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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-701 - September 28, 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 under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was employed in a classified position by the Respondent when he ceased work on June 5, 1991 due to disability from a work related injury. He was laid off on July 31, 1991. The Respondent provided health benefits coverage for the Complainant through July 31, 1992.

The Complainant applied for Social Security Disability Insurance ("SSDI") benefits in October 1991. In September 1992, his application was approved on appeal by an Administrative Law Judge with a disability onset date of June 5, 1991. In October 1992, the Complainant filed an application for pension benefits under the UMWA 1974 Pension Plan. The Complainant was notified by letter dated January 20, 1993 that he was awarded a UMWA 1974 Pension Plan Minimum Disability pension, effective July 1, 1991 and was advised to contact the Respondent, his last signatory Employer, regarding his eligibility for health benefits coverage as a Pensioner.

The Complainant states that the Respondent has refused to provide him with health benefits coverage as a Pensioner. The Complainant also claims that the health benefits coverage provided by the Respondent through July 31, 1992 was not at the level prescribed by the terms of the Employer Benefit Plan.

Information provided to the Funds indicates that the Respondent provided health benefits coverage for the Complainant through The Guardian Life Insurance Company until July 31, 1992. Under this policy, benefits payments were subject to an annual deductible of \$100 per family and, thereafter, benefits were paid at 80% of the cost of service until a beneficiary reached the annual out-of-pocket limit of \$2,000 per family. The Complainant states that although the Respondent agreed to pay the Complainant for any expenses under the 80/20 plan that exceeded the 12-month maximum co-payment specified under the Employer Benefit Plan, such payments have not been made.

The Respondent states that it provided health benefits coverage for the Complainant until October 1992, when the insurance carrier cancelled its group coverage.

### Dispute

Is the Respondent required to provide health benefits coverage for the Complainant as a Pensioner at the level prescribed by the Employer Benefit Plan?

### Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner at the level prescribed by the Employer Benefit Plan.

Position of the Respondent: The Respondent states that it would like to provide health benefits coverage for the Complainant but it has not been able to find a company that will insure the Complainant. The Respondent states that it is financially unable to pay the Complainant's medical bills.

### 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 (5) 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.

- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan.

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

Article II - Eligibility

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

B. Pensioners

Health benefits and life insurance under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
- (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
  - (b) February 1, 1988, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I(5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Article III A. (8) of the Employer Benefit Plan provide, 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....

Co-Payments for covered 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 surgery, 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.
(b) Prescription drugs and insulin, as set forth in Section A(4) and take-home drugs following hospital confinement as set forth in Section A(1)(a).	\$5 per prescription or refill up to a \$50 maximum per 12-month period(*) per family. 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 XX Section (c)(3)(i) of the 1988 Wage Agreement requires each signatory Employer to establish and maintain an Employer Benefit Plan, implemented through an insurance carrier(s), to provide health and other non-pension benefits for its Employees. The Wage Agreement further 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. Article II B. of the Employer Benefit Plan establishes that an individual who is eligible for pension benefits under the 1974 Pension Plan is eligible for health benefits coverage under the Employer Benefit Plan, with certain exceptions not relevant here. Inasmuch as the Complainant is receiving a 1974 Pension Plan Minimum Disability pension effective July 1, 1991, he is eligible for benefits

as a Pensioner under Article II B. of the Employer Benefit Plan established by his last signatory Employer, the Respondent. The Respondent's claim that it is unable to find an insurance carrier to provide health benefits coverage for the Complainant and that it is financially unable to pay the Complainant's medical bills, does not relieve the Respondent of its obligation to provide such coverage under the terms of the Wage Agreement and the Employer Benefit Plan. Accordingly, the Respondent is required to provide health benefits coverage for the Complainant as a Pensioner.

Article III A. of the Employer Benefit Plan specifies the benefits which are to be provided under the Employer Benefit Plan. Article III A. (8) of the Employer Benefit Plan specifies the co-payments which are the responsibility of the beneficiary for medical services and prescriptions. Levels of benefits to be provided to Employees, Pensioners and their dependents and survivors are established through collective bargaining and may not be unilaterally changed by an Employer. The Respondent's use of a non-conforming 80/20 health coverage plan is inconsistent with the provisions of the Wage Agreement and the Employer Benefit Plan. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.

#### Opinion of the Trustees

The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner at the level prescribed by the Employer Benefit Plan.