

Chapter 19

Medical Benefits Only (BMO) and Black Lung Part B Claims (BLB)

I. Medical Benefits Only (BMO) claims

A. Generally

The regulations at 20 C.F.R. Parts 718 and 727 automatically provide compensation for medical treatment to miners who are found entitled to black lung benefits. However, there are no comparable provisions at 20 C.F.R. Part 410 and § 410.490. As a result, Congress amended the Act as reflected in the following excerpt from the regulations:

Section 11 of the Reform Act directs the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under Part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown.

20 C.F.R. § 725.701(A)(a) (2000) and § 725.702 (2008).

The regulations at § 725.701(A)(c) (2000) and § 725.702(a) (2008) require that the miner be alive on March 1, 1978 prior to the application of 20 C.F.R. § 725.701(A)(a) (2000) and § 725.702(c) (2008). Notably, the regulations at 20 C.F.R. Part 727 are applicable to all medical benefits only claims filed prior to December 31, 1980. *Stallard v. South East Coal Co.*, 14 B.L.R. 1-32 (1990). See also 20 C.F.R. § 725.701(A)(d) (2000) and § 725.702(d) (2008).

B. Entitlement to hearing

The miner and employer are entitled to a hearing and *de novo* consideration of the medical benefits only claim by an administrative law judge. *Zaccaria v. North American Coal Corp.*, 9 B.L.R. 1-119 (1986); *Settlemoir v. Old Ben Coal Co.*, 9 B.L.R. 1-109 (1986). Indeed, in *Settlemoir*, the Board held that the Social Security Administration's initial determinations of eligibility under Part B are not binding on the Department of Labor so as to automatically require payment for medical benefits. Thus, an employer's due process rights are preserved through a hearing and *de novo* review of the record before the administrative law judge with regard to liability for medical benefits only. *Id.* at 1-122.

Under 20 C.F.R. § 725.701A (2000) and § 725.702 (2008), a bifurcated hearing process is provided for those cases wherein the miner's entitlement to medical services is challenged as well as whether particular treatment is related to his or her black lung disease. Liability for medical benefits is determined prior to the issue of reimbursement for any particular medical bills or the resolution of medical treatment disputes. 20 C.F.R. §§727.701(A) (2000) and 725.702 (2008). See *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *rev'd in part sub nom., Doris Coal Corp. v. Director, OWCP*, 938 F.2d 492 (4th Cir. 1991); *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82, 1-84 (1987).

For a discussion of challenges pertaining to the reasonableness or necessity of certain medical treatments, see Chapter 20.

C. Scope of hearing

The scope of the administrative law judge's consideration is confined to adjudication of the claim for medical treatment benefits (*i.e.* payment for medical services and supplies) and *not a re-adjudication* of the miner's entitlement to benefits under 20 C.F.R. Part 410 or § 410.490. *Zaccaria, supra*. This is supported by the regulations at 20 C.F.R. § 725.702 (2008), which provide the following:

No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

D. Employer's initial payment not preclude later challenge to reasonableness

An employer's initial acceptance of liability for medical benefits does not preclude it from later exercising its right to have the claimant examined by a physician in an effort to challenge the reasonableness and necessity of questionable medical bills. *Allen v. Island Creek Coal Co.*, 15 B.L.R. 1-32 (1991). For a further discussion of these issues, see Chapter 20.

E. Eligibility to medical benefits

The regulations permit reimbursement for medical care arising from the miner's total disability due to pneumoconiosis:

If a miner seeks reimbursement for medical care costs personally

incurred before the filing of a claim under this section, the (district director) shall require documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

20 C.F.R. § 725.701(A)(h) (2000) and § 725.702(h) (2008).

The regulations further provide that there shall be "[n]o reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section." 20 C.F.R. § 725.701(A)(h) (2000) and § 725.702(h) (2008).

F. Liability for medical benefits

1. Reimbursement

Initially, it is important to note that medical benefits are awarded for the miner, not a survivor or dependent. *Similia v. Bethlehem Mines Corp.*, 7 B.L.R. 1-535 (1984), *rev'd on other grounds sub. nom., Bethlehem Mines Corp. v. Director, OWCP*, 766 F.2d 128 (3rd Cir. 1985); *Thachik v. Greenwich Collieries*, 5 B.L.R. 1-709 (1983).

