

1. Purpose and Scope. This chapter provides an introductory description of the Federal Black Lung Program; includes a general summary of the statutory authority for the administration of this program administered by the Division of Coal Mine Workers' Compensation (DCMWC); and explains the benefits and services available to eligible miners or their survivors.

2. BLBA Program. In the Federal Black Lung Program (FBLP), DOL administers the receipt, determination, and payment of claims for benefits for miners who are totally disabled by pneumoconiosis and survivors of miners who were totally disabled by, or whose death was due to pneumoconiosis.

a. Major Changes to Program. Although the Black Lung Benefits Program began in 1969, with passage of the Black Lung Benefits Act (BLBA) of 1977, several legislative changes occurred to expand and alter the program. Changes created by the Black Lung Benefits Reform Act of 1977 became effective on March 1, 1978, and included several important provisions:

- (1) Broadened definition of the term "miner" so that more may apply for benefits;
- (2) Redefined certain medical criteria for eligibility and eliminated certain time limitations;
- (3) Established a trust fund (BLDTF) for the payment of claims in which there is no responsible operator liability;
- (4) Required the reconsideration of all previous claims, and established certain rebuttable presumptions to facilitate their processing and adjudication; and
- (5) Allowed for the creation of DCMWC District Offices and Field Stations to assist in the receipt and processing of BL claims. This decentralized the program for the first time.

Publication in 1980 of the permanent medical standards for determining disability made medical eligibility standards

stricter and removed several presumptions of either disease or disability.

The 1981 Amendments to the Act required that survivors establish that a miner's death was related to pneumoconiosis before benefits could be awarded, and relieved coal operators and insurers from liability for payment of benefits in certain classes of claims.

A Final Rule that became effective on January 20, 2001 established limitations on the amount of medical evidence that parties to the claim could submit, streamlined the referral of disputed claims into the hearing process, and attempted to reduce the percentage of claims that go to litigation.

The Patient Protection and Affordable Care Act of 2010 amended the Black Lung Benefits Act by restoring the continuation of benefits for eligible survivors in most cases, and reinstating the presumption that a miner who has worked for fifteen years as a miner and has a totally disabling lung impairment is suffering from pneumoconiosis even if his chest x ray is negative.

b. Responsibilities.

(1) DOL. The Department is responsible for processing and adjudicating claims for Black Lung benefits from living miners filed after July 1, 1973, and for claims from miners and survivors after January 1, 1974. It is also responsible for maintenance of claims filed under Part B of the Federal Mine Safety and Health Act of 1969. The Black Lung Benefits Reform Act of 1977 also provided for the review by the DOL of certain BL claims previously denied by Health, Education, and Welfare (HEW - now Health and Human Services, or HHS) and BL claims denied by DOL prior to the enactment of the 1977 Amendments.

(2) Shared Role SSA/DOL. The Social Security Administration (SSA), then part of the Department of Health, Education and Welfare (HEW - now Health and Human Services), administered the original Black Lung Benefits Program (under the FCMHSA of 1969) from its beginning in 69, and processed claims filed until July 1, 1973. Since that time, and in recent years operating under an

agreement with SSA, claims continue to be filed at SSA offices and forwarded to DOL for processing, and SSA continues to provide services for DOL. However, the expansion of DCMWC District Offices after the 1977 Amendments led to a gradual but marked decline in claims being filed with SSA. Following the assumption by DOL of maintenance activities for Part B claims in 1997, and the statutory authority giving DOL responsibility for those claims under the Black Lung Consolidation of Administrative Responsibility Act of 2002, SSA's role is limited to taking claims and providing earnings records and other specified services.

c. Objectives. As a part of its administration of the BLBA, the DOL sought to have States assume responsibility from the Federal Government for Black Lung claims. States are required to meet certain criteria to assume that responsibility. In States where the criteria are not met, the DOL will seek to identify responsible coal mine operators (ROs) who may be determined liable for payment of benefits to miners, or the survivors of miners, who contracted the disease while working in or around coal mines. The Black Lung Disability Trust Fund (BLDTF) is liable for the payment of benefits to a miner whose last employment terminated before January 1, 1970, or where individual liability cannot be assessed against a responsible coal mine operator (RO) as set forth in Sections 422 and 424 of the Act and in BLBA PM 2-800 and 5-500.

