



Does Your Plan Cover The Dependents You Thought It Did?

Since 2005, the Working Families Tax Relief Act has had an impact on the definition of a dependent as it relates to group health plans, flexible spending arrangements for health and dependent care and 401(k) hardship distributions because it changed the Internal Revenue Code's definition of a dependent under Section 152. Health benefits for tax-favored dependents are tax-free under Code Section 105 and the value of health coverage for tax-favored dependents is tax-free under Code Section 106. Without careful review though, a plan's coverage provisions may be inadvertently narrow, restricting coverage to exclude dependents the plan intended to cover. Or, alternatively, the plan's coverage provisions may be too broad, covering additional unwanted individuals.

A comprehensive definition of a dependent under these types of plans should include reference to the factors described in Code Section 152, such as relationship to the employee, age (which may include student or disability status), residence, and support.

Careful review of a plan's eligibility provisions for dependents is necessary due to recent changes to Code Section 152 as well as court interpretation of dependent status. Consequences for failure to properly define dependents under a plan can include exclusion of individuals a plan sponsor may have intended to cover or quite the opposite. Moreover, employees may unknowingly become subject to taxable income for health coverage provided to individuals who are not tax-favored dependents under Code Section 152 but who are covered under the plan nonetheless.

Plan sponsors must also be particularly cautious when defining dependents and applying eligibility conditions for dependents since loss of dependent status and eligibility requires coordination with COBRA requirements.

Courts have yet to substantially address the revised definition of dependent under Code Section 152 in the context of ERISA plans, but there are numerous cases in which courts have been required to consider the definition of dependent under ERISA plans.

In one such recent case, the definition of dependent and an individual's status as a student were at issue in the Western District of Missouri in *Benckeser*¹. In this ERISA action, the district court determined that an individual was not eligible for dependent coverage under the plan because he did not meet the plan's definition of a dependent, specifically as a

¹ *Benckeser v. Carpenter's District Council of Kansas City, Missouri*, 2007 WL 1238647, U.S. Dist. Ct. W.D. MO. 2007.

student. Plan language required that a dependent student's time be devoted principally to attending school or college as a full-time student, but did not further define "full-time" nor specify a certain number of hours a student must complete in order to satisfy such requirement.

In deciding the *Benckeser* matter, however, the district court found that it was not unreasonable for the plan to require a student to be enrolled in 12 credit hours when most colleges and universities require 12 hours for full-time status and the individual's own college determined that a full load for a student is at least 12 hours. Post-secondary education has a variety of requirements and programs which makes drafting dependent student language challenging.

Likewise, an earlier decision in *Rehabilitation Institute, Inc.*², led the 6th Circuit to reverse an opinion which it felt incorrectly interpreted the Plan's definition of an eligible dependent and the requirement for proof of support of dependency status. Under the terms of the plan, a dependent must reside with the employee and the employee must provide over one-half of the support for the dependent to be eligible for coverage under the plan. The plan further required employees to provide proof of such support. The 17-year old individual in this situation did not physically live in the home with the employee-parent for the entire year and, as specified in the plan document, the plan requested proof that the employee claimed the child on his tax return. The employee failed to provide a copy of the tax return, or provide additional proof of support, and the plan denied the claim for benefits.

The Appeals Court found the plan language requiring proof of support to be ambiguous and further determined that under the facts and circumstances the employee-parent likely provided the majority of the individual's support for the year. Considering the potential implications, it is equally challenging to clearly specify requirements to prove residency and support as in the *Rehabilitation Institute, Inc.* decision.

For more information, please contact Haynes Benefits PC at 816-875-1919 or visit
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² *Rehabilitation Institute, Inc. v. Michigan United Food and Commercial Workers Health and Welfare Funds*, 2006 WL 1005053, U.S. Ct. App. 6th Cir. 2006