
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 98-032 - May 23, 2007

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and
Elliot A. Segal.

Background Facts

The Complainant is a classified Employee of the Respondent, a signatory Employer. The Complainant has a son from a previous marriage whose date of birth is January 14, 1984, and who lives with the Complainant's ex-wife. According to a court order dated July 24, 1992, the Complainant pays \$250 per month in child support for his son. The order also states that the Complainant "will maintain the [child] on his insurance at his place of employment and the parties will equally divide any medical, dental, optical or prescription drug expense for the [child] not covered by the insurance."

According to the Respondent, because the Complainant failed to list his son as a dependent during a re-enrollment period for health benefits coverage, the Respondent terminated coverage for the Complainant's son. Subsequently, when the Complainant requested that the Respondent reinstate coverage for his son, the Respondent requested that the Complainant submit evidence that he provides over one-half of his son's monthly support. The Respondent states that coverage for the Complainant's son has not been reinstated because the Complainant has failed to provide the information needed to determine if the Complainant provides over one-half of the child's support. In addition, the Respondent states that the court order submitted by the Complainant does not require coverage for the Complainant's son because the order does not meet the requirements of Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA) for recognition as a qualified medical child support order.

Dispute

Is the Respondent required to provide health benefits coverage for the Complainant's son?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant's son because a child support court order is sufficient to establish one-half support. Trustee decisions in Q&A H-14, Q&A H-2, ROD 81-300, and ROD 81-335 supports

this position. Furthermore, the Respondent is required to provide coverage for the Complainant's son because the Complainant's court order states that the Complainant is the required to provide health benefits coverage for his son.

Position of the Respondent: The Respondent is not required to provide health benefits coverage to the Complainant's son because the son lives with the Complainant's ex-wife and the Complainant has not submitted sufficient documentation to establish that he provides over one-half of his son's support. Furthermore, the court order submitted by the Complainant does not meet the requirements of Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA), and thus, is not a qualified medical child support order required to be recognized by the Employer Plan.

Pertinent Provisions

Article I (1), (2), (4) and (7) 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 1998, 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.
- (7) "Dependent" shall mean any person described in Section D of Article II hereof.

Article II D. (2) of the Employer Benefit Plan provides:

Article II - Eligibility

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

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of

the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II:

- (2) Unmarried dependent children of an eligible Employee or Pensioner who have not attained age 22;

For purposes of this paragraph D, a person shall be considered dependent upon an eligible Employee, Pensioner or spouse if such Employee, Pensioner, or spouse provides on a regular basis over one-half of the support to such person.

Article III D. (4) of the 1998 Employer Benefit Plan provides:

Article III-Benefits

D. General Provisions

* * *

(4) Qualified Medical Child Support Orders

The Plan shall comply with the provisions of Section 609 of ERISA as amended by the Consolidated Omnibus Budget Reconciliation Act of 1993 (“COBRA 1993”).

Q&A H-2 (81) provides:

H-2 (81)

Subject: HEALTH BENEFITS; Dependency Determination, Support

Reference: (50B) II C; (74B) II C

Question:

What are the guidelines for determining the eligibility of persons for health benefits as dependents of disabled employees and pensioners?

Answer:

In general, a person is considered dependent on a participant if the participant regularly provides

over one-half of the person's support. Support includes the fair rental value of lodging, reasonable cost of board, clothing, miscellaneous household services and education expenditures, excluding scholarships. Support is not limited to necessities.

Support is regular if it is provided on a yearly basis.

Guidelines for determining dependency of family members of participants for health benefit coverage purposes are as follows:

* * *

- (2) Unmarried or divorced dependent children who have not attained age 22 (including stepchildren, adopted children and illegitimate children): The children of a participant are considered to be dependent upon the participant if the participant provides over one-half of the children's support, as defined above, or is under Court Order to provide over one-half of the children's support.

Q & A H-14 (81) provides:

H-14 (81)

Subject: HEALTH BENEFITS; Death Benefits; Separation, Divorce

Reference: (50B) II C, II D, III B; (74B) II C, II D, III B(2)

Question:

If a participant and his spouse are separated, or divorced, what is the health and death benefit status of the spouse and any otherwise eligible dependents living with the spouse?

Answer:

A separated spouse is eligible for health and death benefit coverage only if the participant is regularly providing support sufficient to establish dependency, as defined in Q&A H-2, or is under Court Order to provide such support.

A divorced spouse is not eligible for health and death benefit coverage.

The participant's children, living with a separated or divorced spouse, are eligible for health and death benefit coverage as long as the participant provides support sufficient to establish their dependency, as defined in Q&A H-2, or is under Court Order to provide such support.

Discussion

Under Article II. D. (2) of the Employer Benefit Plan, health benefits are provided to an eligible Employee's unmarried dependent children who have not attained age 22. Article II. D. provides that children are considered dependent upon the eligible Employee if such Employee regularly provides over one-half of the child's support. Furthermore, a participant's children who live with a separated or divorced spouse are eligible for health benefits coverage as long as the participant provides support sufficient to establish their dependency as defined in Q&A H-2 (81), or is under court order to provide such support. (See RODs 84-020, 84-043, 84-045, and 88-009.) Support includes the fair rental value of lodging, and the reasonable cost of board, clothing, miscellaneous household services and education expenditures; support is not limited to necessities. (See ROD 93-060.)

