OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer "C"
ROD Case No: 44 - July 25, 1980

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 ("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 payment of maternity and obstetrical delivery services for the spouse of an Employee under the terms of the Employers' Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainant worked as a classified employee at the same mine site, during the period January, 1977 to May 7, 1979, for three different trucking employers, designated as Employers "A", "B" and "C". Employer "A" and Employer "B" operated at the mine site simultaneously until December 5, 1977, when Employer "A" went out of business. Employer "A"'s responsibility for coverage is not at issue here.

The Employee was employed by Employer "B" from March 27, 1978 to August 1, 1978. On August 1, 1978, Employer "B" abandoned the mine site, and the Employee became employed by Employer "C". After operation for some months at a different site, (the exact time is unknown), Employer "B" sold its assets to Employer "C". The National Labor Relations Board has ruled however, that Employer "C" is not the successor of Employer "B".

The Employee's spouse became pregnant during April, 1978, while the Employee was working for Employer "B", and delivered the child, prematurely, on December 20, 1978, while the Employee was employed by Employer "C". Employer "C"'s insurance carrier has paid $5,342.75 of the $5,662.20 bill for the child's hospitalization, but has declined to pay the $2,155.64 bill for the mother's maternity and obstetrical services.

Both Employer "B" and "C" signed the National Bituminous Coal Wage Agreement of 1978 ("1978 Wage Agreement") effective March 27, 1978. Each elected to provide health benefits for classified employees effective June 1, 1978, pursuant to Article XX(c)(3) of that Agreement. Therefore, both the insurance carrier of Employer "B" and Employer "C" refuse to

pay for maternity and obstetrical services inasmuch as the pregnancy commenced prior to the effective date of their coverage.

Pertinent Provisions

Article III(A)(10)(a)(2)(ii) of the Employers' Benefit Plan and the UMWA 1974 Benefit Plan ("1974 Benefit Plan") provide:

> (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following ...
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> (2) Services rendered prior
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> (ii) subsequent to the period after which a Beneficiary is no longer eligible for Benefits under the Plan; provided, however, that coverage as described in Article III, Sections A(1)(h) and (3)(c) will be provided for a pregnancy which commenced while the Beneficiary was eligible for coverage under the Plan if the Employee is employed as a classified employee with another signatory Employer to the Wage Agreement at the time the services are rendered.

Article III A(1)(h) and 3(c) provide coverage for both hospital and physicians' services due to pregnancy, including pre and post-natal care and delivery ("maternity and obstetrical services").

Article III D(1) of the 1974 Benefit Plan provides in pertinent part:

> The 1974 Benefit Plan shall be the plan of a signatory employer for a participating employer during the period between the effective date of the Wage Agreement and May 31, 1978.

Article II of the 1974 Benefit Plan defines a "participating employer" as:

> ... any signatory Employer who does not elect to implement health benefit coverage through a private insurance carrier(s) as of the effective date of the Wage Agreement, pursuant to Article XX, Section (c)(3)(ii) of the National Bituminous Coal Wage Agreement of 1978.

Discussion

Article III A of the 1974 Benefit Plan, and the Employers' Benefit Plan provides for coverage for a pregnancy by the plan of the employer for whom the Employee is working at the time the pregnancy commences, provided the employee is a classified employee with another signatory to the 1978 Wage Agreement at the time the services are rendered.

Here, in April, 1978, when the pregnancy commenced, the Employee worked for Employer "B". After August 1, 1978, and for the remainder of the pregnancy, he performed classified work for Employer "C", another signatory company. Therefore, under the terms of Article III A of the 1974 Benefit Plan and the Employers' Benefit Plan, Employer "B" is responsible for providing maternity and obstetrical services to the Employee because the company was the Employer at the time the pregnancy commenced.

Employer "B", however, was a "participating employer" within the meaning of Article II of the 1974 Benefit Plan. Therefore, pursuant to Article III D(1) of the 1974 Benefit Plan, Employer "B"'s plan at the time the pregnancy commenced in April, 1978, was the 1974 Benefit Plan.

Accordingly, pursuant to Article III(A)(10)(a)(2)(ii) of the Employer's Benefit Plan, and the 1974 Benefit Plan, it is the 1974 Benefit Plan, rather than Employer "B"'s subsequently established plan, that is responsible for the obstetrical and maternity services rendered to the Employee's spouse.

Opinion of the Trustees

The Trustees are of the opinion that Employer "B"'s plan is responsible for the payment of maternity and obstetrical services rendered to the Employee's spouse because the Employee worked for Employer "B" at the time the pregnancy commenced. Further, the Trustees are of the opinion that the 1974 Benefit Plan was Employer "B"'s plan when the pregnancy commenced. Accordingly, under the terms of the 1974 Benefit Plan and the Employers' Benefit Plan, the 1974 Benefit Plan is responsible for payment of these services.