

**FILED**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

2009 MAY 29 PM 3:49

HAMMOND DIVISION

STEPHEN J. CLERK  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

HILDA L. SOLIS, )  
Secretary of Labor, )  
U. S. Department of Labor, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HARRIS N.A. )  
Defendant. )

FILE NO. 2:07-CV-00068 RL

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**SECOND STATUS REPORT OF THE INDEPENDENT FIDUCIARY  
FOR MY SMART BENEFITS INC. TRUST FOR OUTSTANDING CLAIMS**

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On March 20, 2009, the Independent Fiduciary filed a Status Report (D.E. #94) outlining events that had occurred in connection with the processing of claims since the Court's December 8, 2008 Opinion and Order regarding the Independent Fiduciary's Revised Plan of Distribution (D.E. #81). This constitutes the Independent Fiduciary's Second Status Report to update the Court on her progress since her Status Report of March 20, 2009.

**ACTIVITY**

As stated in her first Status Report (D.E. #94), Mr. Robert E. Moore, Jr. and Mr. Jonathan Hogge met on February 5, 2009. During that three hour meeting, Mr. Hogge produced scanned copies of checks (front and back) and ACH Payment vouchers. His information included cancelled checks reflecting payments of

previous claims and plan documents which outline coverage benefits and limitations.

**UNBUNDLING OF SUBMITTED CLAIMS**

Since the commencement of this re-processing project there were a number of steps and approaches that were changed from the previous processing. In compliance with the Court's December 8, 2008 Opinion and Order, all dental claims are being "unbundled." In order to save time and expense in the first processing, all claims of a participant and his/her spouse-dependants were bundled so as to process under a single benefit maximum. Because the Court has implicitly instructed the Independent Fiduciary to re-process the claims with greater accuracy, with efficiency, the Independent Fiduciary is processing all claims in direct accordance with each plan's Plan Document and Coverage Outline. As such, substantially all of MSB's dental reimbursement plans provide benefit maximums and coverage for each individual (i.e. a participant has an individual maximum benefit and each dependant/spouse has an individual maximum benefit). This will potentially increase the adjudicated amount payable over the previous processed amount submitted by the Independent Fiduciary.

**ALL MSB PLANS REQUIRE CUMULATIVE CLAIMS ADJUDICATION FOR EACH PLAN YEAR**

MSB sold several different types of dental coverage plans but they all require cumulative claims processing. In most major medical plans, a participant encounters a co-payment and/or a deductible amount applied to each claim, which then determines

the amount payable on a claim. This is not true for MSB plans. MSB plans are cumulative. For example, for a plan with individual plan year maximum of \$800.00, the first \$50 of dental plan expense for a plan year is paid by the participant. The next \$100.00 of dental plan expense in a plan year is paid at 100% by MSB. The next \$250.00 of dental expense incurred in a plan year is paid at 80% by MSB. The next \$1,200.00 of dental expense incurred in the plan year is paid at 50% by MSB.

**HOGGE PROVIDED INFORMATION**

As stated in her first Status Report, Mr. Hogge provided a large amount of information, some of which has been useful, but some has not. Plan document and group application information has been very helpful in applying the correct plan coverage outline and providing the effective date of the plan year. However, Mr. Hogge was not able to provide a census listing to identify the plan to which is applicable to a member. Therefore if an employer had more than one plan available to its employees, it is difficult to determine which plan is applicable to the participant. Mr. Hogge also supplied prior claims information but this has not been as helpful as was hoped.

Mr. Hogge has provided cancelled check information and some prior claim ledger information. He has also provided premium payment information, which can be used in order to determine if a dental expense claim was incurred while the individual was a member of the plan. However, many of the checks and ledgers do not identify which individual on whose behalf the benefit is

being paid. It simply provides the payable to the participant and often does not indicate if the claim was actually the participant's or was a claim of the participant's spouse or dependant.<sup>1</sup> Further, many times the prior claims history is inapplicable to the claims submitted to the Independent Fiduciary.<sup>2</sup> This is largely because the prior claims were incurred in a previous plan year and are not applicable to the plan year of the claims pending before the Independent Fiduciary. And even with accurate claims history, to process the claims submitted requires the Independent Fiduciary to compute earlier processed claims to understand the individual member's cumulative benefit remaining.<sup>3</sup>

Additional information requests have been issued to Mr. Hogge recently to provide information regarding those participants whose employers or agents paid their claims. Mr. Hogge has been cooperative through this process and has indicated through his counsel that he will provide what information he has available as soon as he can but it may take three to four weeks because of the volume of documentation he must review to find the items requested.

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<sup>1</sup> In instances like these, the Independent Fiduciary has allocated the prior claims history to the participant and not to the participant's spouse/dependants.

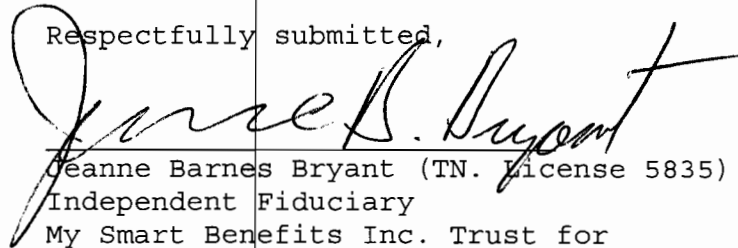
<sup>2</sup> It is possible that Mr. Hogge may not know for some submitted claims the plan year in which they occurred. He may have provided whatever prior claim payment information he has.

<sup>3</sup> For example, if a participant has received a check or checks totaling \$376.00 in a plan year, utilizing the plan outlined earlier, the Independent Fiduciary has to assume that the participant has incurred dental expenses of \$495.00. (\$50 [paid by member] + \$100 [paid by MSB] + \$250 [\$200 of which is paid by MSB] + \$95[\$76.00 of which is paid by MSB] )

**Conclusion**

In spite of information gaps, the Independent Fiduciary is proceeding with processing as quickly as possible and is about half way completed.<sup>4</sup> With the additional information, and changes in claims processing, it is difficult to predict what the final total adjudicated amount will be.

Respectfully submitted,



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<sup>4</sup> Currently at about 50% completed, the unaudited adjudicated total stands at \$239, 248.43.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Status Report has been or will be mailed and/or faxed if number available by the 27 day of May, 2009 to all parties noted below:

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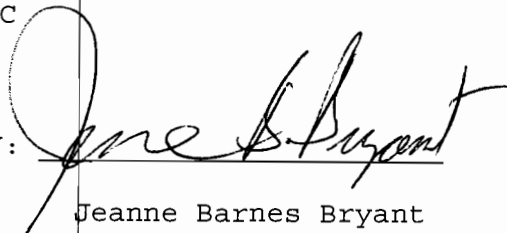
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