

United States Senate

WASHINGTON, DC 20510-4802

June 26, 2008

Mr. Gene L. Dodaro
Acting Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro,

I am writing to request that the Government Accountability Office (GAO) conduct a comprehensive review of the Department of Labor's administration of the federal Black Lung Benefits Program, with a particular focus on the barriers to access that miners, as well as their survivors and dependents, continue to face. Specifically, I would like the GAO to examine and report on the following questions:

- 1) How many black lung claims does the Department of Labor (DOL) process on an annual basis? What is the average length of time it takes for DOL to process an individual claim?
- 2) What are the primary reasons for the continued high rate of claims that are initially denied by the Department of Labor?
- 3) To what extent do miners and their families face financial barriers when pursuing the claims and appeals process?
- 4) To what extent are there persisting barriers to benefits for miners related to the current medical thresholds?
- 5) To what extent are there persisting barriers to benefits for miners related to the claims and appeals processes that are not financial in nature (e.g. miner access to impartial doctors for physical examinations)?

Coal Workers' Pneumoconiosis (CWP), commonly referred to as black lung disease, is a disorder that occurs when dust particles accumulate in the lungs. It results in scarring in the lungs, and makes it very difficult to breathe, thereby greatly affecting one's ability to function normally. The disease is both progressive and irreversible.

The Black Lung Benefits Program, first enacted in 1969 as part of the Federal Coal Mine Health and Safety Act (P.L. 91-173), was the first federal response to CWP. In addition to mandating comprehensive safety enforcement and monitoring of dust exposure, this bill was passed to provide income and medical support for those affected by CWP (or their survivors). It

provides for medical services (diagnostic testing, drugs, durable medical equipment, home nursing visits, and hospitalization) as well as compensation. The base compensation is equal to three-eighths of the salary of a GS-2, step 1 grade federal employee, which is approximately \$584 in 2008 (an increase of 2.5% from 2007). This can be increased if the miner (or survivor) has dependents. The maximum benefit awarded to a primary beneficiary or survivor and three or more dependents is \$1,197.

The program is administered by the Division of Coal Mine Workers' Compensation, within the Office of Workers' Compensation, in the Department of Labor (DOL). Originally, eligibility for benefits for new claimants was solely dependent on one of two factors. First, an individual had to work in the mines for 10 years or longer and have a rebuttable presumption that the CWP arose out of such employment. Second, an individual could qualify if he or she met certain diagnostic standards (x-rays, biopsy, autopsy) that constituted an irrefutable claim of total disability. Within this program context, total disability by black lung is defined as preventing a miner from going back to work in the mine.

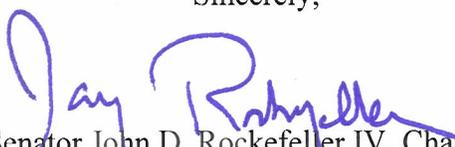
In 2001, the DOL revised the regulations to allow for individuals to fight for black lung benefits by providing more information, including the following:

- Complete pulmonary evaluation conducted by one of an approved list of physicians (not by one that has provided care within the past year);
- Both claimant and mine operator can submit two chest x-rays, pulmonary function tests, blood gas studies and medical reports (one of each, if appealed); and
- Testimony of miners' treating physician.

The 2001 regulations were purportedly aimed at simplifying the administrative procedures for the adjudication of black lung claims pending before the Office of Workers' Compensation Programs (OWCP). Despite the improvements to the claimant process, however, delays remain high, with a number of prominent cases taking more than 25 years to resolve.

I look forward to your analysis of the federal black lung program and am hopeful that this study will be completed no later than August 1, 2009. As you proceed with this request, please keep Jocelyn Moore (202-224-6472) in my office informed of your progress. Also, feel free to contact her with any questions. I appreciate your prompt attention to this matter.

Sincerely,


Senator John D. Rockefeller IV, Chairman
Senate Finance Subcommittee on Health Care