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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 84-412 - December 15, 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 is a Pensioner whose last classified signatory employment in the coal industry was with the Respondent. The representative for the Complainant has stated that the Benefit Plan implemented by the Respondent does not provide health benefits 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. The Complainant's representative has submitted information which indicates that benefit payments are subject to a \$500 major medical deductible and, thereafter, are paid up to 80% of the cost of the service. In addition, the Complainant's representative has also submitted copies of medical bills indicating that the Complainant is required to pay \$12.00 for each office visit. The representative for the Complainant contends that this non-conforming health coverage plan is in violation of the 1984 Wage Agreement.

The Complainant's representative has also indicated that a number of the Complainant's medical bills have not been paid in full because the Employer's insurance carrier has determined that the charges are excessive. The representative asks who is responsible for payment of such charges if it is determined that they do not in fact exceed the reasonable and customary charges for the services in question. The representative also asks who is responsible for payment of such charges if they do exceed the reasonable and customary charge, and who is to defend the Complainant if a provider sues to collect such charges.

### Dispute

Is the Respondent responsible for the provision of health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan? In addition, the

Complainant's representative asks who is responsible for payment of charges which may exceed the reasonable and customary charge.

#### Positions of the Parties

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

Position of the Respondent: The Respondent has failed to respond to repeated correspondence from Funds staff regarding its position in this dispute.

#### 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 (Employer's Name).
- (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 B. (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 1(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) of the Employer Benefit Plan provides 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.

Co-payments for Health Benefits are established as follows:

Benefit

Co-Payment

(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 per 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).

(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(1)(a).

If an employee is covered under an employee Plan (established pursuant to the NBCWA of 1978) 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.

Working Group -- \$7.50 per visit up to a maximum of \$150 per 12-month period(\*) per family.

Non-working Group -- \$5 per visit up to a maximum of \$100 12-month period(\*) per family.

\$5 per prescription or refill up to a \$50 maximum per 12-month period(\*) per family.

Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

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

(g) Explanation of Benefits (EOB)

1. Each Beneficiary shall receive an explanation of billing and payment rendered on behalf of such Beneficiary. Should full payment for a service be denied because of a charge that has been determined by the Plan Administrator to be in excess of the reasonable and customary charge, a copy of such EOB shall be forwarded to the UMWA (International Headquarters, Attention: Benefits Department).

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

2. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

#### Discussion

Article XX Section (c)(3)(i) of the 1984 Wage Agreement requires each signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits to its Pensioners whose last signatory classified employment was with such Employer. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such Plan: Inasmuch as the Complainant is a 1974 Pension Plan Pensioner whose last signatory classified employment was with the Respondent, the Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents.

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 Respondent's use of a non-conforming health coverage plan is inconsistent with the provisions of the 1984 Wage Agreement and the Employer Benefit Plan. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.

In accordance with Article III A. (10)(g) of the Employer Benefit Plan, the Plan Administrator may determine whether or not a charge for a covered medical service exceeds the reasonable and customary charge for that service in the area where the service is provided. If the charge for a covered service is not excessive, the Employer is responsible for payment of the charge under the terms of the Employer Benefit Plan. If a charge for a covered service is determined to be excessive, the Plan Administrator shall attempt to resolve the matter or defend the Employee against a provider who seeks to collect such a charge. Whether the Employer negotiates a resolution or defends a legal action, the Employee would not be responsible for any expenses in

connection with the excessive fee claim. Article III A. (10)(g) is known as the Plan's "hold harmless" provision.

Opinion of the Trustees

The Respondent's health coverage plan is inconsistent with the express provisions of the 1984 Wage Agreement. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan. Where a charge has been determined to be either excessive or for services not medically necessary, the "hold harmless" provision of Article III. A. (10)(g) of the Plan must be followed by the Employer.