
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-694 - May 3, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and Robert T. Wallace.

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 an Employee drawing Worker's Compensation benefits.

Background Facts

The Employee was an active employee of the Employer for 11 years until March 5, 1992, when he ceased working due to a work-related injury for which he is currently receiving Worker's Compensation benefits. The Employee states that based upon his 11 years of service he should be eligible for extended medical benefits for a period of 12 months, or until March 31, 1993. Additionally, the Employee submitted several bills that were denied by the Employer's claims administrator, totalling \$626.17, for services rendered to his spouse between July 25, 1992 and November 13, 1992.

The Employer states that the claims in question were used to recover an overpayment, and explains the sequence of events as follows: The Employee's spouse incurred charges totalling \$2,400 for services on January 4, 1991, for which its claims administrator paid \$1,100. The Employer paid the remaining \$1,300 directly to the provider on October 29, 1991 as a "hold harmless" settlement. Subsequently, the Employer's claims administrator re-reviewed the case and paid an additional \$805 directly to the Employee, since the provider was not a Blue Cross/Blue Shield participating provider.

The Employer notified the Employee on December 16, 1991 that the \$805 check had been sent in error and should be returned. The Employee said he had not yet received the check, but would return it. On January 22, 1992, the claims administrator told the Employer the \$805 check had been cashed by the Employee on December 10, 1991, six days before the Employer's call. The Employer contacted the Employee immediately to make arrangements to recover the overpayment. The Employee said he had spent the money, but was willing to have \$50 deducted from each pay check until the \$805 was recovered. The Employee went on Workers Compensation on March 6, 1992 after re-paying \$200 of the \$805. The Employer, unable under law to withhold from Workers Compensation benefits, asked the Employee to repay \$50 each

payday by personal check. The Employer stated that this effort failed after several attempts, and the Employer, on June 19, 1992, directed its claims administrator to withhold benefits due on the Employee's spouse's future claims until the remaining \$605 was repaid. On December 11, 1992, the claims administrator stated that the \$605 had been withheld and future benefit payments would be resumed.

The Employer states that the Employee was provided with medical benefits from the last day worked, March 5, 1992, through March 31, 1993. In regards to the \$626.17 in charges for the Employee's wife: \$605 was withheld to satisfy the Employee's remaining obligation, and the balance of \$21.17 was paid to the Employee on March 8, 1993.

Dispute

Did the Employer provide health benefits coverage to the Employee at levels specified in Article III of the Employer Benefit Plan? Is the Employer entitled to recover benefit payments made in error to the Employee for services provided to his wife between July 25, 1992 through November 13, 1992 in the amount of \$805?

Positions of the Parties

Position of the Employee: The Employer is required to furnish the Employee with health benefits for the remainder of March 1992, and for the next consecutive 12 months beginning March 5, 1992 and continuing through March 31, 1993. Additionally, the Employer is required to provide benefits for charges totalling \$626.17, for services provided to the Employee's wife between July 25, 1992 and November 13, 1992.

Position of the Employer: The Employer furnished the Employee with 12 months of medical benefits beginning March 5, 1992 and ending April 1, 1993, based on his length of service with the Employer and as provided in Article III. D. (1)(b). The Employer has the right to recover overpayments from benefits due on other medical claims, after reasonable attempts are made to recover them in other ways.

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....

Article I (1),(2),(6) and (9) 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.

(6) "Beneficiary" shall mean any person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.

(9) "Signatory Service" shall have the meaning assigned to such term in the United Mine Workers of America 1974 Pension Plan (the "1974 Pension Plan") or any successor thereto.

Article II B. (1) of the Employer Benefit Plan provides:

ARTICLE II ELIGIBILITY

The persons eligible to receive the health benefits pursuant to Article II Section A (1) and (2) are as follows:

A. Active Employees

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

(1) is actively at work¹ for the Employer on the effective date of the Wage Agreement;
or

(2) is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement for coverage under the 1984 Employer's Benefit Plan ("prior Plan") as a laid-off or disabled employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.

Article III.D.(1) (a), (b), and (d) state:

_____ (1) Continuation of Coverage

(a) Layoff

¹ 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.

