
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 02-011- October 12, 2006

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

Background Facts

The Complainant has been employed in a classified position with the Respondent since April 21, 1997. In November 2000, the Complainant and his spouse separated. According to the Complainant, the Respondent first learned that the Complainant and his spouse were separated and were filing for divorce when the Complainant's manager attended an alimony hearing on June 9, 2003, on behalf of the Complainant. On June 10, 2003, the Complainant met with the Respondent's Plan Administrator. According to the Plan Administrator, the Complainant stated that his spouse was employed and that he was no longer providing his spouse with financial support.

A copy of an Application for Enrollment form signed by the Complainant and Plan Administrator dated June 10, 2003, states, "Drop wife and son-No longer living together or providing support." The Complainant states that he did not ask the Plan Administrator to terminate his spouse's coverage and that the notation "Drop wife and son-No longer living together or providing support" was written on the form by the Plan Administrator after the meeting. The Complainant's spouse's and son's health benefits coverage was terminated effective June 10, 2003.

A temporary court order dated July 29, 2003, states that "Beginning August 1, 2003, the husband [the Complainant] shall pay to the wife the sum of \$1,500 per month as alimony. . . ." According to the Respondent, the judge also ordered the Complainant to provide health benefits coverage for his spouse. Prior to the court order, the Complainant stated that his spousal support consisted of payment of car and house insurance which totaled \$160.00 per month.

In light of the court order, the Respondent requested that the Complainant complete a worksheet to determine whether the Complainant's support payment amounted to over one-half of the Complainant's spouse's support. The worksheet was completed by the Complainant's spouse and returned to the Respondent. After reviewing the worksheet, the Respondent stated that it

lacked the following information deemed necessary to determine whether the Complainant provides such support: 1) documentation of the spouse's earnings or if no longer employed, a statement from the employer verifying such; 2) the fair rental value of the home; and 3) documentation to substantiate the financial information provided on the worksheet. By letter dated October 31, 2003, the Respondent requested the Complainant provide this information but, to date, the Respondent states that the information has not been received.

The Complainant states that even though he has provided all the information that the Respondent has requested, the Respondent still refuses to provide coverage to his spouse. Meanwhile, the Complainant purchased coverage for his wife under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) effective June 10, 2003.

According to the enrollment form, the Complainant's son attained age 22 in January 2004. Under the terms of the Employer Benefit Plan, a child may be eligible for coverage until he or she attains age 22. The Complainant is not seeking health coverage for his son.

Dispute

Is the Respondent required to provide coverage for the Complainant's separated spouse?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant's spouse because the Complainant has provided all the information the Respondent has requested to determine that the Complainant provides his spouse over one-half support. The Complainant indicated that Q&A H-13 (81) supports his claim.

Position of the Respondent: The Respondent is not required to provide health benefits coverage for the Complainant's spouse because the Complainant has not provided sufficient information to make a determination as to whether the Complainant provides his spouse over one-half support.

Pertinent Provisions

Article I (1), (2), (4) and (7) of the Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 2002, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.
- (7) "Dependent" shall mean any person described in Section D of Article II hereof.

Article II D. (1) of the Employer Benefit Plan provides:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to sections, A, B, or C of this Article II:

- (1) A spouse who is living with or being supported by an eligible Employee or Pensioner;

* * *

For purposes of this section D, a person shall be considered dependent upon an eligible Employee, Pensioner or spouse if such Employee, Pensioner or spouse provides over one-half of the support to such person.

Q&A H-13 (81) provides the following:

H-13 (81)

Subject: HEALTH BENEFITS; Separated Spouse

Reference: (50B) II C; (74B) II C

Question:

Can a participant remove a separated spouse from the participant's Health Service Card?

Answer:

No. The separated spouse may not be removed from the participant's Health Service Card unless there is evidence establishing that the participant is not living with, providing support or under Court Order to provide support to the separated spouse.

Q&A H-14 (81) provides the following:

H-14 (81)

Subject: HEALTH BENEFITS; Death Benefits; Separation, Divorce

Reference: (50B) II C, II D, III B; (74B) II C, II D, III B(2)

Question:

If a participant and his spouse are separated, or divorced, what is the health and death benefit status of the spouse and any otherwise eligible dependents living with the spouse?

Answer:

A separated spouse is eligible for health and death benefit coverage only if the participant is regularly providing support sufficient to establish dependency, as defined in Q&A H-2, or is under Court Order to provide such support.

