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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 84-271 - February 18, 1987

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 the provision of health benefits for outpatient surgery under the terms of the Employer Benefit Plan for a Pensioner's spouse who failed to enroll in Medicare.

### Background Facts

The Pensioner's spouse became eligible for Medicare on February 1, 1985. The U.S. Department of Health and Human Services sent her a Medicare card offering automatic enrollment in both hospital insurance (Medicare Part A) and supplementary medical insurance (Medicare Part B). Since she would have to pay a monthly premium for Part B, which she thought would be a duplication of benefits she received under the Employer Benefit Plan, the Pensioner's spouse returned the card, thereby refusing enrollment in Part B. Thus, she was enrolled in Medicare Part A, but not in Medicare Part B.

In March 1986, the Pensioner's spouse underwent outpatient surgery and submitted the charges to the Employer's insurance carrier. The Employer subsequently paid 20% but denied 80% of the charges pertaining to the surgery. The Employer stated that, according to the Employer Benefit Plan, a beneficiary is required to enroll in Medicare, and the Employer is not responsible for providing benefits which are payable under Medicare. The outpatient surgery in question would normally be covered under Medicare's supplementary medical insurance (Part B). Since the Pensioner's spouse did not enroll in Medicare Part B, the Employer stated that the 80% of charges normally payable by Medicare are the patient's responsibility, and not the Employer's. The Pensioner states that neither he nor his spouse were specifically notified by the Plan Administrator that she had to enroll in Medicare Part B. The Plan Administrator stated that a Summary Plan Description was distributed in November 1984, but that no separate notice was given of the requirement to enroll in Medicare Part B.

### Dispute

Is the Employer responsible for providing those health benefits which would normally be covered by Medicare when the Pensioner's spouse failed to enroll in Medicare Part B?

Position of the Parties

Position of the Employee: The Pensioner maintains that neither he nor his spouse was notified by the Plan Administrator that Part B Medicare enrollment was an Employer Benefit Plan requirement and, therefore, that the Employer is responsible for paying benefits for 100% of the charges related to the Pensioner's spouse's outpatient surgery.

Position of the Employer: The Employer maintains that since the Pensioner's spouse failed to enroll in Medicare, the 80% of the charges normally paid by Medicare are not covered under the Employer Benefit Plan.

Pertinent Provisions

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

(d) Medicare

1. For Employees age 70 and over, 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 the benefits provided under the Plan only to the extent such benefits are not provided for under Medicare.

2. For Employees age 65 to 70 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 shall 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:

(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. (11) (a) 3. of the Employer Benefit Plan excludes from coverage benefits provided under Federal Medicare "for which a beneficiary is eligible, or upon proper application would be eligible."

Under Article III. A. (10)(d) of the Employer Benefit Plan, Medicare-eligible beneficiaries are required to enroll in Medicare Part A and Part B, and the Employer is responsible only for providing benefits not paid by Medicare. The Pensioner's spouse was eligible for both Part A and Part B of Medicare. She was notified by the U.S. Department of Health and Human Services of her eligibility, and she refused enrollment in Part B.

Article III. A. (10)(d) of the Plan further provides that the Plan Administrator shall give written notification of the obligation to enroll. However, the Article goes on to state that failure to provide such notification shall not remove any obligation to enroll. The Plan Administrator stated that a Summary Plan Description was distributed in November 1984, but that no separate notice was given of the requirement to enroll in Medicare Part B.

The Pensioner and his spouse contend that since they were not notified of the obligation to enroll, they were unaware of this provision and should not be held responsible. The Trustees note the Plan's requirement that the Employer notify a Medicare-eligible beneficiary of the obligation to enroll, the Plan clearly stipulates that failure to provide such notification does not remove the beneficiary's obligation to enroll. Even though the Employer did not fulfill its responsibility under the Plan to provide the Pensioner's spouse with written notification of the obligation to enroll in all parts of Medicare for which she was eligible, she still had the responsibility to do so. Since she was eligible for Medicare Part B and failed to enroll, the Pensioner's spouse is not eligible to receive from the Employer those benefits for medical services that would normally be provided under Medicare Part B.

#### Opinion of the Trustees

The Employer is not responsible for providing those benefits that would normally be covered by Medicare Part B, related to outpatient surgery provided to the Pensioner's spouse.