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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 254, January 26, 1982

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee,  
Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning coverage for a laser therapy procedure during plastic surgery and hereby render their opinion on the matter.

Background Facts

The Employee's wife underwent corrective surgery in February, 1981, for the treatment of an injury to her nose. Prior approval for the surgery was obtained from the Plan Administrator. During the surgery, the surgeon used a laser to seal the patient's endothelial surfaces, reduce trauma to the surrounding tissue, create a sterilized wound, and reduce blood loss.

The Insurance carrier covered the surgical fee of \$1,750.00, but denied the fee of \$650.00 for the use of the laser, on the basis that such use is experimental in nature. The carrier also denied a fee of \$100.00 for pre-anesthesia services which it considered to be excessive.

Question or Dispute

Is the Employer responsible for coverage of the use of a laser during surgery and for pre-anesthesia services?

Position of Parties

Employee: The Employee feels that the insurance carrier should pay for use of the laser because prior approval for the surgery was obtained from the plan Administrator. The Employee also claims that the use of a laser is not innovative or experimental and that the doctor has justified its use. He also contends that pre-anesthesia services are the same type of services usually received the night prior to surgery for a patient in the hospital and should therefore be covered.

Employer: The insurance carrier bases denial of coverage for use of a laser during surgery on Article III, A (10) (a) 24 of the Employer's Plan, which stipulates that charges for treatment with

new technological medical devices and therapy which are experimental in nature are excluded from payment. In addition, the insurance carrier feels that the pre-anesthesia charge of \$100 should be included in the \$250 charge for the administration of the anesthesia. They feel that this fee is excessive and denial is based on Article III, A (10) (a) 12. Finally, the Employer claims that he only explained the terms of the Employer's Plan with respect to the surgery prior to the surgery, but did not authorize the specific charges.

Pertinent Provisions

Article III, A (10) (a) 12, 24 of the Employer's Benefit Plan provides as follows:

- (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:
  - 12. Excessive charges as determined solely by the Plan Administrator.
  - 24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Question and Answer #62:

"Subject: Fee Maxima

"References: Amended 1950 & 1974 Benefit Plans & Trusts, Art. III, Sect. A (10)(a) 12.

"Question:

- "1. Do the Trustees have the right to establish fee maxima by procedure or provider within geographic area, and to limit payments to fee maxima?
- "2. If yes, what requirements are there, if any, for the uniform administration of fee maxima?
- "3. If fee maxima can be applied must they be identical among plans administered by the Trustees and the individual company Plan Administrators?

"Answer:

- "1. Yes. The Trustees of the 1950 and 1974 Benefit Plans and Trusts have the right to refuse to pay for "excessive charges as determined solely by the Trustees."
- "2. There are no requirements for nationwide uniformity, but providers in equal status under the Trustees' criteria must be treated equally.

- "3. No. The provision of the 1950 and 1974 Benefit Plans and Trusts states that excessive charges are to be determined solely by the Trustees, and the provision of the company plans places that responsibility with the Plan Administrators as designated by those plans."

#### Discussion

Under Article III, A (10) (a) 24 of the Employer's Plan, benefits are excluded for treatment with new technological medical devices and therapy which is experimental in nature. Generally the use of a laser is not considered to be experimental. With respect to the type of surgery performed on the Employee's wife, however, the use of a laser is still being researched and is considered to be experimental. Therefore, the treatment is not a covered benefit under the Employer's Plan.

In addition, under Article III, A (10) (a) 12 of the Employer's Plan, the employer is not required to pay a charge which the Plan Administrator, in his sole discretion, has determined to be excessive. The Plan Administrator has determined that \$100.00 of the pre-anesthesia service fee is excessive. Since this determination was made by the Plan Administrator, the Employer is not obligated to pay the charge. And, since the determination of whether a charge is excessive is solely within the discretion of the Plan Administrator, the Trustees may not comment on the reasonableness of the charge.

The Employee claims, however, that the Employer should pay the charges which were denied because prior approval for the surgery was obtained from the Plan Administrator. The Employer claims that he did not authorize the specific charges which were denied. The Trustees may not resolve this dispute. Under the exemption granted to the Trustees by the Department of Labor for ROD exemptions, the Trustees may only resolve disputes arising under the terms of the Employer Plans. And the Employer's Plan does not address the issue of whether a procedure must be covered once prior approval has been obtained. Therefore, even assuming that the Employee is correct in stating that the Employer did give prior approval for the charges, the Trustees are not authorized to comment on whether that is a sufficient basis upon which to require the Employer to pay the charges which were denied.

#### Opinion of the Trustees

The Trustees are of the opinion that the Employer is not required to pay for the use of the laser during surgery. In addition, because the Plan Administrator has determined that the \$100 charge for pre-anesthesia services is excessive, the Employer is not required to pay this charge. Finally, the exemption granted by the Department of Labor does not authorize the Trustees to comment on the issue raised concerning whether the Employer gave prior approval for the specific charges which were later denied.