
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 02-026 – May 23, 2007

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 was awarded an Age 55 pension under the 1974 Pension Plan effective April 1, 2002. The Respondent provided health benefits to Complainant and his spouse effective May 16, 2002. His spouse received her primary health coverage from her employer until December 31, 2004, when she terminated her employer's health coverage to receive coverage only from the Respondent.

In April 2005, the Complainant completed a form for the Respondent concerning his and his spouse's eligibility for Medicare. According to the information provided by the Complainant, the Complainant became eligible for and was enrolled in Medicare Part B effective April 1, 2004. The Complainant's spouse became eligible for Medicare Part B effective September 1, 2001, but was not enrolled. Subsequently, the Respondent notified the Complainant by letter dated May 17, 2005, that health benefits coverage for his spouse was terminated effective May 16, 2002, because enrollment in Medicare Part B is required under the Respondent's Employer Benefit Plan.

The Complainant's spouse states that enrollment in Medicare Part B was not required by her employer's insurance carrier. According to the Complainant's spouse, prior to terminating her coverage through her employer, she spoke with the Respondent's Plan Administrator who confirmed that she was covered under the Respondent's plan. She also states that she was not told that she had to enroll in Medicare Part B by the Plan Administrator. Moreover, had she known that she was required to enroll in Part B Medicare, she states that she would not have terminated her coverage through her employer. She states that she has incurred medical bills since January 1, 2005, that were denied by the Respondent.

The Respondent contends that it notified the Complainant's spouse of her responsibility to enroll in Medicare Part B by providing a benefits update in March 2003 with a summary of the Medicare enrollment requirements. The Respondent's Summary Plan Description was also

available to the Complainant and his spouse.

The next application period for the Complainant's spouse to enroll in Part B Medicare was in January, February and March 2006 with an enrollment date of July 1, 2006.

Dispute

Is the Respondent required to provide health benefits for the Complainant's spouse after May 16, 2002, during a period when she was eligible for but not enrolled in Medicare Part B?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant's spouse after May 16, 2002, because she was told by the Plan Administrator that she had coverage under the Respondent's plan and she was not informed at that time that her enrollment in Medicare Part B was mandatory. Also, she would not have terminated her coverage through her employer if she had been informed that Medicare Part B was a requirement for coverage under the Respondent's plan. Moreover, the Complainant's spouse states that the penalty period should be waived and she should not be responsible for repayment of her medical bills.

Position of the Respondent: The Respondent is not required to provide health benefits for the Complainant's spouse after May 16, 2002, because she was not enrolled in Medicare Part B. In March 2003, the Respondent mailed a Benefit Update to all retirees that included a summary of the Medicare enrollment requirement. In addition, the Respondent's Summary Plan Description, which includes the Medicare enrollment requirement, is available to all beneficiaries. The Respondent states that its position is supported by RODs 88-650, 84-679, 88-467, 84-516, 84-637, and 84-542.

Pertinent Provisions

Article III. A. (10) (d) of the Employer Benefit Plan provides:

ARTICLE III BENEFITS

A. Health Benefits

(10) General Provision

(d) Medicare

1. For Pensioners, and surviving spouses, the benefits provided under the

Plan will not be paid to a Beneficiary otherwise eligible if such Beneficiary is eligible for Hospital Insurance coverage (Part A) of Medicare where a premium is not required and/or Medical Insurance coverage (Part B) of Medicare unless such Beneficiary is enrolled for each part of Medicare for which such Beneficiary is eligible. Any such Beneficiary who is enrolled in a Medicare program shall receive benefits provided under the Plan only to the extent such benefits are not provided under Medicare.

2. For Employees age 65 or older the benefits provided under the Plan will be paid to a Beneficiary unless the company is furnished written notice of electing coverage under Medicare rather than coverage under the Plan. Alternatively, the participant may elect to enroll for Medicare as secondary payer.

The Plan Administrator will give written notification of the obligation to enroll with respect to 1. above and of the options to enroll with respect to 2. above. For active Employees such notice shall be given prior to their 65th birthdays, but subsequent to their 64th birthdays. Said notice shall explain the limited annual enrollment period and the effect of failing to enroll if retirement should occur prior to the next enrollment period. Failure to provide such notification shall not remove any obligation to enroll.

