

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



MAR 11 1988

OPINION NO. 88-04A
Sec. 3(1)

William R. Charyk, Esq.
Anne D. Bolling, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
Washington Square
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Mr. Charyk and Ms. Bolling:

This is in reply to your request for an advisory opinion concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the Employee Assistance Program (the Program) of El Paso Natural Gas Company and its subsidiary El Paso Hydrocarbons Company (the Employer) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

Your correspondence contains the following facts and representations. You state that approximately 3,440 single and multi-person family units are eligible for benefits at this time. Active participation in the Program is generally voluntary for employees, spouses, and dependents; however, some employees agree to participate as a condition of continued employment.

The Program provides assistance in dealing with major personal problems affecting mental or physical health. Booklets distributed to employees describe these benefits in detail. Assistance is available for a wide range of problems, including drug and alcohol abuse, stress, anxiety, and depression, marital problems, problems involving troubled children, money and credit problems, and legal problems. The Program excludes benefits for work-related problems.

The Human Resources Group, Inc. (Human Resources) is under contract to provide Program services. Human Resources is an independent organization designing and administering employee assistance programs for corporations. Human Resources employees, trained in psychology and social work, counsel Program participants at various locations throughout El Paso, staff a 24-hour hotline, and refer Program participants to additional resources as appropriate.

The cost of services provided by Human Resources employees to Program participants is paid by the Employer through the Program. Additional services obtained through referral are not paid

through the Program; however, other benefit arrangements of the Employer may cover the cost of those services.

As indicated in your letter, the only issue with respect to whether the Program constitutes an "employee welfare benefit plan" is whether the Program provides benefits described in ERISA section 3(1). Section 3(1) defines the term "employee welfare benefit plan" as:

... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions). (Emphasis supplied.)

It is the view of the Department that benefits for the treatment of drug and alcohol abuse, stress, anxiety, depression and similar health and medical problems constitute "medical" benefits or "benefits in the event of sickness" within the meaning of section 3(1). On the basis of your representations, and the submissions accompanying your request, the Program does provide, among other benefits, benefits constituting "medical" benefits or "benefits in the event of sickness" within the meaning of section 3(1).

Accordingly, it is the view of the Department that, to the extent that the Program provides benefits described in section 3(1), the Employee Assistance Program maintained by the El Paso Natural Gas Company and its subsidiary El Paso Hydrocarbons Company for their employees constitutes an "employee welfare benefit plan", within the meaning of section 3(1), subject to the provisions of title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of an advisory opinion.

Sincerely,

Robert J. Doyle
Acting Associate Director for Regulations and Interpretations