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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 93-100 – March 17, 2000

Trustees: A. Frank Dunham, Michael H. Holland, Donald E. Pierce, Jr. and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute under the terms of the 1993 Employer Benefit Plan concerning the provision of benefits for a speech augmentation system (computerized speech synthesizer).

Background Facts

The Employee's daughter was born on March 18, 1992 with congenital physical and mental development problems that make her unable to communicate verbally. Further, her lack of fine motor skills impedes her ability to use sign language. Her physicians recommended a computerized communication augmentation system to enable her to effectively communicate audibly with others.

The Employer has denied benefits for the augmentation system.

Dispute

Is the Employer required to provide benefits for the Employee's daughter's computerized speech augmentation system?

Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the computerized speech augmentation system because it is medically necessary.

Position of the Employer: The Employer is not required to provide benefits for the computerized speech augmentation system because it is neither a prosthesis nor covered medical equipment.

Pertinent Provisions

Article III A. (6) (d) of the 1993 Employer Benefit Plan states:

(6) Home Health Services & Equipment

(d) Medical Equipment

Benefits are provided for rental or, where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.

Article III A. (7) (a) 1. of the Employer Benefit Plan states:

(7) Other Benefits

(a) Orthopedic and Prosthetic Devices

Benefits are provided for orthopedic and prosthetic devices prescribed by a physician when medically necessary.

The following types of equipment are covered:

1. Prosthetic devices which serve as replacement for internal or external body parts, other than dental.

These include artificial eyes, noses, hands (or hooks), feet, arms, legs, and ostomy bags and supplies.

Q&A 81-38 states, in pertinent part:

Subject: Medical Equipment and Supplies

References: Amended 1950 & 1974 Benefit Plans & Trusts,  
Article III, Sections A (6) (d) and (e), and A (7) (a) and (d)

Question:

What medical equipment and supplies are covered under the Plan?

Answer:

- A. Under the Home Health Services and Equipment provision, benefits are provided for the rental and, where appropriate as determined by the Plan Administrator, purchase of medical equipment and supplies (including items essential to the effective use of the equipment) suitable for home use when determined to be medically necessary by a physician. These supplies and equipment include, but are not limited to, the following:
1. Durable Medical Equipment (DME) which (a) can withstand use (i.e., could normally be rented), (b) is primarily and customarily used to service a medical purpose, (c) generally is not useful to a person in the absence of an illness or injury, and (d) is appropriate for use in the home. Examples of covered DME items are Lanes, commodes and other safety bathroom equipment, home dialysis equipment, hospital beds and mattresses, iron lungs, orthopedic frames and traction devices, oxygen tents, patient lifts, respirators, vaporizers, walkers and wheel chairs.
- B. Under the Other Benefits provision, benefits are provided for the following:
1. Orthopedic and prosthetic devices prescribed by a physician when medically necessary, including items necessary for their effective use. These include, but are not limited to, the following items:
    - prosthetic devices replacing internal or external body parts (other than dental), such as cardiac pacemakers, maxillofacial devices and devices replacing all of the ear or nose, and waste collection and retention devices for incontinent people (e.g., catheters, ostomy bags and supplies)
- C. Items of a convenience nature or those that do not require professional judgment, recommendations or instructions to purchase or use are not covered benefits.

Covered items under A and B above are not subject to copayment.

Discussion

Article III A. (6) (d) provides benefits for rental or purchase of medical equipment suitable for home use when determined to be medically necessary by a physician. Article III A. (7) (a) 1. provides benefits for prosthetic devices which replace internal or external body parts. Q&A 81-38 further defines what constitutes covered medical equipment and prostheses.

The proposed communication augmentation system clearly is not medical equipment since it is not primarily and customarily used to serve a medical purpose; and, since it is a computer, would generally be useful to a person in the absence of an illness or injury. Since it does not replace a body part (e.g., larynx), it cannot be considered a prosthesis. This approach is consistent with ROD 84-331 (copy enclosed herein) and with Medicare, which denies such systems as convenience items that are not primarily medical in nature.

A Funds' medical consultant has reviewed the documentation submitted in this case and has concluded that the device is not used to serve a medical purpose as required by the Employee Benefit Plan. Therefore, the Trustees conclude that the Employer is not required to provide benefits for the Employee's daughter's augmentation device.

Opinion of the Trustees

Consistent with the provisions of the 1993 Employee Benefit Plan, the Employer is not required to provide benefits for the Employee's daughter's augmentation device.