
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-815 - January 23, 1997

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 health benefits coverage for bilateral breast surgery under the terms of the Employer Benefit Plan.

Background Facts

The Employee had bilateral fibrocystic disease of the breast for several years. She had regular mammograms and examinations by her physician that periodically revealed cyst formations that were aspirated (the fluid drained through siphoning) without further complication. The medical records note that the Employee's mother died of breast cancer, a sister had undergone bilateral prophylactic mastectomies, and the Employee had what a physician in the case termed "cancer phobia.". The Employee, on referral from her physician, sought opinions from a general surgeon, an oncologist (specialist in cancer treatment) and a specialist in plastic and reconstructive surgery. Each of these physicians agreed that bilateral prophylactic mastectomy with reconstruction was an appropriate consideration in her case.

The Employee contacted the Employer to determine whether benefits would be provided for the proposed surgery and was told that in this case the mastectomies with reconstruction would not be covered. The Employee then appealed this denial and forwarded additional information for review. After discussion with the Employer's insurance carrier, the Employer advised the Employee that benefits would be provided for the biopsy, but probably would not be provided for the mastectomies or reconstructive surgery. However, if the biopsy resulted in a diagnosis of cancer, benefits would be provided only for the mastectomy on the cancerous breast.

The Employee elected to proceed with the bilateral mastectomy with reconstruction despite having been told that benefits would not be provided for other than the biopsy unless a malignancy was discovered. Pathology reports following the operation revealed no cancerous tissue in either breast.

The Employer provided benefits for the hospital and physician charges related to the breast biopsy, but denied benefits for the charges related to the bilateral mastectomies with reconstruction. (It should be noted that bilateral breast biopsies were performed. The Employer refers only to a unilateral biopsy.) The Employer refused to provide a "Hold Harmless" form to the Employee, stating the decision to proceed with surgery was the Employee's.

Dispute

Is the Employer required to provide benefits for the bilateral mastectomies with reconstruction, or, if not, to hold the Employee harmless.

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the bilateral mastectomies with reconstruction because the surgery was medically necessary. If the procedures are determined to be not medically necessary, then the Employer should hold the Employee harmless.

Position of the Employer: The Employer is not required to provide benefits for the bilateral mastectomies with reconstruction because the surgery was preventive in nature and was not medically necessary to treat an illness or injury. The Employer is also not required to hold the Employee harmless because the decision to proceed with surgery was the Employee's.

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 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. . . .

Article III. A. (3) (f), (p) (9) and (10) (g) 3 of the Employer Benefit Plan state in pertinent part:

Article III. Benefits

A. Health Benefits

(3) Physicians' Services and Other Primary Care

(f) Surgical Services Limitations

Benefits are not provided for certain surgical services without prior approval of the Plan Administrator. Such

surgical procedures include, but are not limited to, the following:

Plastic surgery, including mammoplasty
Reduction mammoplasty
Intestinal bypass for obesity
Gastric bypass for obesity
Cerebellar implants
Dorsal stimulator implants
Prosthesis for cleft palate if not covered by crippled
children services
Organ transplants

(p) Services Not Covered

9. Cosmetic surgery, unless pertaining to surgical scars or to correct results of an accidental injury or birth defects.

(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, judgement 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. . . .

Discussion

The Introduction to Article III limits benefits to those covered services that are reasonable and necessary for the diagnosis or treatment of an illness or injury. Article III. A. (3) (f) limits benefits for certain specified services to those for which prior approval of the Plan Administrator has been obtained. Article III. A. (3) (p) 9. excludes benefits for cosmetic surgery unless pertaining to surgical scars or to correct the results of an accidental injury or birth defects, neither of which is applicable here.

A Funds' medical consultant, a practitioner specializing in breast diseases, has reviewed the file material submitted including the medical records. The consultant is of the opinion that given the facts presented in this case that the Employee's risk of breast cancer is similar to that of a woman with no family history of breast cancer. The consultant further advises that the medical data in

this case are insufficient to establish the medical necessity for the bilateral mastectomy surgery, and notes that after surgery, no premalignant lesions were seen in the breast specimens.

Therefore, the Trustees conclude that the Employer is not required to provide benefits for the bilateral mastectomies with reconstruction. This conclusion is consistent with ROD 88-637 which found medical data and history adequate to support the medical necessity of a prophylactic mastectomy, and with ROD 84-510, which did not, and which affirmed denial of coverage for the procedure in that case. Further, since the cosmetic aspect of the procedure was not related to the surgical scars, the result of an accidental injury or birth defect, the charges for breast reconstruction are not covered by the Plan.

Article III. A. (10) (g) 3., which is known as the Plan's "hold harmless" provision, provides that the Plan Administrator shall attempt to negotiate with, or defend the Employee against, providers who seek to collect excessive charges or charges for services not medically necessary. Whether the Employer negotiates a resolution or defends a legal action, the Employee is not responsible for any expenses in connection with such charges, but may be liable for services that are not provided for under the Plan. In this case, the record supports that the decision for surgery was the Employee's. ROD 88-507 (copy enclosed herein) states that it is not appropriate to invoke hold harmless provisions when the services were requested by the Employee and were not medically justified. Since the procedure in this case was requested by the Employee and the medical necessity of the procedure has not been established, the Employer is not required to hold the Employee harmless.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide benefits for the bilateral mastectomies with reconstruction, nor is the Employer required to hold the Employee harmless in this case.