

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of

Claim for

D.B.

(Appellant)

Supplementary Medical
Insurance Benefits (Part B)

(Beneficiary)

(HIC Number)

Social Security
Administration

(Contractor)

(ALJ Appeal Number)

The Medicare Appeals Council has carefully considered the request for review of the Administrative Law Judge's (ALJ's) decision dated September 1, 2009. The ALJ's decision found that the entitlement to Medicare Part B correctly began in July 2009. In reaching this conclusion, the ALJ noted that there was not sufficient evidence of government error, misrepresentation or inaction to change the entitlement date. The appellant has asked the Medicare Appeals Council to review this action. The appellant's request for review, and attachments, has been entered into the record as Exhibit (Exh.) MAC-1.

The regulations provide that the Medicare Appeals Council will grant a request for review where: (1) there appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the ALJ's action, findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. The regulations also provide that if new and material evidence is submitted with the request for review, the entire record will be evaluated and review will be granted where the Council finds that the ALJ's action, findings or conclusion is contrary to the weight of the evidence currently of record. See 20 C.F.R. § 404.970, incorporated by reference in 42 C.F.R. § 405.724.

The Medicare Appeals Council has reviewed the record and considered the appellant's contentions received in connection with the request for review. The Council finds no basis for granting review and changing the ALJ's decision.

LEGAL AUTHORITY

Section 1836 of the Social Security Act (Act) provides that every individual entitled to Medicare Part A or who has reached the age of 65 and is either a U.S. citizen or a lawful resident alien is "eligible to enroll" in Medicare Part B. Section 1836 of the Act; Social Security Administration (SSA) Programs Operations Manuals System (POMS) HI § 805.005.A.2.;¹ Centers for Medicare and Medicaid Services (CMS) General Information, Eligibility and Entitlement Manual (GIEEM)(Pub. 100-01) Ch. 2, §40. The Social Security Administration (SSA) "makes initial Part A and Part B entitlement determinations and initial determinations on applications for entitlement" pursuant to agreement between the Department of Health and Human Services (HHS) and SSA. Medicare Claims Processing Manual (MCPM)(Pub. 100-04) Ch. 29, § 200.A.² A beneficiary may request that SSA reconsider an unfavorable initial determination on entitlement and may appeal an SSA reconsideration to HHS for an ALJ hearing. *Id.* ALJ decisions can then be appealed to the Medicare Appeals Council of the HHS Departmental Appeals Board. *Id.*

In pertinent part, a qualifying individual is first eligible to enroll in Medicare Part B during an "initial enrollment period" (IEP) that begins on the first day of the third month before the month when that individual first becomes entitled to Medicare Part A hospital insurance and ends seven months later. Section 1837(d) of the Act; 42 C.F.R. § 1395p(d). Should an individual fail to enroll during the IEP, he or she must then wait for the next "general enrollment period" (GEP), which begins on January 1st and ends on March 31st of each calendar year. Section 1837(e) of the Act; 42 C.F.R. § 1395p(e). An individual who enrolls in Medicare Part B during a GEP is subject to a 10% increase in monthly premiums for each 12-month period when the individual

¹ The SSA POMS can be located through the link to "Programs Operation Manual System" found in the "Employee Operating Instructions" section of the SSA website at <http://www.ssa.gov/regulations/>. While neither the Council nor the ALJ are bound by the POMS, these provisions would have been applicable to SSA personnel who handled eligibility and enrollment determinations for the appellant.

² Manuals issued by CMS can be found at <http://www.cms.hhs.gov/manuals>.

could have been, but was not enrolled. Section 1839(b) of the Act; 42 C.F.R. § U.S.C. 1395r(b).

The Act allows for a special enrollment period (SEP) for individuals and their spouses "covered under an employer group health plan [GHP] by reason of either the individual's or their spouse's current employment status," which is not subject to a premium surcharge for late enrollment. Section 1837(i) of the Act; 42 C.F.R. § 1395p(i). An individual may enroll in Medicare Part B when covered by a GHP by reason of current employment or during the eight month period after the individual is no longer so enrolled. Section 1837(i)(3)(A) of the Act.

If an individual's enrollment or non-enrollment in Part B is unintentional, inadvertent, or erroneous due to the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government or its instrumentalities, the SSA or Medicare may take such action as necessary to provide appropriate relief. Section 1837(h) of the Act; 42 C.F.R. § 1395p(h), and 42 C.F.R. § 407.32.

BACKGROUND

On September 17, 2008, the appellant applied for Medicare coverage at her local SSA office. Exh. 2 at 4. During the application process, the appellant informed the SSA that she was employed and had health care coverage under her husband's insurance. The appellant contends that she was told that she should only apply for Medicare Part A and "there was no need to get [Medicare] part B as this was covered by [her] . . . group health plan . . . and part B would begin at another time." Exh. 8 at 22; see also Exh. 9 (Application Summary for Hospital Insurance Only) at 24. The application signed by the appellant specifically states: "I am not filing for Part B of Medicare because my spouse is still working and I am covered under his employer's group health plan." Exh. 9 at 24. On October 5, 2008, the SSA notified the appellant that she was entitled "to medicare hospital insurance [Medicare Part A] beginning August 2008." Exh. 4 at 9.