A divorced spouse is not eligible for health and death benefit coverage.

The participant's children, living with a separated or divorced spouse, are eligible for health and death benefit coverage as long as the participant provides support sufficient to establish their dependency, as defined in Q&A H-2, or is under Court Order to provide such support.

Q &A H-2 (81) provides in pertinent part the following:

H-2 (81)

Subject: HEALTH BENEFITS; Dependency Determination, Support

Reference: (50B) II C; (74B) II C

Question:

What are the guidelines for determining the eligibility of persons for health benefits as dependents of disabled employees and pensioners?

Answer:

In general, a person is considered dependent on a participant if the participant regularly provides over one-half of the person's support. Support includes the fair rental value of lodging, reasonable cost of board, clothing, miscellaneous household services and education expenditures, excluding scholarships. Support is not limited to necessities.

Support is regular if it is provided on a yearly basis.

Guidelines for determining dependency of family members of participants for health benefit coverage purposes are as follows:

- (1) Spouse: A spouse is considered dependent if living with the participant, regardless of the spouse's income from all sources.

If the spouse is not living with the participant, it must be established that the participant provides over one-half of the spouse's support, as defined above, or is under Court Order to provide over one-half of the spouse's support.

* * *

Discussion

Article II D. (1) of the Employer Benefit Plan states that health benefits coverage under Article III shall be provided to a spouse who is living with or being supported by an eligible Employee. Article II D. further states that a person shall be considered dependent upon an eligible Employee if such Employee provides over one-half of the support to such person.

The Trustees have previously concluded that an Employer may require Employees to furnish reasonably available information at reasonable intervals to establish date of birth, marital status, and dependency for a spouse or a dependent. (See ROD 81-300.)

The Respondent states that insufficient information was submitted to determine whether the Complainant's spouse meets the requirements for coverage under the Employer Benefit Plan. Specifically, the Respondent requested the following information: 1) documentation of the

spouse's earnings or if no longer employed, a statement from the employer verifying such; 2) the fair rental value of the home; and 3) documentation to substantiate the financial information provided on the worksheet.

Whether a spouse's earnings are considered in determining dependency is based on whether she is living in the participant's household. Q&A H-14 (81) states that a participant's spouse is eligible for health benefits coverage as long as the participant provides support sufficient to establish her dependency as defined in Q&A H-2 (81) or is under court order to provide such support. According to Q&A H-2 (81), "A spouse is considered dependent if living with the participant, regardless of the spouse's income from all sources." It further states that "If the spouse is not living with the participant, it must be established that the participant provides over one-half of the spouse's support, as defined above, or is under Court Order to provide over one-half of the spouse's support." In the present case, the Complainant's spouse's income would be taken into consideration in determining whether the Complainant provides over one-half of her support.

Next, there is the question of whether the fair market value of the Complainant's spouse's home is necessary in this case in order to determine dependency. As part of that process, the yearly cost to maintain the household is determined and then divided by the number of individuals living in the household. (See RODs 93-060 and 88-500.) In addition to food and utilities, rent or mortgage payments are considered costs to maintain the home. If the home is owned, then a fair rental value is considered a monthly cost. In this situation, however, because the Complainant owns a one-half interest in the home, there is no need to determine a fair rental value as a monthly expense. The rental value would increase the spouse's monthly expenses, but the Complainant would be credited with providing one-half of that expense.

The worksheet submitted by the Complainant (signed by the Complainant's spouse) is not supported by any documentation and does not list any income earned by the spouse.

Finally, the Complainant states that Q&A H-13 (81) supports his position. According to Q&A H-13 (81), a separated spouse cannot be removed from the participant's Health Service Card unless there is evidence establishing that the participant is not living with, providing support, or under Court Order to provide support to the separated spouse.

On June 9, 2003, the Complainant's manager attended the Complainant's alimony hearing. According to the Complainant, it was at the hearing that his manager learned of the Complainant's separation and that the court was in the process of determining a support payment. The information provided at the court hearing was sufficient evidence to establish that on June 10, 2003, the Complainant was not living with his spouse nor was he under Court Order to provide support.

Opinion of the Trustees

The Respondent is not required to provide coverage for the Complainant's spouse after June 9, 2003, because the Complainant has not provided sufficient information to make a determination as to whether the Complainant provides his spouse over one-half support.