

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of

Claim for

B.B.

(Appellant)

Medicare Part B Premium:
Income-Related Monthly
Adjustment Amount (IRMAA)

(Beneficiary)

(HICN)

SSA SEPSC

(Contractor)

(ALJ Appeal Number)

The Medicare Appeals Council (Council) has decided, on its own motion, to review the Administrative Law Judge's (ALJ's) decision dated August 11, 2009, because there is an error of law. See 20 C.F.R. §§ 404.967 and 404.970. In his decision, the ALJ determined that the Social Security Administration (SSA) erred in calculating the beneficiary's income-related monthly adjustment amount (IRMAA) for calendar year 2009. The ALJ concluded that the beneficiary had endured a life-changing event, as defined by statute and implementing regulations, and was thus entitled to a calculation of any potential IRMAA based upon her tax year 2008 modified adjusted gross income (MAGI), rather than her 2007 MAGI.

The Council has carefully considered the record that was before the ALJ, as well as the SSA memorandum, dated September 11, 2009, in which the SSA referred the ALJ decision to the Council for possible consideration. The SSA memorandum is hereby entered into the record in this case as Exh. MAC-1.

For the reasons stated below, the Council reverses the ALJ decision and finds that the beneficiary's IRMAA was properly calculated based on her 2007 tax returns.

BACKGROUND AND PROCEDURAL HISTORY

This case involves the extent to which, if any, the beneficiary should be required to pay an IRMAA for calendar year 2009 in addition to her standard Medicare premium for that year. By letter dated November 26, 2008, the SSA advised the beneficiary that her Medicare Part B premium for calendar year 2009 would include an IRMAA of \$96.30 per month.¹

This calculation was based on the following factors:

- The beneficiary's 2007 income tax return showed that her modified adjusted gross income (MAGI) for 2007 was \$137,844.
- The beneficiary's 2007 tax filing status was "single."

The SSA letter also included a chart which showed that in 2009 an IRMAA of \$96.30 per month would be assessed to individuals with a filing status of single, whose MAGI was from \$107,000.01 to \$160,000.00. The letter clarified that this premium amount would be in effect for calendar year 2009 only, as the Medicare Part B premium would be recalculated for 2010 based on later (2008) tax returns. Exh. 1 at 15.

The beneficiary appealed the November 26, 2008, determination. On June 30, 2009, the ALJ conducted a telephone hearing in which the beneficiary participated. Before the ALJ, the beneficiary did not dispute the amount of the MAGI calculated from her 2007 tax return or the related IRMAA. Dec. at 7. However, the beneficiary argued that a different tax year should be used to calculate the premium increase, if any, due to a decrease in income from a dividend reduction of \$2.65 to \$0.01 per share for her insured pension. *Id.*

The ALJ found, without further elaboration, that the beneficiary experienced a loss of income-producing property due to "a reduction in or loss of income from an insured pension plan due to termination or reorganization of the pension plan or a scheduled cessation of pension," within the meaning of 20 C.F.R. 418.1205(f). Thus, the ALJ concluded, a tax year other than 2007 should be used to determine the appellant/beneficiary's

¹ The Council notes that the ALJ inadvertently referred to the incorrect monthly amount (\$154.10) on page 7 of his decision. The correct amount is \$96.30 per month.

MAGI for purposes of determining her increase, if any, in payment toward the monthly Medicare premium pursuant to the regulations.

The case was referred to the Medicare Appeals Council by the SSA, Southeastern Program Service Center (SEPSC) for possible own motion review.

LAW AND REGULATIONS

Section 811 of the Medicare Prescription Drug Improvement and Modernization Act (MMA) (Pub. L. 108-173) established a Medicare Part B premium subsidy reduction, effective January 1, 2007. Under this program, an income-related monthly adjustment amount (IRMAA) is added to a beneficiary's standard monthly Medicare Part B premium, depending on the MAGI as reported on a federal income tax return from two years prior to the IRMAA year. The statute defined the initial income levels for 2007 and the formula to be used by SSA for determining the IRMAA.

The SSA will consider using the MAGI reported in a more recent tax year if: (1) the beneficiary experiences a "major life-changing event" and (2) that event results in a significant reduction in the MAGI for the tax year requested. The beneficiary must provide evidence that both requirements are met. 20 C.F.R. § 418.1201. The regulations at 20 C.F.R. § 418.1205 define a "major life-changing event," as:

- (a) Your spouse dies;
- (b) You marry;
- (c) Your marriage ends through divorce or annulment;
- (d) You or your spouse stop working or reduce the hours of your work;
- (e) You or your spouse experience a reduction in your income due to a loss of income-producing property, provided that the loss is not at your direction (e.g., due to the sale or transfer of the property). Examples of the type of property loss include, but are not limited to, loss of income from real property with a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, or loss of income from real property due to arson;
- (f) You or your spouse experience a reduction in or loss of income from an insured pension plan due

to termination or reorganization of the pension plan or a scheduled cessation of pension.

