

Employee Benefits Division Policy Memorandum

Number: Policy Memo 109r1

Date Issued: November 14, 2017

Subject: COBRA; Deletion from Coverage Prior to Divorce

PURPOSE

Determine how to assess COBRA eligibility for a spouse when an enrollee deletes such spouse from NYSHIP coverage prior to a divorce judgement.

BACKGROUND

In general, a COBRA qualified beneficiary is an employee, spouse, or dependent child who is covered under the group health plan on the day before a COBRA qualifying event. There have been times when an enrollee has cancelled his or her spouse's coverage in anticipation of divorce. An enrollee can cancel dependent coverage at any time under NYSHIP rules, subject to PTCP restrictions if so enrolled. IRS regulation 26 CFR 54.4980B-4(c) provides that coverage that is reduced or eliminated in anticipation of a qualifying event is disregarded in determining COBRA rights. In other words, if an enrollee deletes a spouse from coverage before the entry of a divorce judgment, the spouse still has COBRA rights at the time of the divorce even though such spouse is not covered when the divorce is finalized. The purpose of the regulation is to prevent an action which would deny COBRA rights due to a coming event. IRS commentary to the regulation states "[w]hether a reduction or elimination of coverage is in anticipation of a qualifying event is a question to be resolved based on all the relevant facts and circumstances." We usually encounter this situation after the divorce when the unenrolled spouse does not know of the deletion from coverage and questions why a COBRA application has not been sent.

An administrative decision has been made that if the reduction or termination occurs within six months prior to the entry of a divorce judgment, it is assumed the reduction or termination was in anticipation of divorce and COBRA is granted as of the date of the divorce, upon timely notification by the unenrolled spouse. If the entry of a divorce judgment is more than six months after the spouse's deletion, we ask the COBRA applicant to provide evidence why it is believed that the reduction or deletion was in anticipation of the divorce. The assessment is made on a case-by-case basis taking into consideration all the relevant facts and circumstances. Some examples of evidence include, but are not limited to, a sworn statement from the COBRA applicant regarding the circumstances, papers associated with a divorce action, an order of protection, other law enforcement reports, or a letter from a marriage counselor who counseled the couple etc.

POLICY

If the reduction or termination occurs within six months prior to the entry of a divorce judgment, it is assumed the deletion was in anticipation of the divorce and COBRA shall be granted as of the date of divorce upon timely notification by the unenrolled spouse.

If the reduction or termination occurs more than six months before entry of the divorce judgment, the unenrolled spouse should be requested to provide evidence to establish that the reduction or termination was in anticipation of divorce. Such evidence is reviewed taking into consideration all the relevant facts and circumstances. Employee Benefits Division (EBD) staff shall document the rationale behind the conclusion reached. If EBD determines that the

termination was in advance of the divorce, COBRA shall be granted as of the date of divorce upon timely notification by the unenrolled spouse.