
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-030 - September 26, 1988

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 coverage for an Employee's son under the terms of the Employer Benefit Plan.

Background Facts

The Complainant has been employed by the Respondent in a classified position since October 31, 1972. The Complainant's son, who was born on July 11, 1966, was covered as a dependent under the Respondent's Benefit Plan until he attained age 22; his coverage was terminated on August 1, 1988. Information provided to the Funds indicates that a colostomy, secondary to a gunshot wound, was performed on the Complainant's son in May 1988. The Complainant claims that his son is entitled to health benefits coverage beyond age 22 in accordance with Article II. D. (5) of the Employer Benefit Plan and Q & A H-6(81) (copy enclosed herein) because he became disabled as a result of an injury prior to attaining age 22 and will remain disabled until further surgery is performed. The Complainant states that his son cannot work and is totally dependent on him for support. A statement submitted by the attending physician indicates that further surgery, which will require hospitalization for approximately ten days, is required to reconnect the Complainant's son's colon.

The Respondent states that the Complainant's son is no longer eligible for health benefits coverage under the Employer Benefit Plan because the Complainant's son has attained age 22 and his current disability is not continuous or permanent. The Respondent further contends that it has fulfilled its obligations under the Plan by informing the Complainant of the conversion privilege under the Plan and his son's right to continued coverage in accordance with COBRA regulations.

Dispute

Whether the Respondent is responsible for providing health benefits coverage for the Complainant's son beyond age 22 as a disabled dependent.

Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing health benefits coverage for the Complainant's son as a disabled dependent because his son became disabled prior to attaining age 22 and will remain disabled until further surgery is performed.

Position of the Respondent: The Complainant's son is no longer eligible for health benefits coverage under the Employer Benefit Plan because the Complainant's son has attained age 22. The Complainant's son does not qualify for coverage as a disabled dependent because his current disability is not continuous or permanent.

Pertinent Provisions

Article II 0. (5) of the Employer Benefit Plan provides:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II:

- (5) Dependent children (of any age), of an eligible Employee, Pensioner or spouse, who are mentally retarded or who become disabled prior to attaining age 22 and such disability is continuous and are either living in the same household with such Employee or Pensioner or are confined to an institution for care or treatment. Health benefits for such children will continue as long as a surviving parent is eligible for health benefits.

Article III D. (1)(h) and 3(b) of the Employer Benefit Plan provides:

Article III - Benefits

D. General Provisions

(1) Continuation of Coverage

(h) COBRA Continuation Coverage

Notwithstanding the foregoing, this Plan shall comply with the health care continuation coverage provisions of Section 601-608 of ERISA and Section 162 (i) and (k) of the Internal Revenue Code, effective the first day of the plan year beginning on or after January 31, 1988. The Plan Administrator shall include appropriate language explaining the Employees', Beneficiaries' and Pensioners' rights under COBRA in the next Summary Plan description booklet distributed.

(3) Conversion Privilege

(b) Health Benefits

When health benefits coverage terminates, a Beneficiary may, upon application, convert, without medical examination to a policy issued by the insurance carrier provided such application is made to the insurance carrier within 31 days after the date coverage terminates. The type of policy, coverage and premiums therefor are subject to the terms and conditions set forth by the insurance carrier.

Discussion

Article II D. (5) of the Employer Benefit Plan stipulates that health benefits coverage will be provided to dependent children of any age who are mentally retarded or who become disabled prior to attaining age 22, and whose disability is continuous. Q & A H-6 (81) provides that "a person is 'mentally retarded or disabled' if the person has any professionally determinable physical, mental, or psychological impairment which precludes the person's living or functioning independently of his/her parent(s) or an institution."

The Complainant contends that his son is totally dependent upon him at the present time and that the Respondent should provide health benefits coverage to him while he remains dependent. Although the Complainant's son may currently have some physical limitations due to his colostomy, a colostomy, in and of itself, does not prevent an individual from living or functioning independently of his/her parents. Furthermore, the information provided to the Funds indicates that both the Complainant and the attending physician expect that the Complainant's son's health will be restored when the upcoming surgery to reconnect his colon is completed. Inasmuch as the Complainant's son does not have a physical impairment which is considered continuous and which precludes his living or functioning independently of his parents, he does not qualify for health benefits coverage as a disabled dependent under Article II. D. (5) of the Plan. Accordingly, the Respondent is not responsible for providing health benefits coverage for the Complainant's son beyond age 22. The Respondent has fulfilled its obligation under the Plan by informing the Complainant of the conversion privilege and his rights under COBRA, consistent with the provisions of the Plan.

The Respondent is not responsible for providing health benefits coverage for the Complainant's son beyond age 22.