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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: CA-047 - June 27, 2007

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

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Coal Industry Retiree Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Complainant is a Pensioner who was awarded an age 55 Pension under the 1974 Pension Plan effective July 1, 1991. His last signatory employment was with the Respondent. By letter dated August 25, 1998, the Respondent notified the Complainant that effective January 1, 1998, the Respondent had promulgated a rule requiring that all beneficiaries complete a questionnaire every three months in order for the Respondent to determine whether the beneficiary continues to be eligible for health benefits coverage. Information requested by the Respondent includes verification of the following: pensioner's earnings, Social Security Administration benefits, marital status of beneficiaries and age of dependents. The Respondent also requested that beneficiaries submit a federal income tax return once a year. The Respondent requested that the questionnaires be returned within thirty days or "benefits will be terminated" and the beneficiary may elect to continue coverage under the Consolidation Omnibus Budget Reconciliation Act (COBRA).

The Complainant states that the Respondent's questionnaire violates the terms of the Coal Act Employer Benefit Plan.

Dispute

Does the Respondent's questionnaire violate the terms of the Coal Act Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent's questionnaire violates the terms of the Coal Act Employer Benefit Plan.

Position of the Respondent: The Respondent's questionnaire does not violate the terms of the Coal Act Employer Benefit Plan because the Plan Administrator has the authority to implement this procedure to test the eligibility of beneficiaries on a quarterly or annual basis. This decision is supported by the Trustees' Opinions in RODs 81-593, 81-155, 84-011 and 81-300.

### Pertinent Provisions

Article I (1), (2), (3) and (4) of the Coal Act 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.

(3) "Plan Administrator" shall be the Employer, a subsidiary of the Employer, an affiliated company of the Employer or an employee of the Employer, as designated by the Employer.

(4) "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 of this Plan. Notwithstanding the foregoing, "Pensioner" shall not mean any person who had not met all age and service requirements for receiving benefits as of February 1, 1993, and shall not mean any person who retires from the coal industry after September 30, 1994.

Article II of the Coal Act Employer Benefit Plan provides:

#### ARTICLE II ELIGIBILITY

The persons eligible to receive the health benefits pursuant to Article III are those individuals who are entitled to receive such benefits under section 9711 of the Internal Revenue Code, subject to the eligibility provisions of the Employer Plan in effect on February 1, 1993, and to all other provisions of this Plan. Health benefits shall not be provided to an individual during any month in which such individual would be disqualified from receiving benefits under the terms of the Employer Plan in effect on February 1, 1993; provided, however, that the disqualification based on earnings shall apply during those months in which such individual is regularly employed at an earnings rate equivalent to at

least \$1,000 per month.

Article III A. (10)(b) and (d) of the Coal Act Employer Benefit Plan provides:

ARTICLE III BENEFITS

A. Health Benefits

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

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(d) Medicare

For Pensioners, and surviving spouses, the benefits provided under the Plan will not be paid to a Beneficiary otherwise eligible if such Beneficiary is eligible for Hospital Insurance coverage (Part A) of Medicare where a premium is not required and/or Medical Insurance coverage (Part B) of Medicare unless such Beneficiary is enrolled for each part of Medicare for which such Beneficiary is eligible. Any such Beneficiary who is enrolled in a Medicare program shall receive the benefits provided under the Plan only to the extent such benefits are not provided for under Medicare.

The Plan Administrator shall give written notification of the obligation to enroll. Failure to provide such notification shall not remove any obligation to enroll.

As noted in Article II of the Coal Act Employer Benefit Plan (see above), the individuals eligible to receive health benefits under section 9711 of the Internal Revenue Code (the Coal Act) are subject to the eligibility provisions of the Employer Benefit Plan in effect on February 1, 1993. The Plan in effect on February 1, 1993, was the 1988 Employer Benefit Plan.

Article II B. (4) of the 1988 Employer Benefit Plan provides:

ARTICLE II ELIGIBILITY

B. Pensioners

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

(4) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$500 per month.

### Discussion

Under Article III A. (10)(b), an Employer is authorized to promulgate rules and regulations to implement and administer the Plan. An Employer may implement an administrative rule only if the rule is reasonable and has been effectively communicated to the beneficiaries. See RODs 81-697, 84-042, and 84-484. Any such rules and regulations should not impose an unreasonable burden on the beneficiaries preventing them from receiving the coverage to which they are entitled. See RODs 81-155 and 81-593.

In this case, the Respondent notified the Complainant that he is required to report on his and his spouse's eligibility status by answering a questionnaire mailed to him quarterly. The Trustees have previously determined that it is reasonable for an Employer to request information to determine the initial and on-going eligibility status of an Employee's spouse and dependent. See RODs 81-300, 84-011 and 84-014. In RODs 84-020, 84-043, 84-045 and 88-265, the Trustees found that in the absence of sufficient proof of dependency, the Employer is not required to provide coverage for a dependent.

