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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-673 - 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 level of health benefits coverage for an Employee under the terms of the Employer Benefit Plan.

Background Facts

The Employee works in a classified position for the Employer. The Employee claims that the Employer is refusing to provide medical coverage as required by the contract. The Employee has submitted copies of several outstanding bills along with an Explanation of Benefits (EOB), which states that the entire \$70.00 charge for a physician's evaluation and treatment of the Employee's son on October 23, 1992, was credited towards the son's 1992 deductible.

The Employer states that if it reimbursed its Employees for their medical expenses at the level mandated by the 1988 Wage Agreement, it would be forced to lay Employees off, or possibly shut down. The Employer further states that the Employees had agreed to accept the lower benefit levels for their medical expenses to avert a layoff.

Both parties agree that the Employer's medical plan does not provide benefits at the level stipulated in the Bituminous Coal Wage Agreement (the "Wage Agreement") of 1988.

Dispute

Are the medical benefits provided by the Employer in compliance with the level of benefits mandated by the 1988 Wage Agreement?

Positions of the Parties

Position of the Employee: The Employer does not provide medical coverage at the level required by the Wage Agreement.

Position of the Employer: The Employer cannot afford to provide medical coverage at the levels specified in the Wage Agreement without having to lay off miners or possibly close its operation. The Employees agreed to accept a temporary reduction of medical benefit payments until business is profitable and the Employer has the funds to restore the medical benefits to the levels mandated by the 1988 Wage Agreement.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 provides in pertinent part:

(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 (4) 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 1988, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II A. (1) and (4) of the Employer Benefit Plan provide:

Article II - Eligibility

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

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

- (1) is actively at work\* for the Employer on the effective date of the Wage Agreement; or
- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

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:

<u>Benefit</u>	<u>Co-Payment</u>
(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 charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient paragraph (o) and section A(7) paragraph (f).	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 per 12-month period(*) per family.

\*Actively at work includes an Employee of the Employer who was actively at work on January 31, 1988, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

(b) Prescription drugs and insulin, as set forth in section A(4) and take-home drugs following a hospital confinement as set forth in family section A(1)(a).

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

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

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\* The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990 and March 27, 1991 and March 27, 1992.

### Discussion

Article II A. of the Employer Benefit Plan provides health benefits coverage for active Employees working in classified jobs for a signatory Employer. Article III. A. (8) of the Employer Benefit Plan provides that certain benefits provided under the Plan shall be subject to co-payments of \$5.00 or \$7.50, and such co-payments shall be the responsibility of the beneficiary. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the beneficiary is expected to authorize the provider to bill the insurance carrier for services rendered and to pay only the co-payment charge set forth in Article III. A. (8), until the specified maximum yearly amount is reached. The Employer in this case has implemented a plan that contains a yearly deductible rather than the \$7.50 per visit (\$150 per calendar year maximum) deductible specified in Article III.A.(8)

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires each signatory Employer... "to establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees..." The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement at levels set forth in such Plan. Levels of benefits to be provided to Employees, Pensioners and their dependents and survivors that are established through collective bargaining may not be unilaterally changed. No evidence has been submitted of an agreement modifying the overall Wage Agreement. The Trustees conclude that the Respondent's use of a non-conforming plan is inconsistent with the provisions of the Wage Agreement and the Employer Benefit Plan.

Opinion of the Trustees

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