

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DEPARTMENTAL APPEALS BOARD

**DECISION OF MEDICARE APPEALS COUNCIL**

**In the case of**

E.P. and L.P.  
\_\_\_\_\_  
(Appellants)

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\_\_\_\_\_  
(Beneficiaries)

Social Security  
Administration SE Program  
Service Center  
\_\_\_\_\_  
(Contractor)

**Claim for**

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

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\_\_\_\_\_  
(HIC Numbers)

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\_\_\_\_\_  
(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, by reference of 42 C.F.R. § 405.801(c) and 20 C.F.R. § 418.1350. The ALJ found that the beneficiaries experienced a major life-changing event, as defined in 20 C.F.R. § 418.1205, and were not required to pay an income-related monthly adjustment amount (IRMAA) for calendar year 2009.

The Council has carefully considered the record that was before the ALJ, as well as the memorandum from the Social Security Administration (SSA) dated September 10, 2009. The Council enters SSA's memorandum into the record as Exhibit (Exh.) MAC-1.

**BACKGROUND**

This case involves whether the beneficiaries should be required to pay an IRMAA for calendar year 2009 in addition to their standard Medicare premium for that year. By letter dated November 26, 2008, the SSA advised E.P. that his Medicare Part B

premium for calendar year 2009 would include an IRMAA of \$96.30 per month. Exh. 1 at 11. This calculation was based on the following factors:

- The beneficiary's 2007 income tax return showed that his modified adjusted gross income (MAGI) for 2007 was \$215,616.00.
- The beneficiary had filed his 2007 income tax return as married, filing jointly.

*Id.* at 10.

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 married, filing jointly, whose MAGI was between \$214,000.01 and \$320,000.00. 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) income tax returns. *Id.*

E.P. appealed SSA's initial determination and SSA upheld its initial determination on May 13, 2009, finding that he experienced an event that increased his income in 2007 that did not qualify as a major life-changing event. *Id.* at 17. E.P. then requested a hearing with an ALJ. E.P. claimed that income increased in 2007 due to a one-time sale of property, and that the sale of the income-producing property was done through an agreement with the shareholders and the sale of the land grant. *Id.* at 19.

The ALJ held a hearing on this matter on August 6, 2009, and issued a decision on August 11, 2009. The ALJ added L.P. as a party to the hearing because she had received a similar letter from the SSA imposing an IRMAA. The ALJ held that the beneficiaries "experienced a loss of income-producing property." The ALJ held that the forced sale of the beneficiaries' interests due to action by the majority shareholders was a qualifying major life-changing event, and thus the beneficiaries' 2008 income tax return could be used to determine the appellants' MAGI for 2009. Dec. at 7-8.

In response to the ALJ's decision, the SSA referred the case to the Council for its review. In its referral memorandum, the SSA asserted that the ALJ lacked the authority to modify or expand the definition of "life-changing events" articulated in 20 C.F.R. § 418.1205. Exh. MAC-1 at 2. The SSA argues that as

land grant owners and shareholders, L.P. and her sisters had an opportunity to vote upon the sale of their income-producing property and thus the sale was within L.P.'s control. *Id.* Thus, the SSA claims that the ALJ erred in finding that the SSA should use the appellant's 2008 taxable information in lieu of the 2007 taxable information in calculating the appellant's MAGI for 2009. *Id.*

On October 6, 2009, the Council issued a proposed decision in which it concurred with the SSA in finding that 2007 was the appropriate tax year for the appellants' 2009 MAGI. See "Notice of Own Motion and Proposed Decision of [the Council]" at 5, October 6, 2009. The appellants were advised that they had 20 calendar days in which to respond to the proposed decision. *Id.* The appellants responded by correspondence dated October 22, 2009, with additional evidence corroborating their claim that they were subject to fraud. Further, the appellants argue that the

focus of the Appeals Council should be on the entire C.F.R. § 418.1205 regulation, not only the "income producing" portion.... We believe the spirit of the regulation is to protect us from hardship due to circumstances beyond our control, which we certainly experienced. Therefore we ask that our tax year of 2007 be used to determine our Medicare premium for 2008 (sic).<sup>1</sup>

See appellants' correspondence dated October 22, 2009.

### **DISCUSSION**

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 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 the SSA for determining the IRMAA.

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<sup>1</sup> The Council notes that although the appellants state 2008 is the calendar year at issue, the record indicates that calendar year 2009 is the subject of this appeal.

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.

Emphasis added.

The regulations further provide that events other than those described in § 418.1205 will not be considered to be major life changing events. 20 C.F.R. § 418.1210.

In its referral dated September 10, 2009, 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. Exh. MAC-1 at 2. SSA noted that "a loss due to donation, gift, **sale** or transfer of income-producing property is not considered a loss beyond the beneficiary's control and does not qualify for a new initial determination using a more recent tax year." Emphasis in original. Exh. MAC-2 at 2, citing SSA's Program Operations Manual System (POMS), Part 6-Health Insurance (HI), Section 01120.035.

As noted above, the regulations provide that "a reduction in income due to a loss of income-producing property" may be considered a "major life-changing event" under the meaning of the IRMAA regulations. However, in this case, the Council finds that the ALJ erred in concluding that the sale of the land grant property and shares in 2007 qualifies as a major life-changing event pursuant to 20 C.F.R. § 418.1205, without regard to whether it was by forced sale outside of the beneficiaries' control or within their control as voting shareholders. The record indicates that the beneficiaries *experienced an increase in income due to the sale of income producing property in 2007.*<sup>2</sup> Reference Hearing CD at 10:53:54-10:54:57. They did not experience a *reduction in income due to a loss of income-producing property in 2007*, as required by the regulations for a major life-changing event. Moreover, the ALJ incorrectly framed the appropriate legal test as whether they "experienced a loss of income-producing property," rather than as whether they experienced "a reduction in income due to a loss of income-producing property."

In addition, during the hearing the beneficiaries' representative, their daughter \*\*\*, stated that in previous years, the beneficiaries received checks ranging from \$704 to \$880 as dividends from the common stock ownership of the land. Reference Hearing CD at 10:56:01-10:56:22. The beneficiaries submitted Forms 1099 Div for years 2000, 2002, 2003, 2004 and 2005 to support this statement. Exh. 2. Events that result in a loss of dividend income are never considered major life changing events. 20 C.F.R. § 418.1210(b).

Neither the ALJ nor the Council has authority to consider any events other than those listed in 20 C.F.R. § 418.1205 as a "major life-changing event." 20 C.F.R. § 418.1210. The beneficiaries have not reported any other changes to their status which would qualify as a major life-changing event.

#### **DECISION**

For the reasons enumerated above, it is the decision of the Medicare Appeals Council that the appellants' 2009 IRMAA should be calculated based on the appellant's 2007 income tax return, because they did not experience a major life-changing event within the meaning of 20 C.F.R. § 418.1205.

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<sup>2</sup> We note that the ALJ never asked the beneficiaries to submit satisfactory evidence concerning the sale of the shares or land grant, as is required by 20 C.F.R. §§ 418.1250-1265.

Neither the ALJ nor the Council has the authority to modify what the statute directs that the Social Security Administration use to determine the amount of the beneficiary's income in a given year for calculating the IRMAA. Accordingly, the ALJ's August 11, 2009, decision is reversed.

MEDICARE APPEALS COUNCIL

/s/ Clausen J. Krzywicki  
Administrative Appeals Judge

/s/ M. Susan Wiley  
Administrative Appeals Judge

Date: October 30, 2009