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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 02-014 – March 10, 2005

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 is actively employed by the Respondent. On June 11, 2003, the Complainant completed an application for Black Lung benefits at his place of employment. According to the Complainant, a nurse employed by an agency not connected with the Respondent distributed and collected the Black Lung applications among the employees. As part of the ROD process, the Complainant submitted a copy of his Black Lung application which asks the applicant to list unmarried children under age 18 and to identify their relationship to the applicant as one of the following: legitimate, adopted, stepchild, or other. The Complainant stated that he wanted to list his grandson, whose date of birth is August 31, 1994, as his dependent because his grandson was currently receiving coverage as his dependent under the Respondent's Employer Benefit Plan. According to the Complainant, he was informed by the nurse that grandchildren are not considered dependents under the Black Lung program; therefore, he did not list his grandson as his dependent when completing the application.

The Complainant claims that based on the fact that he did not list his grandson as a dependent on the Black Lung application, the Respondent terminated his grandson's coverage. By letter dated November 10, 2003, the Respondent notified the grandson that as of June 11, 2003, he was no longer eligible for health coverage but could elect continuation of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Subsequently, the Complainant received statements dated October 19, 2003, and November 24, 2003, from the Respondent's insurance carrier that indicated the grandson's coverage terminated on September 12, 2003.

By letter dated December 5, 2003, the Respondent requested that the Complainant complete a questionnaire about the grandson. A copy of the completed questionnaire was submitted by the Complainant. The Complainant answered yes to the following questions: 1) Is the dependent receiving child support income or is there a court order for child support in effect? 2) Is there a court order for medical coverage in effect? and 3) Is this dependent enrolled as a student?

The Complainant answered no to the following question: Is this dependent covered under any other group medical plan, private plan or government plan? The form also asked for a copy of the Complainant's Federal Income Tax Return and if applicable, a copy of the child support order. The form also stated that the employee should complete a support worksheet if attached, but none was attached.

The Complainant completed the form on December 10, 2003, and returned it to the Respondent with a copy of his 2002 tax return on which he claimed the grandson as a dependent. He also included a copy of his daughter's Divorce Agreement which states that his grandson's father is to provide health care coverage for the child until he reaches age 19 or becomes self-supporting.

On December 29, 2003, the Complainant states that he spoke with the Respondent's Plan Administrator who told the Complainant that based on the information submitted, the grandson was not eligible for coverage.

When filing the Resolution of Dispute, the Complainant also submitted the following information: 1) a statement from a certified public accountant indicating that the Complainant claimed his grandson as a dependent on his 2001, 2002, and 2003 tax returns; 2) a statement that the Complainant is receiving no child support; and 3) a statement that his daughter provides no income to the household.

#### Dispute

Is the Respondent required to provide health coverage for the Complainant's grandchild?

#### Positions of the Parties

Position of the Complainant: The Respondent is required to provide health coverage for the Complainant's grandchild because he provides over one-half of the grandchild's support.

Position of the Respondent: The Respondent has not responded to numerous requests from Funds' staff for its position in this matter.

#### 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. (4) 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 paragraphs A, B, or C of this Article II:

\* \* \*

- (4) Unmarried dependent grandchildren of an eligible Employee, Pensioner or spouse who have not attained age 22 and are living in the same household (residence) with such Employee or Pensioner;

\* \* \*

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

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

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:

\* \* \*

- (4) Unmarried dependent grandchildren who have not attained age 22: The test for dependency is the same as that for other children, as described in paragraph (2) above, except that the grandchildren must be living in the same household (residence) as the participant unless attending school as full-time students.

\* \* \*

Discussion

Article II D. (4) of the Employer Benefit Plan provides health benefits coverage for the unmarried dependent grandchildren of an eligible Employee, so long as the grandchildren have not attained age 22 and are living in the same household with such Employee. Article II D. further states that a person shall be considered dependent upon an eligible Employee if such Employee provides on a regular basis over one-half of the support to such person. In addition, in Question and Answer (Q&A) H-2 (81), the Trustees stated that a person is considered a dependent of 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.

The Respondent requested a copy of the Complainant's daughter's Divorce Agreement and the Complainant's 2002 tax return to review to determine whether the Complainant's grandson met the requirements under the Respondent's Employer Benefit Plan.

The Divorce Agreement, which the Complainant is not a party to, states that the Complainant's grandson's father is to provide health care coverage for the child until he reaches age 19 or becomes self-supporting. However, the grandson's father does not provide health coverage for the grandson. In the present case, the Divorce Agreement has no bearing on the decision concerning the grandson's eligibility for benefits under the Employer Benefit Plan. The Trustees' scope of inquiry is limited to the Employer Benefit Plan and whether the grandson meets the eligibility criteria for health coverage under the Plan. Even though someone else also may be obligated to provide health benefits to the grandson, this does not alter the fact that the grandson may satisfy the criteria for eligibility under the Employer Benefit Plan. Likewise, if the grandson were receiving health benefits from another source pursuant to the Divorce Agreement, he may still be eligible for health benefits under the Employer Benefit Plan, although his dual coverage would raise coordination of benefit issues.

In ROD 84-010, the Trustees had been asked whether an Employer may request certain information as proof of dependency and whether there should be a presumption of dependency for young children. The Trustees determined that an Employer "may request documentation of dependency and that the most recent Federal Income Tax Return is among the forms of documentation that are 'reasonably available.'" According to the Federal Tax Return information submitted by the Complainant, the Complainant listed his grandson as his dependent for 2001, 2002, and 2003.

In addition to the tax return information, the Complainant has provided other pieces of evidence to support his claim: a statement that his grandchild lives with him, a statement that he is receiving no child support, and a statement that his daughter provides no income to the household.

Accordingly, the Trustees find that the evidence submitted by the Complainant is sufficient to establish that the Complainant provides over one-half of his grandson's support.

#### Opinion of the Trustees

The Respondent is required to reinstate coverage for the Complainant's grandson effective September 13, 2003, under Article II D. (4) of the Employer Benefit Plan.