
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 16-0004 – April 4, 2018

Trustees: Michael H. Holland, Marty D. Hudson, Michael O. McKown,
and Joseph R. Reschini

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 Complainants are retirees of several coal companies whose health care benefits are provided by the Respondent pursuant to an Employer Benefit Plan (“EBP”). Commencing in September 2017, retirees began to have trouble filling prescriptions. Some retirees were told by the pharmacies that they had no prescription benefit coverage. Other retirees report that claims for medical benefits are not being paid by the Respondent. The reason for the non-payment stated on the explanation of benefits is, “Our records indicate coverage for this patient was not in effect at the time of service.” Complainants only learned of the termination of benefits when medical and prescription drug benefits were not paid. Complainants had difficulty contacting the Respondent, and when reached, some Complainants reported that the Respondent offered a credit card number to pay for the prescriptions. When Complainants asked about their health benefits coverage they were told the Respondent was working on it.

A letter dated August 31, 2017, from the company, was mailed to participants of the company’s retiree health plan announcing changes to a self-funded health plan starting September 1, 2017. Numerous retirees report receiving an application from United Healthcare for enrollment into the United Healthcare supplemental plan. No retirees report receiving any correspondence from the company regarding the termination of benefits under the EBP. Respondent’s plan regarding health and prescription drug benefits for non-Medicare retirees has been requested but has not been received.

The Union reports that the Respondent has not sought agreement from the Union to enroll Medicare-eligible beneficiaries into Medicare Supplemental Plans, nor has the Respondent provided any plan for covering those retirees who are not eligible for Medicare or active employees recently called back to work. Among the Complainants are several with heart conditions and one who recently received a liver transplant.

Dispute

Whether the Respondent is providing the requisite level of benefits required by the EBP?

Whether the Respondent can unilaterally require its Medicare-eligible retirees to enroll in a Medicare Supplemental Plan?

Positions of the Parties

Position of the Complainant: The Respondent is not providing prescription and medical benefits as required by the EBP. Non-payment of prescription and medical benefits is a violation of the EBP. The Respondent's proposed requirement that Medicare-eligible retirees enroll in a Medicare Supplemental Plan does not guarantee the same level of benefits as provided in the EBP and may not be instituted absent an agreement with the Union.

Position of the Respondent: The Respondent responded to informal complaints from retirees by stating that it was "trying to take care of paying for medications until we can get the issue with insurance resolved." To date, however, the Respondent has not responded to the allegations in ROD 16-0004.

Pertinent Provisions

Article II B.1. of the Employer Benefit Plan states in pertinent part:

ARTICLE II ELIGIBILITY

B. PENSIONERS

Health Benefits under Article III hereof shall be provided to Pensioners as follows:

1. Any Pensioner who is not again employed in classified signatory employment subsequent to:
 - a. such Pensioner's initial date of retirement under the 1974 Pension Plan,

Article III A. 10.(b) of the Employer Benefit Plan states in pertinent part:

ARTICLE III BENEFITS

A. Health Benefits

10. General Provisions

b. Administration

* * *

The Plan Administrator shall give written notice to each Employee of the termination of coverage under the Benefit Plan. Such notice shall explain the conversion privileges of the Benefit Plan and the enrollment procedure to be followed.

* * *

Article V Amendment and Termination of the model EBP states:

A. Mid-Term Amendments. The UMWA and BCOA (and its successors or assigns) reserve the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of this Plan, or to terminate this Plan, by written instrument between the UMWA and BCOA, without reopening or otherwise affecting the integrity of any other provision of the Wage Agreement.

* * *

C. Special Rule for Certain Pensioners. The Employer will provide, for life, only the benefits of its own eligible Pensioners who retired between the Effective Date and December 31, 2021. The benefits and benefit levels provided by the Employer under this Plan are established for the term of the 2016 Wage Agreement only, and may be jointly amended or modified in any manner at any time after the expiration or termination of the 2016 Wage Agreement.

Discussion

Article II of the EBP requires an employer to provide health benefits to eligible retirees in accordance with Article III of the EBP. Further, the EBP states that written notice of a termination of benefits shall be given by the plan administrator. The Respondent unilaterally terminated health benefit coverage for the Complainants without notice or explanation. Sporadic

and/or non- delivery of health benefits, from at least September 2017 to March 2018, resulted in

Claimants not knowing if their health benefits were “on or off.” Claimants report pharmacies not filling prescriptions because Claimants’ prescription coverage could not be verified. Also, some Complainants state that they were directed by the Respondent to obtain the price of the prescription medication sought, to call the Respondent with the price and the number of the pharmacy. At that point the Respondent would call the pharmacy and provide a credit card number to pay for the prescription(s). Some pharmacies refused to do this. Complainants were forced to find pharmacies willing to take the Respondent’s credit card information over the phone as payment, pay for the prescriptions out of their own pocket, or forego filling prescriptions. Other Complainants report unpaid medical bills in addition to the difficulties in receiving prescription medications.

Medicare-eligible Complainants report receiving an application form from United Healthcare to enroll in a Medicare Supplemental Plan through AARP and United Healthcare. To enroll in one of these Medicare Supplemental Plans, Claimants would have to pay out of their own pocket anywhere between \$133 and \$201 per month depending on the coverage selected. The EBP does not require retirees to make any such payments as a pre-requisite to coverage. Some Complainants have returned the application to United Healthcare, while others have not because of the premium involved in this coverage. Further, the Medicare Supplemental Plans do not offer the same level of benefits as required by the EBP. Specifically, the plans do not offer any coverage for prescription drugs and some plans do not provide coverage for dependents who are eligible for benefits under the EBP.

The Respondent has not provided information regarding any plan for health coverage for non-Medicare-eligible beneficiaries for whom it is providing benefits under the EBP.

Article V of the EBP governs changes or modifications to the EBP. Specifically, Article V. A. states that the Union and the BCOA may modify or amend the EBP. The Union and the BCOA have not done so. Further, there is no evidence that the Respondent sought such an agreement from the BCOA and the Union.

Opinion of the Trustees

Pursuant to Article XX of the 2016 NBCWA and the provisions of the EBP, the Respondent is required to provide health benefits coverage as delineated in the EBP. The changes that the Respondent has made do not provide the level of health benefits mandated in the 2016 NBCWA or the EBP. Such a unilateral change to health benefits is in violation of the provisions of the EBP.