

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DEPARTMENTAL APPEALS BOARD

**DECISION OF MEDICARE APPEALS COUNCIL**

**In the case of**

**Claim for**

R.F.

\_\_\_\_\_  
(Appellant)

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

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\_\_\_\_\_  
(Beneficiary)

\*\*\*\*

\_\_\_\_\_  
(HIC Number)

SSA Southeast Program Service  
Center (SEPSC)

\_\_\_\_\_  
(Contractor)

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\_\_\_\_\_  
(ALJ Appeal Number)

The Medicare Appeals Council has carefully considered the appellant's request for review of the Administrative Law Judge (ALJ) decision dated July 22, 2009. The ALJ decided that the appellant must pay the additional monthly Medicare Part B premium or "income-related monthly adjustment amount" (IRMAA) of \$211.90 (per month) assessed by the Social Security Administration (SSA) for 2009. The ALJ found that the SSA's calculation of the appellant's IRMAA was correct based on the reported modified adjusted gross income (MAGI) on the appellant's 2007 tax return. Further, the ALJ determined that the appellant's reported capital losses in his financial investments did not constitute a "major life-changing event" as specified in the SSA regulations to justify using a more recent tax year to calculate his IRMAA.

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. § 404.1350 and 20 C.F.R. § 404.970, by reference of 42 C.F.R. § 405.801(c).

The Medicare Appeals Council has considered the contentions submitted in the request for review. The appellant's contentions are: (1) that he had not been informed that his gambling winnings would be counted and not offset by his gambling losses in computing his IRMAA; (2) that he lost income from his investments when the stock market dropped substantially in value; and (3) that the November 26, 2008 letter the Social Security Administration sent to him, explaining the IRMAA provisions, also said that if the appellant was of full retirement age or older "he could keep all his benefits, no matter how much he earned." *Id.*; see Exh. 1 at 1-6. However, for the reasons explained below, the Council has concluded that there is no basis under the law and regulations for granting the appellant's request for review.

#### APPLICABLE LAW

##### *Tax Law Treatment of Gambling Winnings and Losses*

Gambling winnings are fully taxable as income, and must be reported on IRS Form 1040. See IRS Publication 525, *Taxable and Nontaxable Income*, at 33.<sup>1</sup> The fact that gambling winnings must be reported on Line 21 means they are included in adjusted gross income, and in modified adjusted gross income (MAGI) as defined in the MMA.

Gambling losses can be deducted from gambling winnings, according to the IRS laws, but only on a separate schedule for itemizing deductions (Schedule A), and only up to the amount of gambling winnings in the same year. See Publication 525, at 33; and IRS Tax Topics, No. 419 - *Gambling Income and Losses*.<sup>2</sup> Gambling losses cannot be deducted in calculating adjusted gross

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<sup>1</sup> This publication is available online at:  
<http://www.irs.ustreas.gov/pub/irs-pdf/p525.pdf>.

<sup>2</sup> IRS Tax Topic No. 419 is available online at  
<http://www.irs.gov/taxtopics/tc419/html>

income. See 26 U.S. Code § 62 (listing the items and expenses that can be deducted from income in calculating adjusted gross income). This means that when the modified adjusted gross income is calculated, based on the amount on Line 37 of the Form 1040 Return, gambling losses are not subtracted. They are only subtracted at Line 40 on the individual's tax return, and therefore they reduce the individual's income for purposes of computing federal taxes, but not for purposes of calculating the amount of the IRMAA for Medicare Part B.

#### ANALYSIS

The record supports the ALJ's conclusion that the appellant's IRMAA was correctly computed. Moreover, the Council does not agree with the appellant's assertion that the SSA should have provided him with more information about the tax treatment of gambling winnings and losses, as SSA does not have jurisdiction over the creation or interpretation of tax policy. Moreover, the appellant reports that his accountant told him that gambling earnings are included in adjusted gross income. See Request for Review. The information that gambling losses are not offset against gambling winnings in computing adjusted gross income, but instead gambling losses are listed separately on Schedule A as itemized deductions, is also widely available to the public, in the IRS publications cited above, and on the Form 1040 and Schedule A and instructions for filling them out. See, e.g., Form 1040 Instructions at 28, and Instructions for Schedules A & B (1040) at A-10.

In addition, as the ALJ found, there is no legal basis for the appellant's assertion that the capital losses reported on his 2008 tax return and related to the sale of financial investments constitute a "major life-changing event" for the purpose of using a more recent tax year to compute his IRMAA. See 20 C.F.R. § 418.1205; 71 Fed. Reg. at 62929-62930 (Oct. 27, 2006).

Finally, the appellant appears to have misinterpreted the Social Security Administration's November 26, 2009 letter, which says on page five that if the appellant was of full retirement age or older "[he] could keep all [his] benefits, no matter how much [he] earned." Exh. 1 at 5. The appellant apparently interprets this to mean that if he were of full retirement age or older he would not have to pay any IRMAA amounts, regardless of his modified adjusted gross income. However, the part of the letter he refers to does not discuss IRMAA. Rather, it explains what

would happen if the beneficiary were receiving both wages from employment and Social Security benefits.

DECISION

Therefore, the Council has concluded that there is no basis under the law and regulations for granting the appellant's request for review. Accordingly, the request for review is denied, and the ALJ's July 22, 2009 decision stands as the final decision of the Secretary.

MEDICARE APPEALS COUNCIL

/s/ M. Susan Wiley  
Administrative Appeals Judge

Date: October 8, 2009