According to the Respondent's questionnaire, "In order to retain benefits, the questionnaires must be returned to the Plan Administrator within thirty (30) days." The questionnaire further states that if the questionnaires are not returned within thirty days of receipt, "benefits will be terminated and [the pensioner] may elect to continue certain medical coverages through a law called COBRA."

In ROD 88-113, the Trustees addressed a similar situation where the employer requested that laid-off employees complete a questionnaire monthly to identify employees who no longer met the eligibility requirements to receive coverage. The employer in that case first stated that failure to return the questionnaire would result in termination of benefits. Then the employer revised its position and stated that failure to return the questionnaire would result in the delay of processing of claims. The Trustees determined that the employer's notice that benefits would terminate if the employees failed to respond to the questionnaire within thirty days was contrary to the termination provisions under the Employer Benefit Plan for laid off employees. The Trustees also found that the notice to delay the benefit payments would penalize the employees in a manner not authorized by the Plan. However, the Trustees concluded that "the Respondent's periodic inquiries about the Complainants' employment status . . . would be considered a reasonable monitoring action."

The Coal Act Employer Benefit Plan addresses in Articles II and III A. (10) (d) the conditions under which a pensioner would be disqualified from receiving benefits. Article II provides that benefits coverage "shall not be provided to an individual during any month in which such individual would be disqualified from receiving benefits under the terms of the Employer Plan in effect on February 1, 1993. . . ." The Employer Plan in effect on February 1, 1993, was the 1988

Employer Benefit Plan under the National Bituminous Coal Wage Agreement of 1988. Article II B. (4) of the 1988 Employer Benefit Plan states that health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$500 per month. This amount was amended under Article II of the Coal Act Employer Benefit Plan to \$1,000 per month.

Article III A. (10) (d.) of the Coal Act Employer Benefit Plan provides another condition under which a pensioner would be disqualified from receiving benefits. It states that health benefits coverage will not be provided to any pensioner who is eligible for but who does not enroll in Medicare. In RODS 84-103, 84-448, 84-491, and 84-516, the Trustees found that a pensioner who was eligible for but failed to enroll in Medicare was not eligible for coverage until his Medicare coverage became effective.

While there is no evidence presented that anyone has had benefits terminated for failing to respond to the Respondent's questionnaire, the Trustees note that this may be broader than the stated conditions under which a Pensioner would be disqualified from coverage under Article II and Article III A. (10) (d) of the Coal Act Employer Benefit Plan. The Trustees also note that a proper enrollment is necessary for dependents to receive coverage and to affirm the Pensioner's eligibility.

One of the cost containment programs adopted by the Trustees is a Questionnaire Program which acts to monitor the on-going eligibility of beneficiaries receiving health coverage under the Coal Act Plans: the UMWA 1992 Benefit Plan administered by the UMWA 1992 Benefit Plan Trustees and the UMWA Combined Benefit Fund administered by the UMWA Combined Benefit Fund Trustees.

Under the program adopted by those Boards, if a beneficiary fails to return a questionnaire, a follow-up request is sent. If the beneficiary fails to respond to the follow-up request, a final notice is sent informing the beneficiary that "If the form is not received within 30 days, health benefits will be *suspended*." If the form is not returned within 30 days, the beneficiary is notified that his or her health benefits coverage has been suspended because no response was received to repeated requests to verify the beneficiary's continuing eligibility for benefits. The beneficiary is also notified that he or she has the right to appeal this determination within ninety days. Moreover, prior to suspending benefits, attempts are made to locate a beneficiary who has not responded to repeated requests for information. If benefits are suspended due to insufficient information, they will be reinstated once the requested information has been received and eligibility for benefits has been reestablished.

Unlike the UMWA 1992 Benefit Plan's and UMWA Combined Benefit Fund's Questionnaire Program, the Respondent's questionnaire program does not provide for follow-up requests to a beneficiary if the questionnaire is not returned within 30 days. The Trustees note that a questionnaire program that does not provide for follow-up requests fails to take into

consideration that a beneficiary may not have received the questionnaire because of mail delays, illness, relocation, hospital confinement, or other valid reason, and thus is beyond the scope of the Employer's authority under Article III. A. (10)(b) and may not therefore be enforced.

Opinion of the Trustees

A questionnaire program that requests reasonably available information to determine the initial and on-going eligibility status of an Employee and his dependents at reasonable intervals is a reasonable monitoring device and does not violate the terms of the Coal Act Employer Benefit Plan. However, in order to be reasonable, the program must include steps to insure that the beneficiary has received the request and had sufficient opportunity to respond before benefits are suspended. In addition, the program must include the right to appeal.