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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-002 - March 23, 1999

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 health benefits coverage for hearing aids under the terms of the Coal Industry Retiree Health Benefit Act (Coal Act) Employer Benefit Plan.

Background Facts

On June 14, 1993, the Pensioner underwent a series of hearing aid tests costing \$205.00 in order to be fitted for binaural hearing aids. The hearing aids were dispensed the same day at a cost of \$2,995.00. The entire bill totalled \$3,200.00. The Pensioner, who lives in Pennsylvania, went to a Texas hearing aid vendor.

The Employer denied all charges, stating that the vendor was not a participating vendor under the terms of Article III.A.(7)(d) of the 1988 Employer Benefit Plan. The Pensioner qualifies as a Coal Act retiree. The terms of applicable provisions of the Coal Act Employer Benefit Plan are identical to the 1988 Employer Benefit Plan, under which this case was first brought.

Dispute

Is the Employer required to provide benefits for the hearing testing and binaural hearing aids purchase by the Pensioner on June 14, 1993?

Positions of the Parties

Position of the Pensioner: The Employer is required to provide benefits for the Pensioner's hearing testing and hearing aid purchase as required by the Employer Benefit Plan. The Pensioner states that the non-participating out-of-area provider was used because this was the only vendor available qualified to handle the type of hearing aid needed by the Pensioner. Additionally, the Pensioner states that the Employer is obligated to pay for the expenses under an "exception provider" basis.

Position of the Employer: The Employer is not required to provide benefits for the Pensioner's hearing aid purchase since Article III.A.(7)(d) requires that any hearing aid purchase be made from a participating provider, and the Pensioner's purchase was from a non-participating vendor.

#### Pertinent Provisions

Article III.A.(3)(o)2. of the Coal Act Employer Benefit Plan states:

- (o) Primary Medical Care - Miscellaneous
  - 2. Benefits are provided for immunizations, allergy desensitization injections, pap smears, screening for hypertension and diabetes, and examinations for cancer, blindness, deafness, and other screening and diagnostic procedures when necessary.

Article III.A.(7)(d) of the Coal Act Employer Benefit Plan states in pertinent part:

- (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. . . .

#### Discussion

Article III.A.(3)(o)2. of the Coal Act Employer Benefit Plan provides benefits for certain examinations for hearing. Article III.A.(7)(d) of the Coal Act Employer Benefit Plan provides benefits for hearing aids when recommended by a licensed otologist, otolaryngologist and a certified audiologist and when purchased from a participating vendor.

The Pensioner has stated that he checked the participating provider list of the Funds' Johnstown field service office and found no provider in the area who sold this particular type of hearing aid. The Pensioner then went to Fort Worth, Texas, where his daughter lives, to a non-participating provider, to obtain the hearing aids he states could not be obtained in the area where he lived. The Pensioner has not submitted any medical evidence supporting the need for a unique hearing aid, or indeed that this type of hearing aid is itself unique.

Funds staff has determined that at the time of the Pensioner's purchase of the hearing aids the vendor was not a participating provider under the Funds' plan, whose participating provider list is

also used by the Employer. The Trustees conclude that the Employer is not required to provide benefits for the hearing aids purchased by the Pensioner on June 14, 1993. However, the Coal Act Employer Benefit Plan does not state that hearing examinations must be conducted by participating vendors. Therefore, the Employer is required to provide health benefits for the Pensioner's auditory examination on June 14, 1993 totalling \$205.00. Since the Employer's claims administrator's Explanation of Benefits indicates the Pensioner has Medicare Part B coverage, the hearing testing would only be considered for benefits after Medicare has paid its portion, and a Medicare Explanation of Benefits is provided to the Employer for coordination of benefits purposes.

The Pensioner states that benefits for the binaural hearing aids should be provided under an "exception provider" basis. The Coal Act Employer Benefit Plan contains no such provision.

#### Opinion of the Trustees

Consistent with the provisions of the Coal Act Employer Benefit Plan, the Employer is required to provide benefits supplemental to Medicare for the Pensioner's auditory examination on June 14, 1993, but is not required to provide benefits for the hearing aids purchased on June 14, 1993, from a non-participating vendor.