20 C.F.R. § 418.1205.

The regulations further provide that "we will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered major life-changing events for the purposes of this subpart, such as... (b)[e]vents that result in the loss of dividend income." 20 C.F.R. § 418.1210.

DISCUSSION

In her testimony before the ALJ, the beneficiary stated that Bank of America, her former employer, recently acquired Merrill Lynch and Countrywide Financial and reduced the amount of its 401(k) payout from \$2.65 per share to \$0.01 per share. The enrollee testified that she owned 7,568 shares, and that her income from this source dropped from \$22,662 in 2007 to about \$200 in 2009. In her request for hearing before the ALJ, the beneficiary argued that she was unaware that an IRMAA would be applied in 2009, and that she was living on limited resources.

In its referral memorandum, the SSA maintains that the ALJ erred in his application of section 1839(i)(4)(C)(ii) of the Social Security Act and the regulations at 20 C.F.R. § 418.1205. The SSA notes that, in relevant part, section 418.1205 specifies that a major life-changing event includes a situation where:

- (f) You or your spouse experience a reduction in or loss of income from an insured pension plan due to termination or reorganization of the pension plan or a scheduled cessation of pension.

SSA suggested that it was not clear whether the beneficiary's 401(k) plan managed by Bank of America, her former employer, could be considered a "pension plan" within the meaning of this regulatory exception. However, SSA argued, even if the 401(k) plan so qualified, there was no evidence that there had been a reorganization of the plan, nor was there any evidence of a termination of the plan or a scheduled cessation of benefits.

The Council finds that the ALJ erred in concluding that the beneficiary experienced a "major life-changing event" within the meaning of the regulations. First, it is not clear whether a

401(k) plan, in which a beneficiary may contribute tax-deferred wages with some additional contribution from an employer, is a pension plan within the meaning of section 418.1205(f). The terms "pension" or "pension plan" are not defined in 20 C.F.R. Part 418 for purposes of the regulation. However, even if the Council were to assume that a 401(k) plan is a covered pension plan within the meaning of the IRMAA regulations, it is not clear that the plan was terminated or reorganized, or that there was a scheduled cessation in benefits. Thus, there is no evidence that the beneficiary would qualify for use of a later tax year's return under the exception of section 418.1205(f).

At the hearing, the ALJ asked the beneficiary to obtain a statement from Bank of America documenting the extent of the reduction in the payout and explaining the nature of the change which occurred in or around 2007 or 2008. The beneficiary submitted a chart entitled "Dividend History" received from Bank of America, Investor Relations. Exh. 2. That chart indicates that Bank of America made regular cash payouts totaling \$2.40 per share in 2007 and \$2.24 in 2008.² However, there is no documentation of any reorganization, termination, or cessation of the 401(k) plan. Moreover, the slight decline from 2007 to 2008 of \$0.16 per share would not result in a sufficiently significant decline in income in order to place the beneficiary in a lower income category for IRMAA purposes based on her 2008 tax return.³

Finally, the document which was produced from Bank of America is entitled "Dividend History." The regulations are clear that events that result in a decrease in dividend income do not qualify as a major life-changing event for purposes of using a more recent year's tax return for IRMAA calculations.

The beneficiary therefore has not shown that she experienced any loss of income due to a "major life-changing event." Accordingly, the beneficiary may not use her MAGI from tax year 2008 in calculation of a 2009 IRMAA.

² In 2009, the payouts dropped to \$0.01 per share, as the beneficiary referenced in the hearing.

³ While the beneficiary testified that there was a significant decrease in her income from 2007 to 2008, the majority of the decrease appears to have been the result of a home she inherited, repaired, and sold in 2007. Inheritances and voluntary sales of property do not qualify as life-changing events under the statute or regulations for purposes of using a more recent tax year for IRMAA calculations.

DECISION

It is the decision of the Medicare Appeals Council that the appellant did not experience a "major life-changing event" within the meaning of the IRMAA statute and implementing regulations. Thus, the beneficiary may not use a more recent tax year's return for calculation of her Medicare Part B IRMAA amount for calendar year 2009. Based on the IRMAA schedule for 2009 and the appellants' 2007 income, the SSA correctly calculated that the appellant must pay a \$296.30 monthly IRMAA for calendar year 2009.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

/s/ Susan S. Yim
Administrative Appeals Judge

Date: October 28, 2009