
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 88-650 - June 15, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee;
Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan for a Pensioner who failed to enroll in Medicare Part B.

Background Facts

The Complainant is a disabled pensioner under the UMWA 1974 Pension Plan, who has been receiving Social Security Disability payments since 1985. According to information submitted with this case, the Employer's insurance carrier has been paying only 20% of the Pensioner's medical bills, claiming that the Pensioner must participate in Medicare Part B. The Pensioner states that the Social Security Administration has refused to allow him the right to apply for Medicare Part B until January 1993. Further, the Pensioner states that he has never been notified of any requirement concerning enrollment in Medicare Part B. The Pensioner has incurred medical expenses for services received from May 30, 1992 through July 31, 1992 and requests that the Employer be required to pay 100% of these bills, rather than the 20% that the Employer has paid.

The Employer states that the Pensioner is required by the Employer Benefit Plan to enroll in and pay the premium for Medicare Part B in order to maintain benefits under the Plan. The Employer notes that the Plan provides that Employers give written notification of the obligation to enroll in Medicare. The Employer states that they were not notified that the Pensioner was eligible for Medicare and that, regardless, the Plan clearly states ... "Failure to provide such notification shall not remove any obligation to enroll."

Dispute

Is the Employer responsible for providing health benefits under the Employer Benefit Plan during the period when the Pensioner was eligible for, but failed to enroll in, Medicare Part B?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide health benefits for the Pensioner since he was never notified of any requirement to enroll in Medicare Part B and Social Security has refused to allow him to enroll in Part B until January 1993.

Position of the Employer: The Employer is not required to provide health benefits under the Employer Benefit Plan for the period when the Pensioner was eligible for, but failed to enroll in, Medicare Part B because the Employer Benefit Plan clearly states that ..."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." Further, any failure of the Employer to notify the Pensioner of his obligation to enroll in Medicare does not remove the obligation to enroll.

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 benefits provided under the Plan only to the extent such benefits are not provided 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 will 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) of the Employer Benefit Plan stipulates 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 Pensioner states he was unaware of any Medicare requirement and that Medicare has refused to allow him to enroll until January 1993.

The Employer Benefit Plan contains a requirement that the Employer provide written notification of a Beneficiary's obligation to enroll in Medicare. The Employer has stated that it was not aware at the time of the Pensioner's initial eligibility for Medicare that he had become Medicare-eligible. The Employer has not indicated that any general information concerning an obligation to enroll in Medicare under certain circumstances was ever provided to the Pensioner. However, the Trustees note that the Plan clearly stipulates that failure to provide such notification does not remove the beneficiary's obligation to enroll.

Information submitted with this case indicates that the Pensioner has been receiving Social Security Disability payments since 1985. Funds' staff have been advised by the Health Care Financing Administration that a recipient of Social Security Disability payments is eligible to enroll in Medicare Parts A and B upon receiving his 25th SSDI benefit payment. Based upon a 1985 initial SSDI benefit payment date, the Pensioner's Medicare eligibility date would have occurred in 1987 or 1988, depending on the exact month in which the 25th payment was made, well before the 1992 medical services that are at issue in this case. Information from the Health Care Financing Administration indicates that notification of Medicare eligibility is automatically given to a Beneficiary when the eligibility date approaches. There was no evidence submitted to support that the Social Security Administration erred in this case by failing to notify the Pensioner that he was eligible for Medicare. The Pensioner states that Medicare has refused to allow him to enroll until January 1993. Given that there are specific limited enrollment periods for Medicare when a Beneficiary fails to enroll on his initial date of eligibility, it is reasonable to conclude that the January 1993 date was the first enrollment period available to the Pensioner

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after he contacted the Social Security Administration when benefits for the medical services he received from May through July, 1992 were denied by the Employer's insurance carrier.

The issue of health benefits coverage for Pensioners who fail to enroll in Medicare Part B has been addressed previously. Among the RODs that have specifically addressed the issue are RODs 84-491 and 84-679 (copies enclosed herein), which concern Pensioners eligible for Medicare based on receiving Social Security Disability payments. In each case, the Pensioner claimed he did not enroll in Medicare because he was unaware of the requirement and in each case, the Trustees concluded that the Respondent was not responsible for providing health benefits under the circumstances.

It is not clear from the information provided whether the Pensioner is enrolled in Medicare Part A. However, consistent with the Plan, the Pensioner is required to enroll in each part of Medicare for which he is eligible. The Trustees conclude that the Employer is not required to provide health benefits while the Pensioner is eligible for Medicare, until such time as the Pensioner enrolls in each part of Medicare for which he is entitled.

Opinion of the Trustees

The Employer is not required to provide health benefits for the Pensioner under the Employer Benefit Plan during the period when the Pensioner was eligible for, but failed to enroll in, Medicare Part B.