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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 84-290 - January 30, 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 level of health benefits coverage for a Pensioner under the terms of the Employer Benefit Plan.

Background Facts

The Complainant retired from classified employment with the Respondent on November 30, 1982. On July 26, 1983, he was awarded a normal retirement pension under the UMWA 1974 Pension Plan, effective December 1, 1982.

The Complainant has stated that the Benefit Plan currently implemented by the Respondent does not provide prescription drug coverage at the level prescribed by the terms of the Employer Benefit Plan established pursuant to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1984. According to information obtained by the Funds, the coverage for prescription drugs under the Respondent's Plan was changed effective April 1, 1986.

Prior to April 1, 1986, the Complainant was entitled to prescription drug benefits under the Plan's Prescription Drug Program. Under that program, claims were submitted directly to the Plan by the pharmacy and payment was made to the pharmacy. A yearly \$50 deductible for the whole family was applicable with a maximum of \$5 per prescription being assessed until the deductible was satisfied. After the deductible was met, 100% payment was made by the program.

According to the information provided by the insurance carrier, the Complainant's bills for prescriptions filled on or after April 1, 1986 are paid under his Major Medical coverage. It is the Complainant's responsibility to submit the bills to the Plan; payment is then made directly to him. The yearly Major Medical deductible is \$50 for one person and \$100 for the whole family. The deductible must be fully satisfied before any claims payments are made. After the deductible is met, 80% of the covered charge is reimbursed and the subscriber is responsible for the remainder. The Complainant believes that this level of prescription coverage is in violation of the 1984 Wage Agreement which sets forth specific co-payments for prescriptions (\$5.00) up to a \$50.00 yearly maximum per family.

The Complainant asks that the Respondent be found responsible for the provision of prescription drug coverage at the level prescribed by the terms of the Employer Benefit Plan.

The Respondent claims that it has been out of business since March 1, 1983, and is financially unable to provide prescription drug coverage for the Complainant. In addition, the Respondent contends that the Complainant was awarded Workers' Compensation benefits due to disability resulting from Black Lung; and therefore, the Complainant's bills for prescription drugs should be covered by Workers' Compensation.

Information obtained by the Funds on December 12, 1986 indicates that the Complainant's claim for benefits under the Federal Black Lung Program was denied in November 1984, and his award of benefits under the Kentucky Workers' Compensation Program is currently under appeal.

### Dispute

Is the Respondent responsible for the provision of prescription drug coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan?

### Positions of the Parties

Position of the Complainant: The Respondent is responsible for the provision of prescription drug coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan.

Position of the Respondent: The Respondent is financially unable to provide prescription drug coverage for the Complainant, and the Complainant's bills for prescription drugs should be covered by Workers' Compensation.

### Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1984 provides in pertinent part:

(c) 1974 Plans and Trusts

- (3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans.

Article I (1), (2), and (5) of the Employer Benefit Plan provide:

#### Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (coal company).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1984, as amended from time to time and any successor agreement.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan.

Article II 8. (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:

##### B. Pensioners

Health benefits and life insurance 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, and
  - (b) October 1, 1984, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Article III A. (8) and (11) (a) 1. of the Employer Benefit Plan provide in pertinent part:

Article III - Benefits

A. Health Benefits

(8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the beneficiary. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments.

For purpose of this paragraph (8), the working group shall be deemed to be Beneficiaries who are described in Article II A and C (3) and their eligible dependents. The non-working group shall be deemed to be Beneficiaries who are described in Article II B, C (1), C (2) and E and their eligible dependents.

Co-payments for Health Benefits are established as follows:

<u>Benefit</u>	<u>Co-Payment</u>
(a) Physician services as an out-patient as set forth in Section A (2) and physician visits in connection with the benefits set forth in Section A(3), paragraph (c) but only for pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and Section A(7) paragraph (f).	Working Group -- \$7.50 per visit up to a maximum of \$150 per 12-month period(*) per family.
(b) Prescription drugs and insulin, as set forth in Section A(4) and take-home drugs following a hospital confinement as set forth in Section A (I)(a).	Non-Working Group -- \$5 per visit up to a maximum of \$100 per 12-month period(*) per family.
If an employee is covered an employee Plan (established pursuant to the NBCWA of 1978)	\$5 per prescription or refill up to a \$50 maximum per 12-month period(*) per family. Note: For purposes of this co-payment pro- under vision, a prescription or refill shall be deemed to be

by more than one signatory employer during a 12-month period(\*), the total co-payments made by the employee during such period shall be counted toward the 12 month(\*) maximum.

each 30 days (or fraction thereof) supply.

\*The 12-month periods shall begin on the following dates: March 27, 1984; March 27, 1985; March 27, 1986 and March 27 1987

(11) General Exclusions

- (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:
1. Cases covered by workers' compensation laws or employer's liability acts or services for which an employer is required by law to furnish in whole or in part.

Discussion

Article XX Section (c)(3)(i) of the 1984 Wage Agreement requires each signatory Employer to establish and maintain an Employee Benefit Plan to provide health and other non-pension benefits to Pensioners whose last signatory classified employment was with such Employer. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such plans shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such plans. Inasmuch as the Complainant is a pensioner whose last signatory classified employment was with the Respondent, the Respondent is responsible for providing health benefits coverage for the Complainant under the terms of the Employer Benefit Plan. Although the Respondent claims it is financially unable to provide prescription coverage for the Complainant, such claim, in and of itself, does not relieve the Respondent of its responsibility to provide coverage as required under the Wage Agreement.

Article III. A (8) of the Employer Benefit Plan specifies the co-payments which are the responsibility of the beneficiary for medical services and prescriptions. Levels of benefits to be provided to Employees, Pensioners and their dependents and survivors are established through collective bargaining and may not be unilaterally changed by an Employer. The coverage for prescription drugs provided by the Respondent is inconsistent with the provisions of the 1984 Wage Agreement and the Employer Benefit Plan.

Article III A. (11)(a) 1. of the Plan excludes benefits for services covered by Workers' Compensation laws. Although the Respondent claims that the Complainant's prescription drug charges would be excluded under the terms of the Employer Benefit Plan, the Complainant's award of state workers' compensation benefits is currently under appeal. Furthermore, such an

Opinion of Trustees  
Resolution of Dispute  
Case No. 84-290  
Page 6

exclusion does not relieve the Respondent of its obligation to provide benefits for covered services, including prescription drugs, at the level specified in the Employer Benefit Plan.

Opinion of the Trustees

The coverage for prescription drugs provided by the Respondent is inconsistent with the express provisions of the 1984 Wage Agreement. The Respondent is responsible for providing prescription drug coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.