OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-711 - October 28, 1987

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 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 the provision of health benefits coverage for laser therapy under the terms of the Employer Benefit Plan.

Background Facts

The Employee's six-year-old son had a history over approximately five years of recurrent warts on both hands. After electric needle and chemical treatments failed to cure the condition, the approximately 23 warts were cauterized with a carbon dioxide (CO_2) laser under general anesthesia in a one-day surgical facility. Three months later, 13 more warts developed on his hands. Laser cauterization under general anesthesia in a one-day surgical facility was performed on these warts as well.

The Employer denied the charge for the use of the laser, paid the physician the usual and customary fee for conventional wart removal and denied the charge for pre-anesthesia services because it was redundant and the surgery was performed in an out-patient facility.

Dispute

Is the Employer responsible for payment of additional benefits for the charges related to the laser cauterization procedures performed on the Employee's son?

Positions of the Parties

Position of the Employee: The Employer is responsible for the payment of benefits for all of the charges related to the laser cauterization procedures performed on the Employee's son.

Position of the Employer: The Employer is not responsible for payment of the charge for the use of the laser because at the time it was incurred it was an experimental and inappropriate

treatment for warts. The Employer is not responsible for the payment of additional benefits for the professional fee because the payment was based on the usual and customary fee for the removal of warts by conventional means. The Employer is not responsible for payment of the charge for pre-anesthesia services because it is a redundant charge and it is applicable only to inpatient surgical patients.

Pertinent Provisions

Article III. A. (3)(a) of the Employer Benefit Plan states in part:

> (3) Physicians' Services and Other Primary Care
>
> (a) Surgical Benefits
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> Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedure (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

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

> (d) Anesthesia Services
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> Benefits are provided for the administration of anesthetics provided either in or out of the hospital in surgical or obstetrical cases, when administered and billed by a physician, other than the operating surgeon or his assistant, who is not an employee of, nor compensated by, a hospital, laboratory or other institution.

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 and therapy which are experimental in nature.

Discussion

Under Article III. A. (3)(a) of the Employer Benefit Plan, benefits are provided for surgical services which are performed either in or out of a hospital by a physician. The Employer's insurance carrier denied coverage under Article III. A. (11)(a) 24., which excludes charges for treatment with new technological medical devices and therapy which are experimental in nature.

Virtually all organizations addressing experimental procedures look first to the Food and Drug Administration for the initial approval of a new device as safe for marketing. Once the device is approved by the FDA, then it must be determined whether the procedure is experimental in particular circumstances.

The CO_2 laser used in this particular case received pre-market approval by the FDA in 1976. The Employer attempted to determine whether coverage should be provided by following the policy of the current Medicare carrier in its region. Funds' staff has learned that Medicare allows coverage for use of an FDA approved laser subject to the Medicare carrier's determination that its use in a particular case is medically necessary and reasonable for the treatment of an illness or injury and that its use is a commonly accepted practice in the area served by the carrier. Thus, some Blue Cross-Blue Shield Medicare carriers would cover the laser surgery today and some would handle it as the Illinois carrier has indicated, paying an amount equal to conventional surgery. Due to the passage of time and a change in carrier, Funds' staff has been unable to learn if the Medicare carrier in the Employer's location would have covered the laser procedure in 1982 or if it might have reduced the amount covered to that amount equal to conventional surgery for wart removal.

Because the Employer Benefit Plan provides coverage nationwide, there is need for a uniform standard. In determining whether a new procedure is experimental or should be recognized for coverage, the Trustees attempt to determine the general level of acceptance of the new procedure by the appropriate medical specialty societies whose physician members have occasion to use and test the procedures; by the numerous assessments of public and private research organizations who study experimental procedures, such as the National Academy of Science's Institute of Medicine; by the health insurance industry in general; and by researching Medicare's policy.

The American Academy of Dermatology referred Funds' staff to two physicians expert in laser surgery. They advised that laser cauterization has been commonly recognized as a treatment for warts since at least 1977, and that it is recommended for the treatment of warts which, as in this case, have been resistent to other methods and are difficult to treat because of their location on the fingers and around the nails.

Contacts with several large insurance carriers indicate that those carriers provided coverage for the medically necessary removal of warts by CO laser in 1982. Thus, the Trustees conclude that the laser therapy provided i~ this case was not considered an experimental treatment at the time of its use in 1982, and that it was an appropriate and reasonable treatment modality, given the failure of other methods of treatment.

The pre-anesthesia services in dispute consisted of an evaluation prior to the scheduled surgery for the purposes of ascertaining the patient's state of health, allergies, baseline vital signs and other information necessary to prescribe and administer anesthesia. The fact that the anesthesia was administered in a one-day surgical facility does not preclude the necessity for an evaluation prior to the administration of general anesthesia. However, the charge for pre-anesthesia

services is customarily included in the fee for anesthesia services. In this case, the separate charge was redundant.

Opinion of the Trustees

The Employer is responsible for payment of additional benefits for the charges related to the laser cauterization procedures performed on the Employee's son. The Employer is not responsible for the charges related to pre-anesthesia services.