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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-467 - May 7, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Elliot A. Segal, 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 under the terms of the Employer Benefit Plan for a pensioner who failed to maintain enrollment in Medicare Part B.

Background Facts

The Complainant is a disabled pensioner whose date of birth is May 7, 1941 and is eligible under Medicare Part A (hospital coverage) and Part B (medical coverage) on the basis of his disability. He became entitled to Medicare coverage on December 1, 1984. His Part B coverage lapsed April 30, 1991 for failure to pay the required premiums.

The Pensioner has stated that the Employer is refusing to pay his medical bills, and should continue to pay as his primary provider, as it has in the past. The Employer states that Medicare is the primary provider under the terms of the Employer Benefit Plan; that it has continued appropriate benefits for Part A claims even through Part B coverage has lapsed.

Dispute

Is the Employer required to provide health benefits under the Employer Benefit Plan for the period when the Pensioner failed to maintain coverage under Medicare Part B?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide health benefits for the Pensioner since it has done so in the past and a regional office of the U.S. Department of Health and Human Services has stated that the Employer is the primary provider.

Position of the Employer: The Employer is not required to provide benefits under the Employer Benefit Plan for the period when the Pensioner failed to maintain Part B coverage because the

Pensioner was properly notified of the requirement to maintain coverage under Part B of Medicare, yet failed to do so.

Pertinent Provisions

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

(d) Medicare

1. For 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 or older 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.

Article III. A. (10)(d)(1) of the Employer Benefit Plan states that the benefits provided under the Plan will not be paid to a Beneficiary unless such Beneficiary is enrolled in each part of Medicare for which he is eligible. The Complainant, a disabled pensioner, had been enrolled in Medicare, Parts A and B, but allowed his Part B enrollment to lapse on April 30, 1991.

Article III. A. (10)(d) of the Plan further provides that the Plan Administrator shall give written notification of a Beneficiary's obligation to' enroll in each part of Medicare for which he is eligible. In this case, the Pensioner was properly enrolled in Part A and Part B but allowed his Part B coverage to lapse through non-payment of the premiums. The Employer has stated that it provided the Pensioner with a full explanation of the need to maintain Medicare Part A and B coverage as well as a new copy of the Employer Benefit Plan, at a meeting on September 21, 1990. The Trustees note that while the Plan contains a requirement that the Employer notify in writing a Medicare-eligible Beneficiary of the obligation to enroll, and by extension to maintain coverage, the Plan clearly states that failure to provide such notification does not remove the Beneficiary's obligation to enroll or to maintain coverage.

The record shows there is a conflict of opinion between the insurance carrier, the Medicare Intermediary and the Social Security Administration, as to whether Medicare or the Employer Benefit Plan is the primary insurer. This separate dispute is not within the scope of this opinion which is concerned solely with the Pensioner's obligation to maintain Medicare Part B coverage.

The Pensioner is required to enroll in, and maintain, his entitlement to Medicare Part B consistent with the Plan, whether Medicare is a primary or secondary payor. After May 1, 1991, the Employer is not responsible for the provision of health benefits until such time as the Pensioner has reinstated his Medicare Part B entitlement.

#### Opinion of the Trustees

The Employer is not required to provide benefits for the Pensioner under the Employer Benefit Plan during the period when the Complainant failed to maintain his coverage under Medicare Part B.