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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

MAY 0 8 2003

Re: Appeal [redacted], HIP of New Jersey Staff Employees Retirement Plan and Trust (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your appeal of PBGC's September 30, 2002 determination that your client, [redacted] is not entitled to a vested benefit under the Plan. For the reasons stated below, the Appeals Board changed PBGC's determination by finding that your client is entitled to a PBGC benefit. PBGC's Insurance Operations Department will send her a new determination of her benefit amount and related matters.

Benefit Determination and Appeal

PBGC's letter informed [redacted] that she was not entitled to a benefit because she did not have the required 5 years of service to be eligible for pension benefits under the Plan. In your January 15, 2003 appeal, you contended (1) that [redacted] was vested because in each of the five calendar years from her date of hire (March 29, 1993) through her termination of employment (November 7, 1997) she completed 1000 hours of service and (2) that [redacted] was vested, because in October of 1998, she received a letter from Barbara Flyn, the Pension Director of her former employer, indicating that, due to the partial termination of the plan, [redacted] was 100% vested.

Vesting Due to Partial Termination of the Plan

Section 4022(a) of the Employee Retirement Income Security Act ("ERISA") states:

> "Subject to the limitations contained in subsection (b), the corporation shall guarantee in accordance with this section the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single employer plan which terminates at a time when this title applies to it." (Underlining added.)

In Opinion Letter 84-4, PBGC's Office of General Counsel concluded that Section 4022(a) of ERISA applies to both the termination and partial termination of a plan and, as a result, concluded that "benefits which become vested solely on account of termination or partial termination of the Plan are not guaranteed."

Vesting Due to the 1,000 Hour Rule

The original Plan was effective January 1, 1990 and adopted April 30, 1990 (the "1990 Plan"). The Plan was amended and restated in a document effective January 1, 1996 and adopted October 15, 1996 (the "1996 Plan"). PBGC's Benefit Statement indicates that your client's date of hire was March 29, 1993 and that her date of termination of employment was November 7, 1997. PBGC's records indicate that [redacted] transferred from employment covered by another plan to which the Employer contributed (the Garden State Medical Group) to employment covered by this Plan on November 25, 1996. Section 3.5 of the 1996 Plan provides that certain transferees, including your client, "shall, for all purposes under the Plan other than for the purpose of computing the amount of the Member's Accrued Benefit, receive credit for periods of employment with the Employer prior to such transfer as if during such period he [or she] was a Member of this Plan."

Section 3.1(a) of the 1990 Plan stated: "[F]ollowing his Employment Commencement Date . . . a Member shall be credited with a year of Credited Service for each Plan Year [calendar year] during which he has completed at least 1000 Hours of Service." Section 4.3 of the 1990 Plan provided that a Member ". . . shall be entitled to a Deferred Vested Retirement Allowance if, at the time of termination of employment, he has completed five (5) years of Credited Service." In your appeal, you claimed that Ms. Davis completed 1,000 hours of service during each of her five calendar years of employment (1993, 1994, 1995, 1996, and 1997), and the Appeals Board accepted your claim. Thus, under the provisions of the 1990 Plan, she would have become entitled to a deferred vested benefit.

Under the 1996 Plan, Credited Service was defined as the total months of service measured in elapsed time from the Employee's Employment Commencement Date to the last day of the month during which his Severance from Service Date occurs. Thus, in order to complete five years of Credited Service under the provisions of the 1996 Plan, your client's Severance from Service Date would have had to have occurred in March of 1998 (or later). As a result, she was not vested under the terms of the 1996 Plan.

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Section 9.5 of the 1990 Plan, however, requires that "[I]f any amendment changes the rate at which benefits under this Plan become vested . . ." a Member who has completed at least three years of Credited Service "may elect to have the rate at which his benefits under this Plan vest determined without regard to the amendment . . ." Pursuant to Section 3.5 of the 1996 Plan (quoted, in part, above), the Board found that [redacted]s was covered by Section 9.5 of the 1990 Plan (i.e., that she should be treated as if she were a Member of the 1990 Plan for the purpose of applying Section 9.5 of the 1990 Plan).

Under the 1990 Plan's definition of Credited Service, [redacted] would have been 100% vested in her accrued benefit; under the 1996 Plan's definition of Credited Service she would be 0% vested in her accrued benefit. Therefore, the Board found that the 1996 Plan's redefinition of Credited Service constituted an amendment which changed the rate at which her benefits became vested.

Consequently, under Section 9.5 of the 1990 Plan, [redacted] should have been allowed to elect to have the rate at which her benefit became vested determined without regard to the 1996 Plan. She was not given this opportunity. Therefore, the Board found that her vesting percentage should be determined as if she had made the election most advantageous to herself. As a result, the Board found that she is entitled to a deferred vested benefit.

Decision

Having applied the law, PBGC's rules, and the Plan's provisions to the facts in this case, the Board found that your client is entitled to a PBGC benefit. This is a final agency action with respect to your client's entitlement to a PBGC benefit under the Plan. PBGC will send her a new benefit determination letter (with a new right of appeal) regarding the amount, form, and commencement date of her benefit. If you or your client need other information from PBGC, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,

Roger Cushing for
Harriet D. Verburg
Chair, Appeals Board

cc: [redacted]