The appellant then applied on or around December 15, 2008, for Medicare Part B. Exh. 10. An employee of the SSA district office completed a report of contact with the appellant on December 17, 2008. Exh. 5 at 18. The appellant indicated that she was self-employed, covered by her spouse's group health plan (GHP) through his retirement, and was "fine" with entitlement to

Medicare beginning in July 2009, based on deemed enrollment during the GEP.

Subsequent to her Medicare applications, the appellant incurred medical bills which she presented to Group Health Insurance (GHI) the carrier providing coverage through her husband. GHI refused to cover the appellant's claims indicating that they should be paid by Medicare Part B. After unsuccessful attempts to obtain coverage from GHI, the appellant requested reconsideration of the SSA entitlement determination in order to obtain Medicare Part B coverage beginning in August 2008, concurrent with her Medicare Part A coverage. Exh. 3 at 8; Exh. 8 at 22-23. The appellant asserted that there was a misunderstanding.

On April 23, 2009, The SSA denied the appellant's request finding that:

On the initial application you indicated that you were not filing for Medicare Part B because your spouse was still working, and that you had coverage under his employer's group health plan. You noted at that time that you could wait until a general enrollment period (January - March each year) and coverage would be effective July of that year.

You subsequently filed an application for cash benefits on December 15, 2008. Coverage under your husband's group health plan was discussed. You were told that you did not meet the requirements under the Special Enrollment Provisions for Medicare Part B coverage. You were told that your coverage would be effective July 2009. On December 17, 2008 you indicated that you were fine with that determination. Coverage for Medicare Part B was established for July 2009.

Your husband's group health coverage did not provide you protection under the Special Enrollment Provisions since he retired in 2001.

* * *

An interview was conducted with [the] representative who handled your initial claim to see if you were given any

misinformation concerning your situation involving Medicare. No information was found that any misinformation was given.

Exh. 2 at 4-5.

The appellant requested a hearing before an ALJ. The ALJ conducted a hearing, by telephone on August 13, 2009, during which both the appellant and her husband testified. Dec. at 1. Before the ALJ, the appellant contended that she was misinformed "regarding Part B and how it pertained to the private insurance held by her husband." *Id.* at 6. After consideration of the record, including the hearing testimony, the ALJ concluded that SSA was correct in establishing July 2009 as the appellant's initial month of entitlement to Medicare Part B. The ALJ reasoned that "it appears the Appellant was unsure about the ramifications of the employment situation of her husband. The appellant contends she was give bad information. . . . The record does not contain sufficient evidence of an error, misrepresentation or bad information." *Id.* at 6-7.

In her request for review, the appellant contends that the ALJ ignored her request for reconsideration "of a decision which I am told I made to reject Medicare B. There were inaccuracies which I faxed to him . . . re my husband's actual date of retirement and also an original decision to accept Medicare B." Exh. MAC-1.

DISCUSSION

The Council has reviewed the record before the ALJ, including the appellant's post-hearing submissions to the ALJ (in the record as Exhibit 10) and the audio CD of the ALJ hearing.

The Council finds nothing in the record before the ALJ or the appellant's arguments to the Council supporting her contention that she was somehow misinformed by SSA, regarding the availability of Medicare Part B. Rather, the record contains several documents noting the appellant's decision not to enroll in Part B due to her coverage under her husband's group health plan, GHI. *See, e.g.,* Exh. 5 at 11, 17-18.

Both the appellant and her husband testified that they did not consult with GHI prior to her application for Medicare, but only after GHI refused to fully cover the appellant's medical bills

incurred after her enrollment in Medicare Part A effective age 65.³ The appellant's husband indicated that they did not see the

³ The timing of these bills was not specified in the record, but the hearing testimony indicates that they began to arrive after mid-December 2008. See ALJ Hearing CD.

need as he apparently had been receiving Medicare Part B from the start of his eligibility for Medicare, some years prior to the appellant's eligibility. ALJ Hearing CD.

The ALJ did not err in finding that no relief is available for the appellant. There is no evidence of pertinent error, misrepresentation, or inaction from the SSA in the course the appellant's Medicare applications.⁴ Rather, from the testimony of both the appellant and her husband, it appears that she did not understand the impact of the availability of Medicare Part B on her prior health insurance coverage under her spouse's GHI plan, and also gave incorrect information to the SSA.

The Council therefore denies the request for review.

MEDICARE APPEALS COUNCIL

/s/ Clausen J. Krzywicki
Administrative Appeals Judge

Date: December 15, 2009

⁴ Throughout the course of her appeal, the appellant referenced language in the April 23, 2009, SSA reconsideration decision alleging that the appellant stated she was not seeking Medicare Part B because her husband was still working. The appellant asserted that she did not claim her husband was working but rather had been retired for sometime. The appellant's concern is misguided. As the ALJ noted, the fact of her husband's employment or retirement is not determinative; rather it is the question of whether she informed the SSA that she was covered under her husband's medical insurance plan. See ALJ Hearing CD.