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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-832 - March 25, 1996

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 for an Employee under the terms of the Employer Benefit Plan.

### Background Facts

The Employee states that the Employer has refused to provide health benefits according to the provisions of the National Bituminous Coal Wage Agreement of 1988 ("1988 Wage Agreement") and to reimburse him for bills he has paid. To support his position, the Employee submitted copies of Explanation of Benefit (EOB) forms that he received from the Employer's insurance carrier and a copy of the Certificate of Coverage Employee Benefit Booklet (booklet) distributed by the Employer. The EOB forms reflect denials of benefits for \$1819.50 and \$670.00 in charges related to a preexisting condition; \$38.00 applied to the deductible and \$74.05 in percentage co-pays owed by the Employee; and a note that states, in part, "If your provider is non-participating, this balance will be included in the column labeled 'Your Share of Charges.'"

The Employer's Plan also differs from the standard Employer Benefit Plan in several major respects: There are inpatient co-pays, calendar year deductibles for prescription drugs, and exclusions for hearing aids, travel expenses and vision care. The calendar year deductible is \$100.00 for single coverage and \$300.00 for family coverage; co-pays vary from 20% to 50% of the allowable amount depending on the type of service and/or provider.

The Employer has not responded to repeated requests for information to support its position in this dispute.

### Dispute

Is the Employer's implementation of its health coverage plan in violation of the 1988 Wage Agreement?

### Positions of the Parties

Position of the Employee: The Employer has implemented a plan for health benefits coverage that is not in accordance with the 1988 Employer Benefit Plan and must reimburse the Employee for expenditures in excess of those required under the standard Plan.

Position of the Employer: The Employer has not responded to repeated requests for information to support its position in this dispute.

Pertinent Provisions

Article XX Section (c) (3) (i) of the National Bituminous Coal Wage Agreements of 1984 and 1988 states 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 XX, "General Description of the Health and Retirement Benefits" of the NBCWA of 1988, Section (10) Health Care, states in pertinent part:

Health care benefits are guaranteed during the term of this Agreement subject to the terms of this Agreement at the level of benefits provided in the 1950 Benefit Plan, 1974 Benefit Plan, and the Employer Benefit Plan.

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

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<sup>1</sup> for the Employer on the effective date of the Wage Agreement; or

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<sup>1</sup> Actively at work includes an Employee of the Employer who was actively at work on January 31, 1988, and who returns to active

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(4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III. A. (1) (a), (7) (d) and (e), (8) and (9) of the Plan provide in pertinent part:

Article III. Benefits

A. Health Benefits

(1) Inpatient Hospital Benefits

(a) Semi-private room

When a Beneficiary is admitted by a licensed physician (hereinafter "physician") for treatment as an inpatient to an Accredited Hospital (hereinafter "hospital"), benefits will be provided for semi-private room accommodations (including special diets and general nursing care) and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

Medically necessary services provided in a hospital include the following:

Operating, recovery, and other treatment rooms  
Laboratory tests and x-rays  
Diagnostic or therapy items and services  
Drugs and medications (including take-home drugs which are limited to a 30-day supply)  
Radiation therapy  
Chemotherapy  
Physical therapy  
Anesthesia services  
Oxygen and its administration  
Intravenous injections and solutions  
Administration of blood and blood plasma  
Blood, if it cannot be replaced by or on behalf of the Beneficiary

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work with the Employer two weeks after the effective date of the Wage Agreement.

(7) Other Benefits

(d) Hearing Aids

Benefits are provided for hearing aids recommended by a licensed otologist or otolaryngologist and a certified clinical audiologist. Such hearing aids must be purchased from a participating vendor.

(e) Ambulance and Other Transportation

Benefits are provided for ambulance transportation to or from a hospital, clinic, medical center, physician's office, or skilled nursing care facility, when considered medically necessary by a physician.

With prior approval from the Plan Administrator benefits will also be provided for other transportation . . . .

(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. Nonworking 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	\$5 per prescription or refill up to \$50 maximum per 12-month period

A(4) and take-home drugs following per family. Note: For purposes of hospital confinement as set forth in section (A)(1)(a). this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

(9) Vision Care Program

<u>(a) Benefits</u>	<u>Actual Charge Up To Maximum Amount</u>	<u>Frequency Limits</u>
Vision Examination	\$20	Once every 24 months
Per Lens (Maximum = 2)		Once every 24 months
- Single Vision	10	
- Bifocal	15	
- Trifocal	20	
- Lenticular	25	
- Contact Frames	15 14	Once every 24 months

Discussion

Article II. A. (1) and (4) of the 1988 Employer Benefit Plan, established under the 1988 Wage Agreement, state that Employees are covered on the effective date of the 1988 Wage Agreement or, for new hires, the date they are hired. The Plan contains no provision penalizing Beneficiaries for a pre-existing condition. (See RODs 81-638 and 88-326.) According to information submitted by the Employee, benefits for services rendered to the Employee's spouse in April 1993 were denied as covering treatment for a preexisting condition.

Article III. A. (1) provides benefits for all medically necessary inpatient services. The Employer Benefit Plan has no provision for special reimbursement for participating providers in a hospital setting. In the Employer's Plan, the benefits schedule for inpatient hospital services with a participating provider is "100% of the allowable amount for covered services for the first \$5,000 in expenses; then 80% of the allowable amount for the remaining covered services." These benefits can be further subject to a deductible, out-of-pocket limit and benefit reduction. "Non-participating providers" may also bill for the balance of charges in excess of the "allowable amount" paid under the Employer's Plan.

Article III. A. (7) (d) and (e), and (9) (a) of the Employer Benefit Plan establish coverage for hearing aids, ambulance and certain other transportation, and vision care respectively. The Employer's Plan does not provide benefits for hearing aids, any non-ambulance transportation, and vision care.

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 1988 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 XX "General Description of the Health and Retirement Benefits," (10) "Health Care," further states that "[H]ealth care benefits are guaranteed during the term of this Agreement subject to the terms of this agreement at the level of benefits provided in . . . the Employer Benefit Plan." Thus, levels of benefits to be provided to Employees, Pensioners and their dependents and survivors which are established through collective bargaining may not be unilaterally changed. Given the clear language of Article XX, an Employer cannot arbitrarily change Plan benefits. In this case, the Employer's Plan does not provide its Employees and dependents coverage at the level specified by Article XX of the 1988 Wage Agreement and the Employer Benefit Plan. Therefore, the Trustees conclude that the Employer's Plan is a non-conforming health plan and is inconsistent with the express provisions of the 1988 Wage Agreement and the Employer Benefit Plan.

#### Opinion of the Trustees

The Employer's implementation of a non-conforming health benefit plan is inconsistent with the express provisions of the 1988 Wage Agreement. The Employer is required to provide health benefits coverage for the Employee at the level specified in the Employer Benefit Plan established under the 1988 Wage Agreement and to reimburse the Employee for the medical expenses incurred by the Employee and his eligible dependents which are covered under the Employer Benefit Plan during his eligibility for coverage.