OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: CA-065 – December 8, 2004

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 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 1974 Pension Plan pensioner whose last signatory employer was the Respondent. The Complainant has a daughter born out of wedlock whose date of birth is November 2, 1984, and who resides with her mother. According to a court order dated January 1986, the Complainant "shall pay the reasonable medical, dental, hospital and optical expenses" for his daughter. The order also stated that the Complainant was to pay $30.00 a week for child support. A court order dated February 13, 1992, states that the Complainant's child support obligation will be taken care of by the Complainant's Social Security payment and that the $30.00 per week support should end. The most recent court order dated February 8, 2002, states the following:

> 1) No child support will be ordered at this time, for the reason that the minor child [child's name], age 17 years, receives a subsidy income each month in the sum of $642.00, as a result of the Father's disability.
>
> 2) The Father shall maintain medical insurance for the minor child which pays Eighty Percent (80%) of the child's health care costs, with the parties equally sharing any medical, dental, optical, and pharmaceutical expenses not covered by insurance. All monthly insurance premiums paid by the Father shall be credited towards his share of the medical expenses.
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> 3) The Mother is entitled to the income tax exemption for the minor child every year.

During a re-enrollment process for health benefits coverage, the Respondent requested that the Complainant provide documentation to show that he provides over one-half of his daughter's support. In response, the Complainant provided the following information: 1) a copy of the

Complainant's tax return for 2000; 2) a statement from the Complainant indicating that he pays $100.00 per month for clothes and other needs; 3) a copy of his daughter's Social Security check dated October 2000 for $620.00; and 4) a list indicating that the Complainant's daughter's personal monthly expenses totaled $740.00.

After reviewing this information, the Respondent determined that the Complainant did not provide over one-half support to his daughter for the following reasons: 1) The Complainant did not claim his daughter as a dependent on his tax return; 2) the $100.00 payment per month does not equal one-half of the daughter's living expenses of $740.00; and 3) the Social Security payment is an entitlement from the Social Security Administration and not a support payment from the Complainant. In addition, the Respondent states that the court order submitted by the Complainant does not meet the requirements under Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA) for recognition as a qualified medical child support order (QMCSO) because it failed to specify the minimum required information to constitute a QMCSO.

On April 1, 2001, the Respondent terminated the Complainant's daughter's health benefits coverage. Subsequently, the Complainant elected continuation of coverage for his daughter under the Consolidated Omnibus Budget Reconciliation Act (COBRA) through December 31, 2001. In February 2002, the Complainant purchased health coverage through a private insurance carrier.

According to the Social Security Administration, the last SSDI payment the Complainant's daughter received was in November 2002.

Dispute

Is the Respondent required to provide health benefits coverage for the Complainant's daughter as a dependent under the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide coverage for the Complainant's daughter because the Complainant is under court order to pay child support and meets the guidelines established in Q&A H2, Q&A H14, RODs 81-300, 84-011, 84-014, and 84-045.

Position of the Respondent: The Respondent is not required to provide health benefits coverage for the Complainant's daughter because the Social Security payment is an entitlement and is not support payment from the Complainant. This position is support by ROD 88-664. Furthermore, a support payment of $100.00 per month does not equal one-half of the Complainant's daughter's living expenses of $740.00. In addition, the court order submitted by the

Complainant does not meet the requirements under Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA) to be recognized as a QMCSO, for the order lacks the minimum required information to be recognized as a QMCSO.

Pertinent Provisions

Pertinent provisions are addressed under two plans: the Coal Act Employer Benefit Plan and the Employer Benefit Plan maintained pursuant to the National Bituminous Coal Wage Agreement of 1988 (1988 Employer Benefit Plan).

Provisions from the Coal Act Employer Benefit Plan are listed first.

Article I (1), (2), (4) and (5) of the Coal Act Employer Benefit Plan:

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.

* * *

(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.

(5) "Beneficiary " shall mean any person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.

Article II of the Coal Act Employer Benefit Plan provides in pertinent part:

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 .

. . .

Pertinent provisions from the 1988 Employer Benefit Plan.

Article II D. (2) of the 1988 Employer Benefit Plan provide:

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.

Q&A H-2 (81) provides:

H-2 (81)

Subject: HEALTH BENEFITS; Dependency Determination, Support

Reference: (5OB) 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 unmarried dependent children of an eligible Employee who have not attained age 22. Article II. D. provides that children are considered dependent upon the eligible Employee if such Employee provides on a regular basis over one-half of the child's support. Stepchildren, illegitimate and adopted children may qualify for health benefits coverage assuming all elements of dependency are met. (See ROD 88-456.)

