



April 11, 2005

2005-06A
ERISA SEC.
503

Larry Brand
Mahoney & Associates
2455 East Sunrise Boulevard, Suite 300
Fort Lauderdale, FL 33304

Dear Mr. Brand:

This is in response to your request regarding the applicability of the claims procedure regulations under the Employee Retirement Income Security Act of 1974 (ERISA) to certain accidental death and dismemberment (“AD&D”) insurance benefits. Specifically, you ask whether the AD&D benefits you describe are subject to the requirements in 29 C.F.R. § 2560.503-1 for “disability benefits” or whether they are “other” welfare benefits subject to the general claims procedure provisions of 29 C.F.R. § 2560.503-1.

The correspondence and materials you forwarded contain the following facts and representations. Mahoney & Associates is an insurance brokerage firm and also provides benefits management and consulting services to employers that sponsor ERISA-covered employee welfare benefit plans. You state that a significant number of your clients provide basic and supplemental life insurance, AD&D and other additional welfare benefits to their employees through the purchase of insurance. The insurance policies that are the subject of your request provide active full-time employees with AD&D benefits. The policies define AD&D as “death or dismemberment resulting from accidental bodily injury which is unintended, unexpected, and unforeseen.” To be covered, the death or dismemberment must occur within a specified time frame from the day of an eligible accident. The AD&D benefit is based on a percentage of the basic and supplemental life insurance for which an employee has been insured under the policies. The life insurance may be a flat figure (e.g., \$15,000), an amount based on the covered employee’s annual earnings, or a combination. The insurance policies include a schedule listing percentages paid for death, for total and irrecoverable loss of sight, speech or hearing, and for severed limbs. Benefits are paid in a lump sum upon written proof of a covered loss meeting the conditions of the policy. Proof of a claim may include, but is not limited to, police accident reports, autopsy reports, laboratory results, hospital records, x-rays, and narrative reports. The insurer reserves the right to have the claimant medically examined or to have an autopsy performed.

The term “employee welfare benefit plan” is defined, in pertinent part, in section 3(1) of ERISA as “any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program

was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs”¹

Employee benefit plans covered by Title I of ERISA must establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations. The Department of Labor (“Department”) issued a final regulation on November 21, 2000, that amended and updated the minimum requirements for employee benefit plan claims procedures under Title I of ERISA.² The final regulation established special rules for group health plans and plans providing disability benefits regarding, among other things, notices of benefit determinations and appeals of adverse benefit determinations. See 29 C.F.R. §§ 2560.503-1(f)(2), (h)(3) and (i)(2)(group health plans) and 29 C.F.R. §§ 2560.503-1(f)(3), (h)(4) and (i)(3)(disability benefits).

As to the dismemberment benefits described in your submission, we note that “common types of [disability insurance] coverage (1) provide for the payment of a lump sum where the insured suffers a specified injury (a form of coverage which includes ‘dismemberment’ insurance), and (2) provide for periodic payments where the insured suffers a total or partial disability.” 10 *Couch on Insurance* § 146:1. The dismemberment benefits you describe also fall squarely within the ERISA section 3(1) concept of benefits in the event of “accident.” Although there may be some overlap among the types of benefits listed in section 3(1), we do not believe the special disability benefit rules in the claims procedure regulation apply to all accident benefits. Rather, the Department issued guidance in question and answer format on the claims procedure regulation which, in Q&A 9, explains what are “disability benefits” subject to the regulation’s special rules for disability claims:

A benefit is a “disability benefit” under the regulation, subject to the special rules for disability claims, if the plan conditions its availability to the claimant upon a showing of disability. It does not matter how the benefit is characterized by the plan or whether the plan as a whole is a pension plan or a welfare plan. If the claims adjudicator must make a determination of disability in order to decide a claim, the claim must be treated as a “disability claim” for purposes of the regulation. As the Department stated in the preamble to the regulation, 65 FR at

¹ Nothing in the materials you submitted suggests that the AD&D benefits would be pension benefits under section 3(2) of ERISA, and, therefore, this letter does not address section 3(2).

² The final rule was published in the *Federal Register* at 65 Fed. Reg. 70246 (Nov. 21, 2000). The final rule is effective with respect to benefit claims filed on or after January 1, 2002, under all plans other than group health plans. For claims filed under a group health plan, the final rule is effective beginning on the first day of the first plan year that begins on or after July 1, 2002, but in no event later than January 1, 2003. See 66 Fed. Reg. 35886 (July 9, 2001).

70247, n.4, “where a single plan provides more than one type of benefit, it is the Department's intention that the nature of the benefit should determine which procedural standards apply to a specific claim, rather than the manner in which the plan itself is characterized.”³

Accordingly, whether the AD&D benefits you describe are “disability benefits” under the claims procedure regulation depends on whether the claims adjudicator must make a “determination of disability” in order to decide a claim.

In the Department’s view, a “determination of disability” for purposes of the claims procedure regulation involves a determination regarding an individual’s ability to engage in gainful activity due to a physical or mental impairment. In the case of the accidental dismemberment benefits under the insurance policies you describe, the decision on the claim for benefits does not relate to a claimant’s ability to engage in gainful activity. Further, although the plan may reserve the right to have a medical examination conducted, the exam does not involve such a determination. Therefore, based upon your submission and representations, the Department would not consider the accidental dismemberment benefits under the policies you described to be subject to the special rules for “disability benefits” in 29 C.F.R. § 2560.503-1.

Similarly, the benefits in the event of death described in your submission do not involve a “determination of disability” for purposes of the claims procedure regulation. Thus, the special disability benefit rules in 29 C.F.R. § 2560.503-1 also would not apply to the death benefits under the AD&D insurance policies described above.

This letter constitutes an advisory opinion under ERISA Procedure 76-1, and is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

John J. Canary
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations

³ The questions and answers can be viewed as a set of “FAQs about the Benefit Claims Procedure Regulation” on EBSA’s website at www.dol.gov/ebsa/faqs.