
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: CA-032 – September 13, 2000

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits for morphometric analysis under the terms of the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Pensioner was diagnosed with cancer of the prostate following diagnostic testing. One of the tests ordered by his physician was morphometric analysis which attempts to measure an excessive amount of nuclear DNA using a stain that fluoresces when exposed to a special laser.

The Employer had provided benefits for all the diagnostic tests except for the morphometric analysis.

Dispute

Is the Employer required to provide benefits for the Pensioner's morphometric analysis?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the Pensioner's morphometric analysis because it was medically necessary.

Position of the Employer: The Employer is not required to provide benefits for the Pensioner's morphometric analysis because the procedure was not medically necessary and is experimental.

Pertinent Provisions

The Introduction to Article III of the Employer Benefit Plan states:

Subject to Article IV, the benefits provided under this Plan are set forth in this Article III. Benefit payments shall not exceed reasonable and customary charges for covered services and supplies. 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. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care. The benefits described in this Article are subject to any requirements implemented pursuant to Article IV. Covered services that are medically necessary will continue to be provided, and accordingly, while benefit payments may be subject to managed care and cost containment rules, this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Article III A. (3) (j) of the Employer Benefit Plan states:

A. Health Benefits

(3) Physicians' Services and Other Primary Care

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Such benefits will not cover laboratory tests and x-rays ordered in connection with a routine physical examination, unless the examination is

considered medically necessary by a physician.

Article III A. (11) (a) 24. of the 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:

24. Charges for treatment with new technological medical devices, therapy which are experimental in nature.

Discussion

The Introduction to Article III limits covered services to those services which are reasonable and necessary for the diagnosis and treatment of an illness or injury. 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 the Plan. The Introduction further states that services which are not reasonable and necessary include procedures which are of unproven value or of questionable current usefulness. Article III A. (3) (j) provides benefits for laboratory tests. Article III A. (11) (a) 24. of the Plan excludes benefits for treatment with new technological medical devices and therapy which are experimental in nature.

A Funds' medical consultant has reviewed the documentation submitted with this case and has concluded that morphometric analysis is experimental in nature in the evaluation of prostate cancer. The theory behind morphometric analysis is that abnormal DNA content in tumor cells correlates with tumor aggressiveness and may provide prognostic information. Although promising in theory, the technology has not progressed beyond the experimental stage at this point based on information from the American Cancer Society. Morphometric analysis in the study of tumors is considered experimental under the Medicare Program and is not covered thereunder. The Centers for Disease Control and Prevention, The American Cancer Society and the National Cancer Institute do not list morphometric analysis as one of the methods used for detecting prostate cancer. Because the morphometric analysis performed on the Pensioner is not a recognized method used for the detection of prostate cancer, and is of questionable current usefulness, it is not a benefit covered under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for the Pensioner's morphometric analysis.