
OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse
Respondent: Employer
ROD Case No: 88-791 - August 3, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and
Robert T. Wallace

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits for purchase of a hearing aid under the terms of the Employer Benefit Plan.

Background Facts

On August 1, 1990, the Complainant purchased a hearing aid and other related supplies from an area hospital at a cost of \$676. After numerous filing and processing delays, the Employer's insurance carrier denied benefits on April 8, 1993, for the hearing aid purchase, stating that no hearing-related expenses were covered under the claimant's policy.

The Employer has not responded to numerous requests from Funds' staff for its position in this dispute.

Dispute

Is the Employer required to provide benefits for the surviving spouse's hearing aid purchase on August 1, 1990?

Positions of the Parties

Position of the Surviving Spouse: The Employer is required to provide benefits for the surviving spouse's hearing aid as provided for under the terms of the Employer Benefit Plan. The spouse asserts that she was assured by a former company representative that these expenses would be paid. Furthermore, she states that the current company representative promised to take care of the matter for her.

Position of the Employer: The Employer has not responded to numerous requests from Funds' staff for its position in this matter.

Pertinent Provisions

Article III. A. (7)(d) states in pertinent part:

(7) Other Benefits

(d) Hearing Aids

Benefits are provided for hearing aids recommended by a licensed otologist or otolaryngologist and a certified clinical audiologist. Such hearing aids must be purchased from a participating vendor. . . .

Article III.A.(10)(b) states in pertinent part:

(10) General Provisions

(b) Administration

_____ The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan. . . .

Discussion

Article III. A. (7)(d) of the Plan provides benefits for hearing aids recommended by a licensed otologist, otolaryngologist or a certified audiologist and when purchased from a participating vendor. Article III.A.(10)(b) states that the Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and that such rules and regulations shall be binding on all persons dealing with the Beneficiaries claiming benefits under this Plan. The Trustees have established in prior RODs that such rules and regulations are binding if they are reasonable and have been effectively communicated to the beneficiaries involved. See RODs 81-697, 84-042, 88-322 and 88-403.

In this case, the Complainant purchased a hearing aid from an area hospital, which at the time of purchase was not a participating Funds' vendor, but joined later. The Complainant states she had been assured by two company officials that benefits would be provided for the purchase, but benefits were denied by the carrier. The Respondent has not replied to repeated requests by Funds' staff for its position in this matter. Absent such a response, there is no way for the Trustees to determine whether the Employer in fact authorized a change in the Plan under the latitude granted by Article III.A.(10)(b) as stated by the Claimant. Since the hospital subsequently became a participating vendor, it is not unreasonable to assume that such a waiver may have been granted in the normal course of administering the Plan. Indeed, the available evidence is that the Complainant made a good-faith effort to comply with the provisions of the Employer Benefit Plan by contacting the Respondent at least twice concerning the hearing aid purchase and was led to believe there was no problem concerning coverage.

Accordingly, the Trustees find that the Respondent is required to provide benefits for the Complainant's hearing aid secured on August 1, 1990.

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Opinion of the Trustees

The Employer is required to provide benefits for the Complainant's hearing aid secured on August 1, 1990.