Once it is determined that the miner is eligible for medical benefits and s/he demands reimbursement, the responsible operator or Trust Fund (if appropriate) must commence such reimbursement. 20 C.F.R. § 725.707 (2000) and § 725.708 (2008); *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82 (1987).

2. Challenge to liability

The only method by which an employer or the Director, OWCP may challenge liability for the payment of medical benefits is by filing a request for modification under 20 C.F.R. § 725.310 (2000) and (2008). *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *rev'd in part sub nom., Doris Coal Co. v. Director, OWCP*, 938 F.2d 492 (4th Cir. 1991).

3. Interest on reimbursable costs

Interest to the claimant may be assessed against the responsible operator (but not the Director, OWCP) for reimbursable medical costs. *Baldwin v. Oakwood Red Ash Coal Corp.*, 14 B.L.R. 1-23 (1989)(*en banc*) (interest accrues thirty days after the initial determination of entitlement to medical benefits).

G. Onset of medical benefits

The regulations at 20 C.F.R. §§ 725.701(A)(h) (2000) and 725.702(h) (2008) provide the following regarding the onset of payment for medical benefits:

If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which is attributable to medical care required as a result of the miner's total disability due to pneumoconiosis.

20 C.F.R. §§ 725.701(A)(h) (2000) and 725.702(h) (2008).

II. Black Lung Part B Claims (BLB)

A. An introduction

The "Black Lung Consolidation of Administrative Responsibilities Act" (Act) of 2002, 30 U.S.C. § 801 (P.L. 107-275, 116 STAT. 1925 (Nov. 2, 2002)) was enacted to amend the Black Lung Benefits Act at 30 U.S.C. §§ 901-945 to transfer responsibility for adjudicating and administering all pending Part B claims from the Social Security Administration (SSA) to the Department of Labor (DOL). Prior to enactment of the 2002 Act, the SSA administered and adjudicated all black lung claims filed prior to June 30, 1973, also known as "Part B" claims. The SSA and DOL shared responsibility for adjudicating "transition period" claims filed between July 1, 1973 and December 31, 1973 and, then the DOL was responsible for adjudicating and administering claims filed on or after January 1, 1974, also known as "Part C" claims. The effect of the 2002 Act is to transfer jurisdiction of remaining Part B claims to the DOL to administer and adjudicate, in addition to Part C claims already administered and adjudicated by the DOL.

Part B claims transferred to the DOL under the 2002 Act are designated as "BLB" claims by the Office of Administrative Law Judges (OALJ). Adjudicatory proceedings for these claims follow the procedures set forth at 20 C.F.R. Part 410. They are non-adversarial in nature so the caption will list only the claimant. The Director, OWCP is not a party-in-interest in these claims and will not participate in the proceedings or present any evidence to challenge a claimant's entitlement under Part B. Benefits awarded under Part B are paid by the federal treasury. Finally, unlike the other black lung case types adjudicated by the OALJ that are appealed to the Benefits Review Board, if the claimant is dissatisfied with the judge's decision in a BLB claim, s/he may

request review with the Administrative Review Board.

B. Must be filed within six months of miner's or survivor's death

In *M.W. v. Director, OWCP*, BRB No. 07-0663 BLA (Mar. 13, 2008) (unpub.), on motion of the Director, the Board vacated the administrative law judge's decision and remanded the claim to the district director on grounds that the district director improperly referred the claim for adjudication under Part C, instead of Part B, of the regulations.

Notably, the miner was awarded benefits in conjunction with his Part B claim filed on January 9, 1970. He received benefits until his death on October 29, 1982, after which the widow received survivor's benefits until she died on July 31, 2003. The miner's surviving disabled child then filed a claim for benefits on August 7, 2003. The district director determined that, because Claimant had not been receiving Part B benefits "with her mother when her mother died," then her July 2003 claim should be considered under Part C of the Act.

On appeal, the Director cited to 20 C.F.R. § 410.231(d) and asserted that "because claimant's survivor's claim was filed within six months of the widow's death, her claim was also governed by Part B of the Act and . . . the district director and the administrative law judge erred in adjudication this claim under Part C." The Board agreed. Further, the Board agreed with the Director to find that adjudication of the claim under Part C was not "harmless" because:

. . . unlike Part C claims, in which the Director may participate, submit evidence, and argue against entitlement, SSA black lung hearings were non-adversarial, and, therefore, it was error for the Director to have participated in the proceedings in an adversarial capacity.

As a result, the administrative law judge's denial of benefits was vacated and the claim was remanded to the district director so that it could proceed under Part B.