3. Authority. DOL secures its authority for the BLBP either directly or by reference from five separate pieces of legislation: the Federal Mine Safety and Health Act of 1977, as amended (the Act), the Longshoremen's and Harbor Workers' Compensation Act (LHWCA); the Administrative Procedures Act (APA); the Social Security Act (SSA), and the Black Lung Consolidation of Administrative Responsibility Act. A brief description of the requirements contained in each of these Acts applicable to the operation of the FBLP is provided in subparagraphs a through b below.

a. Responsibility for processing and adjudicating claims under the Act had been divided into two parts. Part B was originally the responsibility of SSA; Part C, of the DOL. Specific responsibilities follow:

(1) Section 415, Part B. Upon inception of the Act in 1969, and ending June 30, 1973, the BL claims known as Part B claims were administered by SSA. Section 415(a) of Part B prescribed a transition period between July 1 and December 31, 1973; living miner claims filed during this period were administered by the DOL and handled as Part B claims. Claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under Part B of Title IV of the Act at the time of death, if filed within 6 months of the miner's death, were also adjudicated and paid by SSA. However, SSA did not have primary responsibility or jurisdiction over new claims filed after July 1, 1973.

On October 1, 1997, a Memorandum of Understanding between SSA and DOL led to a transfer of maintenance authority for Part B claims to DOL.

(2) Section 422, Part C provided for the takeover of responsibility by the DOL including assignment of liability to ROs for payments of benefits for claims filed on or after January 1, 1974. In addition to certain modifications of the medical standards for disability, the transfer of liability from the Federal Government to ROs whenever possible was the principal difference between SSA's and DOL's administration of the program. Claims filed on or after January 1, 1974, are designated Part C claims.

(3) Section 435 provided for the review of all claims in Parts B and C which were pending or previously denied at the time the 1977 Amendments became effective.

b. Longshoremen's and Harbor Workers' Compensation Act (LHWCA). Section 422(a) of the Act incorporates, by reference, a number of sections of the LHWCA. These sections provide the basis for a number of Black Lung program requirements, including medical treatment to miner beneficiaries, and assistance in obtaining vocational rehabilitation services. The LHWCA also gives the FBLP a

system of hearings and appeals paralleling the one used for LHWCA cases. Until January 2001 this system involved the review of cases at a conference with a District Director, the referral of disputed conference issues and recommendations to a formal bearing by an Administrative Law Judge (ALJ), the right of review by the Benefits Review Board (BRB), and the right of appeal to the Federal Courts. The regulations effective January 29, 2001 effectively replaced the conference with a Proposed Decision and Order, but the other appeal elements were unchanged.

c. Administrative Procedure Act (APA). Title V of the Administrative Procedure Act contains general provisions for hearings and appeals and the requirements for handling such hearings and appeals. These provisions are made applicable to the Act by the inclusion of LHWCA Section 19(d) as one of the sections incorporated into the Act by Section 422. As a result, the APA requirements regarding time limits for hearings explained in BLBA PM 2-1500, notification of parties, responsibilities of Administrative Law Judges (ALJs), and general rules of procedure apply to hearings conducted under the BLBA.

d. Social Security Act (SSA). Certain provisions of Title II of the Social Security Act are made applicable by Section 402 of the Act to the eligibility of dependents, and by Section 412 in determining whether a claimant bears the relationship as the miner's parent, brother, or sister. These provisions are found in the Code of Federal Regulations (CFR) and in BLBA PM, Part 2.

e. Black Lung Consolidation of Administrative Responsibility Act. This Act, which became law in 2002, transferred responsibility and permanent custody of all currently-active Part B claims from SSA to DOL.

