

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 93-067 - February 6, 1997

Trustees: Thomas F. Connors, Michael H. Holland, Donald E. Pierce, Jr. and Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for assistant surgeon services under the terms of the Employer Benefit Plan.

Background Facts

In May 1995, the Employee underwent a laparoscopic cholecystectomy (surgical removal of the gallbladder with the use of a laparoscope) in the outpatient department of a local hospital.

The surgeon utilized the services of an assistant surgeon. The Employer provided benefits for all charges except for those of the assistant surgeon. The Employee maintains that he was careful to ensure that benefits would be provided for his surgery and that the Employer should not have denied benefits for the assistant surgeon's services.

Dispute

Is the Employer required to provide benefits for the assistant surgeon's services?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the assistant surgeon's services because the Employee was not told that these services would not be covered.

Position of the Employer: The Employer is not required to provide benefits for the charges of the assistant surgeon because the services were not rendered on an inpatient basis.

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. 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. . . .

Article III A. (3) (b) states:

(3) Physicians' Services and Other Primary Care

(b) Assistant Surgeons

If the Beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating physician in the performance of such surgical services when the condition of the Beneficiary and type of surgical service require such assistance.

Article III A. (10) (h) 2. of the Employer Benefit Plan states:

(h) Explanation of Benefits (EOB) and Hold Harmless

2. The Employer and the UMWA agree that 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, judgements or other expenses in connection with the case, but may be liable for any services of the provider which are not provided 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. . . .

Discussion

The Introduction to Article III of the Employer Benefit Plan limits benefits to those services that are medically necessary and reasonable treatment of an illness or injury. To provide benefits for an assistant surgeon, Article III A. (3) (b) requires that the surgical services or the condition of the beneficiary require such assistance.

A Fund's medical consultant has reviewed the information submitted and is of the opinion that the services of the assistant surgeon were not medically appropriate in this case. Since the use of the assistant surgeon was not medically appropriate, the Employer is not required to provide benefits for the assistant surgeon's services, but is required to hold the Employee harmless from any attempt by the provider to collect charges for the assistant surgeon's services.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide benefits for the assistant surgeon's services, but is required to hold the Employee harmless against any attempt by the provider to collect for the charges involved.