
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 98-041 - September 17, 2003

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of Employer Benefit Plan.

Background Facts

The Complainant is an active mine worker who has been employed in a classified position with the Respondent since 1979. The Complainant has a son whose date of birth is April 13, 1980, and who resides with the Complainant. The Complainant has requested health benefits coverage for his son as a disabled adult under the Respondent's Employer Benefit Plan.

By letter dated August 15, 2002, the Complainant's son's physician stated that the Complainant's son was born with Meningomyelocele (the bones of the spine do not completely form and the spinal canal is incomplete) with associated Hydrocephalus (abnormal buildup of fluid in the brain), Neurogenic Bladder (problem with the muscles and nerves that hold and release urine in the bladder) and Paraplegia (paralysis of the lower half of the body). The physician also stated that the Complainant's son has had several complications from his condition such as Tethered Spinal Cord which caused weakness of his lower extremities and required surgery. The physician noted that the Complainant's son is not able to live independently and is dependent upon his parents for support and care.

According to the Social Security Administration, the Complainant's son has been receiving Supplemental Security Income since October 1, 1984.

The Complainant's son was covered as a dependent under the Respondent's Employer Benefit Plan until he attained age 22. Subsequently, the Respondent denied coverage for the Complainant's son as a disabled adult.

Dispute

Is the Complainant's son eligible for health benefits coverage as a disabled adult under the terms of the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Complainant's son is eligible for health benefits coverage as a disabled adult under the terms of the Employer Benefit Plan because the Complainant's son has been chronically disabled since birth and he is totally dependent upon the Complainant for support.

Position of the Respondent: The Complainant's son is not eligible for health benefits coverage as a disabled adult under the terms of the Employer Benefit Plan because based on a medical rating used by the Respondent's insurance carrier, the Complainant's son is not considered totally disabled.

Pertinent Provisions

Article II D. (2) and (5) of the 1998 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;

(5) Dependent children (of any age), of an eligible Employee, Pensioner or spouse, who are mentally retarded or who become disabled prior to attaining age 22 and such disability is continuous and are either living in same household with such Employee or Pensioner or are confined to an institution for care or treatment. Health benefits for such children will continue as long as a surviving parent is eligible for health benefits.

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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.

Question and Answer (Q&A) H-6 (81) (part 1) provides:

Subject: HEALTH BENEFITS; Disabled Children H-6 (81)
Reference: (50B) II C(5), II D; (74B) II C(5), II D

Question:

Certain dependent children (of any age) are eligible for health benefits if they are mentally retarded or become disabled prior to attaining age 22 and such disability is continuous.

- (1) What is the standard for determining whether the dependent child is "mentally retarded or disabled"?

Answer:

- (1) A person is "mentally retarded or disabled" if the person has any professionally determinable physical, mental, or psychological impairment which precludes the person's living or functioning independently of his/her parent(s) or an institution.

Discussion

Article II D. (5) of the Employer Benefit Plan stipulates that health benefits coverage will be provided to dependent children of any age who are mentally retarded or who become disabled prior to attaining age 22, and whose disability is continuous. Q&A H-6 (81) provides that "a person is mentally retarded or disabled if the person has any professionally determinable physical, mental, or psychological impairment which precludes the person's living or functioning independently of his/her parent(s) or an institution."

The Complainant's son became disabled prior to attaining age 22. His disability is continuous, and he has never lived independently of his parents. According to the Complainant's son's physician, the Complainant's son is not able to live independently and is dependent upon his parents for support and care. In addition, the Complainant's son has been awarded Supplemental Security Income ("SSI") benefits based on a disability. Under the Social Security Act, an individual is considered disabled if "he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (42U.S.C. §1382c (3)(A)).

The Respondent argues that the Complainant's son is ineligible because its insurance carrier's medical department determined that his disability rating, as relayed by the Complainant's son's physician, is less than 11, which indicates that the Complainant's son is not totally disabled. This conclusion, however, is refuted by the Complainant's son's physician in other evidence

provided to the Respondent and by the award of Social Security benefits. Accordingly, the Complainant's son is eligible for health benefits coverage as a disabled adult because he has a determinable physical impairment which is considered continuous and which precludes his living or functioning independently of his parents.

Opinion of the Trustees

The Respondent is required to provide health benefits coverage for the Complainant's son as a disabled adult dependent subject to the requirements of Article II D. (5) of the Employer Benefit Plan.