Article III. A. (11) (a) 3. of the Employer Benefit Plan states:

ARTICLE III BENEFITS

A. Health Benefits

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

* * *

3. Services furnished by any governmental agency, including benefits provided under Medicaid, Federal Medicare and Federal and State Black Lung Legislation for which a beneficiary is eligible or upon proper application would be eligible.

Discussion

Article III. A. (10) (d) of the Employer Benefit Plan states that the benefits provided under the Plan will not be paid to a Beneficiary “unless such Beneficiary is enrolled in each part of Medicare for which such Beneficiary is eligible.” Article III. A. (11) (a) 3. of the Employer Benefit Plan excludes benefits provided under Medicare for which a Beneficiary is eligible or upon proper application would be eligible.

The Complainant’s spouse became eligible for Medicare Part B effective September 1, 2001. Notification of Medicare eligibility is automatically given to a Beneficiary by the Social Security Administration when the eligibility date approaches. (See ROD 88-650.) No evidence was submitted to indicate that the Social Security Administration failed to notify the Complainant’s spouse that she was eligible for Medicare.

The Complainant’s spouse states that prior to terminating her coverage under her employer’s plan, she was told by the Respondent’s Plan Administrator that she had coverage under the Respondent’s plan. She states that she was not informed at that time that her enrollment in Medicare Part B was mandatory. The Complainant’s spouse states that the penalty period should be waived and she should not be responsible for repayment of her medical bills. In RODs 88-659 and 84-491, the Trustees reviewed similar situations concerning Medicare enrollment.

In ROD 88-659, a pensioner who was enrolled in Medicare Part B, cancelled his Part B coverage when his Employer informed him that he did not have to enroll in Medicare Part B until he attained age 65. Subsequently, the Employer informed the pensioner that it had misinterpreted the Medicare provisions and he was required to re-enroll in Medicare Part B as soon as possible. The pensioner had to pay a penalty on his monthly Part B premium. The Trustees noted that “while the Plan contains a requirement that the Employer notify in writing a Medicare-eligible Beneficiary of the obligation to enroll, and by extension to maintain coverage, the Plan clearly states that failure to provide such notification does not remove the Beneficiary’s obligation to enroll or to maintain coverage.” The Trustees found that the Employer was not responsible for providing him with health benefits if he did not re-enroll and maintain his Medicare Part B coverage.

In ROD 84-491, a pensioner did not enroll in Medicare Part B claiming that he was advised by the employer’s representative that such enrollment was not required until he attained age 65. The employer in this case erroneously provided benefits for the pensioner after June 1, 1984- the date the pensioner became eligible for Medicare Part B. The Trustees noted that “while the Employer Benefit Plan contains a requirement that the Employer provide written notification of a beneficiary’s obligation to enroll in Medicare, the Plan clearly stipulates that failure to provide such notification does not remove the beneficiary’s obligation to enroll.” The Trustees also noted while the Employer erroneously provided benefits for some period beyond the beneficiary’s Medicare Part B eligibility date, the Employer is not required “. . . to provide

additional benefits during the period that the Complainant was eligible for, but not enrolled in, Medicare Part B.”

In both cases listed above, the Trustees consistently looked to Article III A. (10) (d) of the Employer Benefit Plan. They found that although the Plan requires written notification of a Beneficiary’s obligation to enroll in Medicare, the Plan clearly states that failure to provide such notification does not remove the Beneficiary’s obligation to enroll in Medicare Part B.

The Respondent cited RODs 88-650, 84-679, 88-467, 84-516, 84-542, and 84-637 to support its position. The RODs address a pensioner’s failure to enroll in Medicare Part B, when he became eligible for Medicare. ROD 84-637 specifically addresses the failure of a pensioner’s spouse to enroll in Medicare Part B. The pensioner and his spouse argued that they were not notified of the requirement to enroll in Medicare. The Trustees concluded that the Employer was not responsible for providing health benefits to a pensioner’s spouse during a period she was eligible for, but not enrolled in, Medicare Part B.

Opinion of the Trustees

The Respondent is not required to provide health benefits to the Complainant’s spouse under the Employer Benefit Plan during the period when she was eligible for, but not enrolled in, Medicare Part B.