4. Eligibility.

a. The Act provides for the payment of benefits to certain coal miners (including qualified transportation and construction workers who were exposed to coal dust) and their surviving dependents (including surviving spouses, children, and dependent parents, brothers and sisters). In order for an entitled miner or surviving spouse and dependents to qualify for benefits, such survivors must

meet the eligibility requirements set forth in 20 CFR 725.202 and BLBA PM 2-900.

b. Time Limitations. A miner must file a Part C claim for benefits within 3 years after a medical determination of total disability due to pneumoconiosis (which has been communicated to the miner or a person responsible for the care of the miner (20 CFR.725.308 (a)) There are no time limits for survivors.

c. Miner and Total Disability are defined in Section 402(f)(1) of the Act, and 20 CFR 725.101.

5. Benefits.

a. Payments to Miners and Survivors.

(1) Entitled Benefits.

(2) Compensation Offsets. Part C benefits are reduced by the amount received, dollar for dollar, from other compensation benefits received under any State or Federal workers' compensation law (for consecutive periods covered by a BLBA award) because of death or disability due to pneumoconiosis only. For more information regarding these offsets, see BLBA PM 2-1403.

b. Medical Treatment. Living miner (LM) beneficiaries are also entitled to medical treatment as described in 20 CFR 725.701(a). (See BLBA PM 3-500 for details.)

c. Payment Systems. The DOL Part C FBLP involves payment of benefits by one of three possible sources: payment under State programs that have DOL-approved workers' compensation plans; payment by individual coal mine operators, or payment through a BLDTF where no approved state program exists or no RO has been determined liable.

(1) State Payment. In States where the Secretary of Labor has approved a worker's compensation law, the DCMWC has no jurisdiction to process claims. Such claims are referred to the respective States for adjudication. There are no approved State laws at this time.

(2) Operator Payment. In States where there are no workers' compensation laws that meet the standard set by the Secretary, DOL will process all claims filed under the Act, as amended. A coal mine operator who is determined responsible for benefits payments must either be self-insured, or have insurance to cover its liability for payments. The Secretary of Labor is authorized to establish and carry out a BL insurance program which will enable operators of coal mines to purchase insurance covering their obligations as ROs. Where an individual operator is responsible for a claim, such operator shall reimburse the fund for payment of benefits by the fund. DOL has established procedures to review and approve both carrier-provided private insurance and the self-insurance plans of operators and carriers, and to receive reports on benefits paid by operators and carriers. (See Parts 2 and 5, BLBA PM,.)

(3) A Black Lung Disability Trust Fund (BLDTF) is administered by the U.S. Treasury to pay all Part C claims (a) for workers whose last coal mine employment terminated prior to January 1, 1970, and (b) for workers whose last employment terminated on or after January 1, 1970 and a responsible operator cannot be identified or determined. (Part C claims include previously denied Part B claims.) The fund shall reimburse operators (exclusive of interest and penalties) in those cases involving coal mine employment prior to January, 1970 if the operators had been making payments. The fund shall also assume future liability. The fund is to be available for payment of benefits where an operator liable for the payment of such benefits has not commenced payment of such benefits within 30 days after the date of an initial determination by DOL or has not made a payment within 30 days after that payment is due. The fund will be reimbursed by the operator whenever the fund pays on behalf of the operator. (See BLBA PM 2-1101 and 5-600.)

d. Services to Claimant. Besides providing a compensation payments system, Part C of Title IV of the Act authorizes additional services to claimants for whom benefits have

been approved. These are described in the paragraphs below:

(1) Medical Treatment. Included in benefits authorized by Part C is medical treatment for a miner's pneumoconiosis or related illness, as defined in 20 CFR 725.101 (a)(25). (Also see BLBA PM 3-500.)

(2) Vocational Rehabilitation. Section 39 of the LHWCA, which is incorporated by Section 422(a) into the Act, authorizes the provision of vocational rehabilitation services to miners. Each miner shall be informed by the OWCP of the availability and advisability of such services. If such miner chooses to avail himself/herself of vocational rehabilitation, the miner's request shall be processed and referred by OWCP vocational rehabilitation advisors (20 CFR 725.711).

(3) Anti-Discrimination. Section 428 of Title IV of the Act requires the DOL to review and act upon cases of discharge or any other form of discrimination against miners who are suffering from pneumoconiosis. Any of the parties involved may request a public hearing (within 90 days of an alleged violation) which shall be of record and subject to Section 554 of Title 5 of the United States Code.