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, 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 for 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 (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 daughter 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 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 February 8, 2002, court order governing support of the child and has determined that it is not a qualified order. The Trustees agree.

The order states that the Complainant "shall maintain medical insurance for the minor child which pays Eighty Percent (80%) of the child's health care costs, with the parties equally sharing any medical, dental, optical, and pharmaceutical expenses not covered by insurance. All monthly insurance premiums paid by the Father shall be credited towards his share of the medical expenses." 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 whether the Complainant's daughter is eligible for coverage under Article II D, the Complainant claims 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. However, 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 that required coverage of a child and the Trustees 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." The Trustees further noted in ROD 88-009 that an employer "must determine on a case-by-case basis whether the support each [employee] provides constitutes more than one-half of the total monthly support for each child." 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 participant provides over one-half support as required by Article II D. of the Employer Benefit Plan.

The Complainant states that RODs 81-300, 84-011, and 84-014 support his position that his daughter is eligible for coverage because he has a court order to pay child support. However, RODs 81-300, 84-011 and 84-014 do not address the issue of whether a court order is sufficient to establish eligibility for a dependent's coverage, but rather, they address the issue of an Employer's right to request documentation to determine eligibility under the Employer Benefit Plan.

In order to prove he provides over one-half support to this daughter, the Complainant states that he gives his daughter $100.00 per month. In addition, his daughter received $659.00 from the Social Security Administration each month—with cost of living increases—as a result of the Complainant's disability. In response the Respondent states that the Social Security payment received by the Complainant's daughter is not child support because the Social Security payment is an entitlement and is not a support payment from the Complainant. However, a 1992 court order makes clear that the Social Security benefit payments offset the Complainant's support obligation. This establishes that the court considered the Social Security payment as satisfaction of the Complainant's support obligation. Therefore, in this case, the Complainant's monthly support to his daughter included both the Social Security payment of $659.00 which terminated effective December 2002 and the $100.00 he pays her directly.

The Respondent cites ROD 88-664 to support its position that the Complainant's daughter's Social Security payment is not child support, but an entitlement. In ROD 88-664, an employee's mother was not eligible as a dependent because of the amount of income the mother received from a Worker's Compensation award. The circumstances differ in the present case because the court recognizes the Social Security payment as the Complainant's support obligation and the daughter was receiving the Social Security payment because of the Complainant's disability. Unlike the precedent ROD where the Worker's Compensation was paid as a direct result of the past employment and wages of the dependent herself, the Social Security payment in this case is based on the employment and wages of someone other than the dependent.

Another issue raised by the Respondent was that the Complainant did not claim his daughter as a dependent on his 2000 tax return, therefore, the Complainant does not provide one-half support. According to the Internal Revenue Code, the custodial parent of a minor child is granted a dependency exemption unless that parent waives the exemption. The amount of support the non-custodial parent pays to the custodial parent is irrelevant. Thus, the Respondent's argument is not proof that the Complainant has failed to provide over one-half support for his daughter.

According to the Respondent, the Complainant's daughter's monthly living expenses total $740.00. The Complainant's monthly support totaled $759.00 through November 2002. Accordingly, the Trustees conclude that the Complainant provided over one-half of his daughter's support through November 2002.

Following the termination of the Complainant's daughter's coverage on April 1, 2001, the Complainant elected to purchase COBRA coverage from the Employer until December 31, 2001. Subsequently, the Complainant purchased coverage from a third party insurer.

An Employer who is obligated to provide coverage is not responsible for reimbursement of the cost for insurance premiums when the insurance was purchased by an Employee from a third party insurer. In contrast, when the Employee has paid the Employer for the cost of insurance premiums to maintain coverage during a period when the Employer is obligated to provide

coverage, the Employer is required to reimburse the Employee for the cost of the insurance premiums. See ROD 88-327. Therefore, consistent with the Trustees decision in ROD 88-327, the Complainant is entitled to reimbursement for the COBRA premiums he paid for the period from April 1, 2001, through December 31, 2001. The Complainant is not entitled to reimbursement for insurance premiums paid after December 31, 2001.

Opinion of the Trustees

Based on the information submitted, the Respondent is required to provide health benefits coverage for the Complainant's daughter from April 1, 2001, through November 2002. The Respondent is also required to provide reimbursement for premiums paid by the Complainant to maintain COBRA coverage from April 1, 2001, through December 31, 2001.