to the Employee because the surgical fee had been paid in full. An \$1,800 check for the second procedure was issued directly to the Employee.

On May 5, 1993 the Employer's claims administrator asked the Employee to return the \$3,600 because benefits had been paid in error, stating that radial keratomies were not covered under the Employer Benefit Plan.

Dispute

Is the Employer required to provide benefits for the radial keratomies performed on the Employee on October 2, 1991 and October 9, 1991?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the surgery performed on October 2, 1991 and October 9, 1991, because surgery is a covered benefit under the terms of the Employer Benefit Plan. Additionally, the Employee should not be required to refund any overpayment made in connection with the two surgical procedures since a similar situation existed in ROD 84-222 and that Employee was not required to repay the overpayment.

Position of the Employer: The Employer is not required to provide benefits for the proposed eye surgery because it is an elective procedure of unproven value that is not medically necessary for the treatment of myopia (nearsightedness), and its use is considered experimental. The Employee is responsible for refunding the overpayment since the surgery for which the benefits were paid is an ineligible expense under the terms of the Employer Benefit Plan.

Pertinent Provisions

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

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 or 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 can be performed with equal efficiency at a lower level of care....

Article III. A. (3) (a) of the Employer Benefit Plan states, in pertinent part:

(3) Physicians' Services and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedures (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

Article III. A. (9) (c) 5. of the Employer Benefit Plan states in pertinent part:

(9) Vision Care Program

(c) Exclusions include:

5. experimental services or supplies.

Article III. A. (11) (a) 24. 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:

24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Discussion

Under Article III. A. (3) (a) of the Employer Benefit Plan, benefits are provided for surgical services essential to a beneficiary's care for the treatment of illnesses, injuries, fractures or dislocations, and which are performed either in or out of a hospital by a licensed physician. The Introduction to Article III of the Plan limits covered services to those that are reasonable and necessary for the diagnosis or treatment of an illness or injury and that are given at the appropriate level of care, or are otherwise provided for in the Plan. The Introduction further states that services that are not reasonable and necessary shall include procedures that are of unproven value or of questionable current usefulness. In addition, Article III. A. (9)(c) of the Plan excludes benefits under the vision care program for experimental services, and Article III. A. (11)(a) 24. states that benefits are also not provided for treatment with new technological medical devices and therapy that are experimental in nature.

The Employer has stated that the surgical procedure, radial keratotomy, is considered an elective procedure of unproven value that is experimental in nature and, therefore, ineligible for benefits under the terms of the Employer Benefit Plan.

In RODs 84-222 and 88-408, (copies enclosed herein), the Trustees determined at that time that radial keratotomy was regarded as experimental by Medicare and the American Academy of Ophthalmology. Under current Medicare regulations, refractive keratoplasty in any form, including radial keratotomy, remains not covered because it is still under investigation, and has not been subjected to adequate scientific evaluation in humans.

A recent assessment of the current status of radial keratotomy by a committee of the American Academy of Ophthalmology, published in July 1993, notes that the procedure has been performed several hundred thousand times in the United States by ophthalmologists, but remains an elective procedure because, in the majority of cases, conventional prescription eyeglasses or contact lenses provide an acceptable, predictable and more conservative alternative treatment.

A Funds' medical consultant has reviewed this case and advises that radial keratotomy is no longer considered experimental among practicing ophthalmologists for the treatment of nearsightedness. He notes that the procedure is generally considered elective because there is a less expensive and more conservative form of treatment using prescription lenses. He also notes

that Medicare still considers the procedure experimental. The consultant is, therefore, of the opinion that the procedure would not be covered by the Employer Benefit Plan as a medically necessary or reasonable treatment for myopia.

Inasmuch as a less expensive and more conservative treatment for myopia is available in the form of prescription lenses, and the record does not indicate any medical necessity for the surgical procedure, but was elective, the radial keratotomy was neither reasonable nor necessary and the Employer is not required to provide benefits for the Employee's radial keratotomy surgery on October 2, 1991, and October 9, 1991.

The Employee has stated he should not be required to return the amounts already paid to him, citing ROD 84-222. This ROD, which also dealt with radial keratotomy, is in fact silent on return of funds paid in error. Under these facts, the Employee is not entitled to retain benefits paid in error for services not covered under the Plan. (See ROD 88-561, in which an Employer was entitled to recover an overpayment of benefits to an Employee.)

Opinion of the Trustees

The Employer is not required to provided benefits for the Employee's radial keratotomy surgery on October 2, 1991 and October 9, 1991. The Employee is not entitled to retain any reimbursement he has received in error for these procedures.