_____ If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date <u> Last Worked </u>	Period of Coverage Continuation from the <u> Date Last Worked </u>
_____ 2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

(b) Disability

_____ Except as otherwise provided in Article II, Section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment insurance coverage while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period set forth in the schedule in (a) above.

(d) Maximum Continuation of Coverage

_____ In no event shall any combination of the provisions of (a), (b), (c), (e) or (g) above result in continuation of coverage beyond the balance of the month plus 12 months from the date last worked.

Discussion

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement (Wage Agreement) of 1988 requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its active Employees and Pensioners whose last signatory classified employment was with such Employer. Article I defines a Beneficiary as any person who is eligible, pursuant to the Plan, to receive health benefits as set forth in Article III. Article II.A.(2) includes in its definition of an Active Employee, an Employee who is on layoff or disabled from the Employer, and had continuing eligibility as of the effective date of the 1988 Employer Benefit Plan. Article III.D.(1)(b) provides continued health, life and accidental death and dismemberment benefits to disabled Employees for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period set forth in the schedule in Article III.D.(1)(a). Both parties agree on the continuation of health benefits coverage through March 31, 1993, so this matter is not disputed.

The remaining question concerns the use of offset by the Employer to recover an overpayment made to the Employee in error. The Employee alleges that the Employer did not provide coverage from July 25, 1992 through November 13, 1992 since only very limited benefits were provided for the charges of \$626.17 incurred by his wife in that time. The Employer states that coverage was maintained on behalf of the Employee during this time, but that some benefits were withheld in order to recover an outstanding overpayment.

As noted in ROD 88-561 (copy attached herein), there is no provision in the Employer Benefit Plan providing for an offset of benefits when an overpayment exists. However, as stated in ROD 88-561, under Department of Labor opinion letters and other authorities, a welfare plan may use offset to recoup an erroneous payment to a participant or beneficiary, provided the recovery by the plan is prudent. Whether recovery is prudent depends on the facts and circumstances in each case. Thus, for example, it may be prudent for a plan to recoup on a time payment basis by allowing the participant to repay the plan in monthly payments or to offset some portion of the amount of recoupment from the benefits that are distributed to the participant each month. In other circumstances, depending upon the hardship resulting to the participant from recoupment, it may be imprudent for a plan to apply offset. The information provided by the Employer indicates that \$605 of the \$805 overpayment was recovered through offset of health benefits due to the Employee's spouse, after the initial \$50-per-paycheck withholding ended with the Workers Compensation-related injury. This amount and the procedure used to offset are not disputed by the Employee.

Was this arrangement of health-benefits offset prudent? From the record, the Employer made reasonable efforts to recover the overpayment from the Employee, beginning with the \$50-per-paycheck withholding, which the Employee agreed to. However, after repaying only \$200, the Employee was injured, ceased working, and is currently on disability and receiving Workers Compensation Benefits. The Employer could not legally withhold funds from Workers Compensation benefits, and requested that the Employee repay \$50 by personal check every payday. This effort failed after several attempts and the Employer then authorized its claims administrator to offset by withholding from health benefits payable to the Employee for charges incurred by the Employee's spouse. The claims administrator withheld \$626.17 from charges submitted for the Employee's spouse, and incurred between July 25, 1992 and November 13, 1992. When the overpayment was satisfied, benefits payments were resumed and the Employer paid \$21.17 to the Employee on March 8, 1993 for the balance of the \$626.17 charge.

It is the Trustees' opinion that the Employer acted prudently in this case by making several efforts to recover the overpayment in small payments over a period of time from the Employee, and, considering the relatively small amount involved, in withholding the \$605 from the Employee's health benefits over a six month period when no other method of recoupment was available. Further, it is relevant that the amount was not disputed, not substantial and the Employee does not demonstrate that he suffered undue hardship as a result of the offset. As noted earlier, the

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continuation of health benefits coverage through March 31, 1993 is not an issue in this case, since both parties agree on this duration.

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The Employer acted prudently in this case by the initial \$50-per-paycheck withholding and by making several efforts to recover the undisputed overpayment over a period of time from the Employee, and considering the amount involved and no showing of undue hardship, in withholding the \$605 from the Employee's spouse's health benefits over a six month period.