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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-659 - December 10, 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 health benefits coverage for a Pensioner who failed to maintain enrollment in Medicare Part B.

### Background Facts

The Complainant, a disabled Pensioner under the 1974 Pension Plan, obtained eligibility for Medicare Part A (hospital coverage) and Part B (medical coverage) as a result of his disability. The Pensioner dropped his Medicare Part B coverage in 1989 after inquiries to both the Employer's claims administrator and Medicare resulted in letters dated March 17, 1988 and March 15, 1989 respectively, stating that until the Pensioner reached 65 the Employer Benefit Plan would provide primary coverage, and Medicare secondary. The Pensioner contends that he was advised that there was no need to continue his Medicare Part B coverage, and consequently, dropped his Part B coverage sometime in 1989.

The Employer sent letters on December 9, 1992 to all disabled Pensioners acknowledging that it had misinterpreted the Medicare secondary payer provisions for the disabled. Additionally, the letter stated that any Pensioners who may have cancelled Part B coverage, or who may never have enrolled, needed to (re-)enroll as soon as possible.

The Pensioner says he was informed by Medicare that there will be a penalty assessed when re-enrolling in Part B, making his new premium approximately \$60 to \$65. The Pensioner contends that he should not be penalized for the errors of others and asks that the Employer provide primary benefits until he is 65.

### Dispute

Is the Employer required to provide health benefits under the Employer Benefit Plan for the disabled Pensioner until he reaches age 65.

Positions of the Parties

Position of the Pensioner: The Employer is required to provide primary health benefits for the Pensioner until he is 65 years of age without requiring him to enroll in Medicare Part B, since both the Medicare carrier and the

Employer's claims administrator concurred that the Employer Benefit Plan is the primary carrier until age 65. Both the Employer's claims administrator and Medicare advised the Pensioner that he could drop his Part B coverage; therefore, the Pensioner should not be penalized for the errors of others by paying a higher premium.

Position of the Employer: The Employer is not required to provide primary insurance coverage for the Pensioner because Article III.A. (10)(d) of the Employer Benefit Plan clearly provides that all Pensioners must enroll in, and maintain coverage in, both Parts A and B of Medicare in order to be eligible for benefits under the Plan.

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. Therefore, whether the Employer Benefit Plan was primary or not, coverage in Medicare must be maintained in accordance with the Plan. The Complainant, a disabled Pensioner, had been enrolled in Medicare Parts A and B, but dropped his Part B coverage in 1989 based on his interpretation of letters from Medicare and the Employer's claims administrator that stated the Employer Benefit Plan would provide primary coverage. The Employer later advised all its disability pensioners by letter that it had misinterpreted the Medicare secondary payor provision. The letter told them to obtain coverage in Part B as soon as possible, if they had not already done so. The Employer advised Funds' staff in a telephone conversation on June 2, 1993 that due to its misinterpretation of the Medicare Secondary Payor provision, it will continue to provide primary coverage for all Pensioners who may have inadvertently cancelled their Part B coverage until such time as the Pensioners re-enroll in Medicare Part B, but not later than June 30, 1993.

The Pensioner states that the penalty assessed on his monthly Part B premium was caused by the incorrect advice of others and that he should not be held responsible for the actions of others. The Pensioner stated that Medicare had advised him that his new premium would be \$60 or \$65. This does not appear to be correct. The Baltimore, Maryland Social Security office has advised Funds' staff that the Medicare re-enrollment penalty is 10% of the normal monthly premium for each whole year in which the Part B coverage was not in effect. In the Pensioner's case, he

terminated his Part B coverage sometime in 1989 and re-enrolled in 1993, so he would be penalized for the complete years of 1990, 1991 and 1992. His total penalty would be 30%, or \$10.98 (normal monthly premium = \$36.60 X 30% = \$10.98) making his total monthly premium \$47.58.

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 cancelled his Part B coverage based on his interpretation of information contained in the two letters. The Trustees noted in prior RODs 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 Trustees have addressed the issue of primary vs. secondary coverage in ROD 88-467 (copy enclosed herein). In that case, the Pensioner allowed his Part B enrollment to lapse, and there was also a conflict over who was responsible for providing primary coverage. The Trustees concluded in that case that their opinion was concerned solely with the Pensioner's obligation to maintain Medicare Part B coverage, and could not evaluate or resolve any other dispute or conflict of opinion concerning interpretation of Medicare regulations by other parties. Consistent with the Trustees ruling in ROD 88-467, the Pensioner is required to enroll in, and maintain, his entitlement to Part B in accordance with the Plan, regardless of whether Medicare is a primary or secondary payor.

The Trustees note that while the Plan provisions on Medicare are clear, the Employer has continued coverage through June 30, 1993 to allow adequate time to (re-)enroll in Medicare Part B. The Trustees conclude that the Employer is not obligated by the Plan to provide primary coverage until the Pensioner reaches 65, in lieu of the Pensioner's enrolling in Part B.

#### 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 fails to maintain his coverage under Medicare Part B, after June 30, 1993.