
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 93-068 - December 1, 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 the treatment of dyslexia under the terms of the 1993 Employer Benefit Plan.

Background Facts

On October 12, 1994, the Employee's son, on referral from his pediatrician, was tested at a center specializing in dyslexia. The diagnosis following testing was Marked Dysphonic (Mixed) Dyslexia, a combination of two of the basic types of dyslexia. The dyslexia center recommended a treatment plan comprised of two hours of therapy per week in the office and daily treatment in the home for one year, and the Employee's son started the sessions.

On November 15, 1994, the Employee's spouse wrote to the local school's Director of Special Education, included her son's test results, and requested special teaching/testing for their son and other dyslexic children, noting they cannot be taught the same way as children in special education classes. Under the rules of the state board of education, dyslexia is a disability for which the school system must provide special services upon demonstration of a severe discrepancy between the student's intellectual ability and achievement. Following the provisions of those rules, the school's Multidisciplinary Eligibility Determination Committee (MEDC) reviewed the case on December 12, 1994 and by letter from the Director of Special Education advised the Employee that his son did not qualify for special education services because he "is working up to his potential" and there "is not a significant discrepancy between his ability and his achievement." The Director of Special Education also stated that the Employee's son was being referred for possible eligibility under the state's Vocational Rehabilitation Act. Disagreeing with the decision of the committee, the Employee's spouse maintained that their son did well on MEDC testing only because of his dyslexia therapy, and disputed the type of special education/treatment the school provides.

The Employer provided benefits for the testing, stating the Employee's spouse had been incorrectly told by the carrier that such services were covered. The Employer has denied benefits for the dyslexia therapy.

Dispute

Is the Employer required to provide benefits for the Employee's son's dyslexia therapy?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the therapy services because they are related to a medical condition, not a learning disability, and while the school should provide such services at this time, it does not.

Position of the Employer: The Employer is not required to provide benefits for the therapy services because they are available under the state's department of education division of special education services. The Employer cites provisions of state law which require that schools provide services for dyslexic children.

Pertinent Provisions

Article III A. (11) (a) 3., 4., and 27. of the 1993 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:

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3. Services furnished by any governmental agency, including benefits provided under Medicaid, Federal Medicare and Federal and State Black Lung legislation for which a beneficiary is eligible or upon proper application would be eligible.

4. Services furnished by tax-supported or voluntary agencies.

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27. Any types of services, supplies or treatments not specifically provided by the Plan.

Discussion

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Article III A. (11) (a) 3. and 4. of the Employer Benefit Plan excludes benefits for services that are furnished by any governmental, tax-supported or voluntary agency. Article III A. (11) (a) 27. excludes benefits for any types of treatments not specifically provided by the Plan. The rules of the state board of education recognize dyslexia under its definition of "Specific Learning Disabilities" and stipulates that affected individuals are entitled to the services necessary for them to benefit from the educational program. The same rules note, however that, in order to qualify for special services, such an individual "will demonstrate a severe discrepancy between intellectual ability and achievement..." In its review of this case, the school's Multidisciplinary Eligibility Determination Committee noted that the Employee's son was "working up to his potential" and "there is not a significant discrepancy between his ability and his achievement."

Based on the documentation submitted, the school recognized its obligation to provide services for dyslexic students and applied its rules to determine the Employee's son's eligibility.

Therefore, consistent with the provisions of Article III A. (11) (a) 3., 4. and 27. of the Employer Benefit Plan, the Employer is not required to provide benefits for the Employee's son's dyslexia treatment therapy.

Opinion of the Trustees

Consistent with the provisions of the 1993 Employer Benefit Plan, the Employer is not required to provide benefits for the Employee's son's dyslexia therapy.