

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

**ACTION OF MEDICARE APPEALS COUNCIL
ON REQUEST FOR REVIEW**

In the case of

Claim for

J.J.K.

(Appellant)

Entitlement to Hospital
Insurance Benefits
(Medicare Part A)

(Beneficiary)

(HIC Number)

Social Security
Administration (SSA)

(Agency)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision on July 15, 2009. The ALJ found that the appellant was not entitled to withdraw from Medicare Part A hospital insurance (HI) benefits. The appellant has asked the Medicare Appeals Council (Council) to review this action.

The regulations provide that the 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 Council has considered the appellant's request for review, which consists of Form DAB-101 accompanied by a memorandum in support of the request. We decline review of the appellant's request.

DISCUSSION

The appellant, a retired engineer, applied for Social Security retirement benefits in February 2005, shortly after his 65th birthday. Exh. 1 at 3-4. However, he did not wish to enroll in Medicare HI benefits when he applied for Social Security benefits; he wanted only to receive the retirement benefits, but was not permitted to opt out of HI.

The appellant wishes to continue receiving the monthly Social Security benefits to which he is entitled, but seeks to withdraw or disenroll from HI. He challenges the validity of certain SSA Program Operations Manual System (POMS) provisions that effectively preclude an individual entitled to receive monthly benefits from opting out of enrollment in HI, or, once enrolled, to disenroll from HI but continue receiving the monthly benefits.¹ When the appellant filed for retirement benefits in

¹ In relevant part, the specific POMS provisions at issue are:

HI 00801.002, Waiver of HI Entitlement by Monthly Beneficiary

A. Introduction

Some individuals entitled to monthly benefits have asked to waive their HI entitlement because of religious or philosophical reasons or because they prefer other health insurance.

B. Policy

Individuals entitled to monthly benefits which confer eligibility for HI may **not** waive HI entitlement. The only way to avoid HI entitlement is through withdrawal of the monthly benefit application. Withdrawal requires repayment of all RSDI and HI benefit payments made.

HI 00801.034, Withdrawal Considerations

A. Policy

To withdraw from the HI program, an individual must submit written request for withdrawal and must refund any HI benefits paid on his/her behalf . . .

. An individual who filed an application for both monthly benefits and HI may:

- withdraw the claim for monthly benefits without jeopardizing HI entitlement; **or**
- withdraw the claim for **both** monthly benefits and HI.

2005, the SSA informed him that retirement benefits were "awarded along with Medicare Part A" and that he "cannot waive entitlement to Medicare Part A" and be paid only the retirement benefits because "Part A entitlement is tied to monthly benefits." Exh. 1 at 3. On December 21, 2005, the SSA affirmed its initial determination that there is no authority to permit only a waiver of entitlement to Medicare. *Id.* at 4.

The appellant requested an ALJ hearing on the SSA's December 21, 2005, decision, by filing a request for hearing at his local SSA office in ***, ***, in February 2006. Exh. 2 at 1-2. An ALJ video-teleconference hearing was held more than three years thereafter, on June 18, 2009. During the ALJ hearing, the appellant testified that he did not want to enroll in Medicare, but the SSA did not permit him to opt out of Medicare and receive only his monthly retirement benefits. He further testified that neither he, nor his wife, ever received any item or service paid for by Medicare.

In his July 15, 2009, decision, the ALJ determined that, consistent with Section 226 of the Social Security Act and 42 C.F.R. § 406.10, the appellant remains "entitled to Part A benefits . . . as he has attained age 65 and is entitled to monthly Social Security benefits." He further concluded: "There is no provision in the regulations that allows a beneficiary to withdraw once entitled or to 'disenroll' from Medicare Part A. Accordingly, the regulations do not permit the relief sought by the appellant, and [the appellant's] request to 'disenroll' from Medicare Part A is denied." Dec. at 6.

Presently, the appellant and several other retirees are named plaintiffs in an action pending in the United States District Court for the District of Columbia. The plaintiffs challenge the validity of the POMS provisions on the bases that the POMS provisions at issue amount to agency policy not mandated by

The individual may not elect to withdraw only the HI claim.

GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved

The claimant can withdraw an application for:
 RSI [monthly retirement or survivors insurance] cash benefits only;
 RSI cash benefits and HI coverage . . . ; or
 Medicare [only] . . .

However, a claimant who is entitled to monthly RSI benefits cannot withdraw HI coverage only since entitlement to HI is based on entitlement to monthly RSI benefits . . .

statute or regulations and were not subjected to notice and comment rulemaking.

As the ALJ determined in his July 15, 2009, decision, the law and regulations currently in effect do not provide for the relief the appellant seeks.

There is no basis for granting the request for review. The request for review is denied.

MEDICARE APPEALS COUNCIL

/s/ Susan S. Yim
Administrative Appeals Judge

Date: October 9, 2009