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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-033 – 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 Lung Volume Reduction Surgery under the terms of the Coal Industry Retiree Health Benefits Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Pensioner had a history of emphysema with increasing shortness of breath and dyspnea (difficulty in breathing). He had been receiving home oxygen therapy for seven years and his physician considered him to be a candidate for Lung Volume Reduction Surgery (LVRS). In early 1996, the Pensioner requested approval from Medicare for LVRS, which was denied. He appealed the denial, but it was sustained.

The Pensioner then requested preauthorization for LVRS under the Employer's Benefit Plan. Before the Employer had completed review of the records and determined whether benefits should be provided, the Pensioner pre-paid the cost of the surgery and underwent LVRS on November 18, 1996. Following surgery, he experienced severe complications and died in the hospital on December 1, 1996.

The Employer subsequently denied benefits, stating that the surgery was experimental and therefore not a covered service.

Dispute

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

Positions of the Parties

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

Position of the Pensioner: The Employer is not required to provide benefits for the Pensioner's LVRS because it was experimental and therefore not medically necessary.

Pertinent Provisions

The Introduction to Article III of the Coal Act 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 this 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. . . .

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; . . . .

Article III A. (11) (a) 24. of the Coal Act 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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24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Discussion

The Introduction to Article III of the Coal Act Employer Benefit Plan limits covered services to those which are reasonable and necessary for the treatment or diagnosis of an illness or injury and excludes benefits for services which are of unproven value or of questionable current usefulness. Article III A. (11) (a) 24. denies benefits for treatment with new technological medical devices and therapy which are experimental in nature. Medicare ceased providing benefits for LVRS in December 1995, stating that its safety and effectiveness have yet to be substantiated.

A Funds' medical consultant has reviewed the medical documentation in this case and has concluded that the Pensioner's LVRS was an experimental procedure at the time of the operation and is still considered experimental at this time. Therefore, consistent with the provisions of the Coal Act Employer Benefit Plan, the Employer is not required to provide benefits for the Pensioner's LVRS.

Opinion of the Trustees

Consistent with the provisions of the Employer Benefit Plan, the Employer is not required to provide benefits for the Pensioner's LVRS.