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 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. § 725.702.[1]

The regulations at 20 C.F.R. § 725.702(a)[2] require that the miner be alive on March 1, 1978, prior to the application of 20 C.F.R. § 725.702(c).[3] Twenty C.F.R. Part 727 applies 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. § 725.702(d).[4]

B. Entitlement to hearing

The miner and employer are entitled to a hearing for, and *de novo* consideration of, a "medical benefits only" claim by an Administrative Law

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[1] Formerly 20 C.F.R. § 725.701(A)(a) (2000).

[2] Formerly 20 C.F.R. § 725.701(A)(c) (2000).

[3] Formerly 20 C.F.R. § 725.701(A)(a) (2000).

[4] Formerly 20 C.F.R. § 725.701(A)(d) (2000).

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 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 by the Administrative Law Judge with regard to liability for medical benefits only. *Id.* at 1-122.

Under 20 C.F.R. § 725.702,[5] 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. § 725.702.[6] *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), not 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, 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.

20 C.F.R. § 725.702.

[5] Formerly 20 C.F.R. § 725.701A (2000).

[6] Formerly 20 C.F.R. § 727.701(A) (2000).

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 miner 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. § 725.702(h).[7]

The regulations further provide 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. § 725.702(h).[8]

F. Liability for medical benefits

1. Reimbursement

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).

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[7] Formerly 20 C.F.R. § 725.701(A)(h) (2000).

[8] Formerly 20 C.F.R. § 725.701(A)(h) (2000).

Once it is determined that the miner is eligible for medical benefits, and s/he demands reimbursement, the responsible operator (or Trust Fund, as appropriate) must commence medical benefits payments, including reimbursement for benefits paid out of pocket by the miner. 20 C.F.R. § 725.708[9]; *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 petition for modification under 20 C.F.R. § 725.310. *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 a 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. § 725.702(h)[10] 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. § 725.702(h).

[9] Formerly 20 C.F.R. § 725.707 (2000).

[10] Formerly 20 C.F.R. § 725.701(A)(h) (2000).

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)) amended the Black Lung Benefits Act at 30 U.S.C. §§ 901-945, and transferred 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 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 was 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. The proceedings 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 miner's entitlement under Part B. Benefits awarded under Part B are paid by the United States Treasury. Finally, unlike the other black lung case types adjudicated by the OALJ that are appealed to the Benefits Review Board, if a claimant is dissatisfied with the Administrative Law 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 a 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, because Claimant had not been receiving Part B benefits "with her mother when her mother died," her July 2003 claim should be considered under Part C of the Act.

On appeal, the Director, OWCP cited to 20 C.F.R. § 410.231(d), and asserted "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 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 be processed under Part B.

C. Disabled child

Must be disabled before 22 years of age

In the matter of *R.L.H.*, ARB Case No. 08-075, 2007-BLA-5279 (ARB, July 30, 2008) (unpub.), the Administrative Review Board (Board) affirmed the Administrative Law Judge's denial of an adult disabled child's claim for benefits. The Board stated, "To be eligible for survivor's benefits under Part B, claimant must establish that her SSA-adjudicated disability began before she was twenty-two" under 20 C.F.R. § 410.370. Claimant maintained she was entitled to benefits as the surviving daughter of the deceased miner and his deceased wife because she was disabled and unmarried, and "need(ed) the benefits to sustain her livelihood." The Board rejected these arguments, noting Claimant conceded "she was not disabled before she was twenty-two but became disabled . . . at age forty-five." The Board further concluded the adverse financial circumstances asserted by Claimant "do not change the regulatory requirement that she prove disability before she was twenty-two." As a result, the Board affirmed denial of the claim.

D. Proceedings are non-adversarial

In *R.L.H.*, ARB Case No. 08-075, 2007-BLA-5279 (ARB, July 30, 2008) (unpub.), the Administrative Review Board (Board) noted Part B proceedings are non-adversarial pursuant to 20 C.F.R. §§ 410.623(a), 410.625, and 410.632 such that it was error for the Director's counsel to enter an appearance in the claim before the Administrative Law Judge. Nonetheless, the Board held the Director's "mistake" was harmless in this case because Claimant did not allege any prejudice to her case as a result of the Director's entry of appearance, and the Board found no prejudice.

E. Appellate jurisdiction lies with the Administrative Review Board

In the matter of *R.L.H.*, ARB Case No. 08-075, 2007-BLA-5279 (ARB, July 30, 2008) (unpub.), the Administrative Review Board (Board) accepted jurisdiction of the appeal of a Part B survivor's claim pursuant to the provisions of the Black Lung Consolidation and Administrative Responsibility Act of 2002, 116 Stat. 1925 (2002), and "Section 4(c)(44) of the Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002)," which provides the Board "has the authority to act for the Secretary of Labor when a statute enacted after September 24, 2002 states that the Secretary of Labor is the final decision maker on an appeal of a decision issued by an ALJ."