The Trustees have previously concluded that an Employer may require Employees to furnish reasonable available information at reasonable intervals to establish, update, or verify date of birth, marital status, and dependency of a spouse or a dependent. (See ROD 88-500.)

In addition to the provisions addressed above, Article III D. (4) of Employer Benefit Plan was added under the 1993 National Bituminous Coal Wage Agreement to comply with the provisions of Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA), which was amended on August 10, 1993. This amendment to ERISA establishes the obligations of group health plans to extend health care coverage to a child of a non-custodial parent who is named in a qualified medical child support order (QMCSO). Article III D. (4) states that the Plan shall comply with the provision of Section 609 of ERISA. Therefore, with the addition of Article III D. (4), there are two provisions under the Employer Benefit Plan that may be applied to determine a child's eligibility for coverage: Article II D. and Article III D. (4). Whether the Complainant's son is eligible for coverage under Article III D. (4) will be reviewed first.

Under Article III D. (4), health benefit coverage will be provided to a child named in a QMCSO. To be recognized as a QMCSO, a medical child support order must provide the following information: 1) the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order; 2) a reasonable description of the type of coverage to be provided or the manner in which the coverage will be determined; 3) the period to which the order applies; and 4) each plan to which the order applies. According to Section 609(a) of ERISA, determining whether such requirements are present in an order is

the obligation of the plan administrator. In this case, the Respondent has reviewed the court order governing the Complainant's divorce and has determined that it is not a qualified order.

The order states that "The [Complainant] will maintain the [child] on his insurance at his place of employment and the parties will divide equally any medical, dental, optical or prescription drug expenses for the [child] not covered by insurance." This paragraph does not satisfy the requirements of a QMCSO as discussed above. For example, it does not list the period to which the order applies, nor does it provide the name of the plan to which the order applies. Thus, the order is not a QMCSO and the Respondent is not required to provide coverage under Article III D. (4) of the Employer Benefit Plan pursuant to it.

As to the eligibility of Complainant's child under Article II D., the Complainant argues that the Respondent is required to provide coverage for his son because the court order requires that the Complainant maintain the child on his insurance. The Complainant cites RODs 81-300 and 81-335 to support his claim. These RODs, however, primarily address an employer's right to request information to establish dependency, and do not support the Complainant's argument that a court order providing for coverage is sufficient to establish eligibility. In RODs 84-020 and 84-045, the Trustees specifically addressed the issue of a child's eligibility for health benefits coverage based on a court order which stated that a child was to be covered, and found that "A participant under court order to supply health benefits to children residing outside the household must ultimately show that his children meet the criteria for dependency as established in Q&A H-2 (81) in order for them to be considered eligible for health benefits coverage under the Employer Plan." Consequently, a court order that requires an Employee to provide coverage for a child who does not reside with the Employee is insufficient in and of itself to establish that the child meets the eligibility requirements to receive coverage under the Employer Benefit Plan, unless, as discussed above, the order qualifies as a QMCSO. If the court order does not qualify as a QMCSO, additional documentation must be presented to establish the fact that the Employee provides over one-half of the child's support as is required by Article II D. of the Employer Plan.

To determine whether an Employee provides over one-half support for a child who does not live with the Employee, Q&A H-2 requires a review of the costs incurred to maintain the child in the child's home. In connection with this dispute, the Complainant submitted information concerning the support that he provides his son. Based on the documentation submitted, Funds' staff has calculated that the yearly household expenses for the household in which the Complainant's son resides totals approximately \$23,592.00. The household consists of the five people including the Complainant's son and ex-wife; therefore, each person's pro rata portion of these expenses is \$4,718.40. The Complainant also submitted information concerning expenses attributable solely to the Complainant's son, which totals \$360. Therefore, the Complainant's son's pro rata portion of household expenses, added to his claimed direct personal expenses, equals a total annual expense of approximately \$5078.40, half of which totals \$2,539.20.

In determining one-half support, a dependent's earnings are also taken into consideration. (See RODs 81-408, 81-433, 81-469 and 93-060.) The Complainant's son is employed at a local grocery store and earns approximately \$3,198.00 gross income per year. The Complainant's son's earnings provide approximately 62% of his annual support requirement. Because the Complainant's son's earnings comprise more than 50% of his annual support, the Complainant is not providing over one-half of his son's support. Consequently, based on the information submitted, the Respondent is not required to provide health benefits coverage for the Complainant's son under Article II D., because the Complainant is not providing over one-half support to his son.

The Complainant also argues that because his divorce decree states that he is to pay child support, he automatically meets the requirements under Q&A H-2 and Q&A H-14 concerning one-half support. Q&A H-2 states that an unmarried dependent child is "considered to be dependant upon the participant if the participant provides over one-half of the children's support . . . or is under Court Order to provide over one-half of the Children's support." Q&A H-14 has similar language. These Q&As do not state that medical coverage is required simply because a court order requires the payment of child support. Rather, they state that a court-ordered child support payment may be the figure used to determine whether the participant provides over one-half of the child's support (the cost to maintain the child in a household). The mere fact that a participant is required to pay child support (of any amount) is insufficient to establish that the participant provides over one-half support. The Complainant still is required to prove that the court ordered amount is over one-half of the dependent's support.

Opinion of the Trustees

Based on the information submitted, the Respondent is not required to provide coverage for the Complainant's son.