

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Brittany Dyeing & Printing Corp.
Docket No. A-12-30
Decision No. ER3
April 13, 2012

DECISION

Brittany Dyeing & Printing Corp. (Plan Sponsor) appeals from an adverse reimbursement determination, issued on December 1, 2011, by the Centers for Medicare & Medicaid Services (CMS) under the Early Retiree Reinsurance Program (ERRP). Specifically, CMS determined that a plan participant listed on the Plan Sponsor's Early Retiree List Response File did not qualify as an early retiree during the plan year and, therefore, denied reimbursement for that participant.

For the reasons discussed below, I uphold CMS's adverse reimbursement determination.

Applicable Regulations and Guidance

Established by the Patient Protection and Affordable Care Act (Affordable Care Act), the ERRP provides reimbursement to participating employment-based plans for a portion of the cost of health benefits for early retirees. Affordable Care Act, Pub. L. No. 111-148, § 1102, 124 Stat. 143-145 (2010); *see also* 45 C.F.R. Part 149. In pertinent part, the ERRP regulations define an early retiree as:

[A] plan participant who is age 55 and older who is enrolled for health benefits in a certified employment-based plan, who is not eligible for coverage under title XVIII of the [Social Security] Act [the Medicare statute]. . . .

45 C.F.R. § 149.2. Relevant provisions of the Social Security Act (Act) state that individuals who are age 65 years or older are eligible for Medicare coverage. *See* Act § 226(a), 42 U.S.C. § 426(a) (2007), *incorporated by reference at* Act § 1811(1), 42 U.S.C. § 1395c(1). The Act further provides that individuals who have not attained the age of 65, but who are entitled to disability benefits under Social Security or Railroad Retirement for a specified period of time may also be entitled to Medicare. 42 U.S.C. § 426(b), *incorporated by reference at* Act § 1811(2), 42 U.S.C. § 1395c(2).

Case Background and Analysis

On December 8, 2011, the Plan Sponsor filed a timely appeal from CMS's adverse reimbursement determination as to the plan participant at issue. CMS determined that during the September 2010 – August 2011 plan year the plan participant at issue was Medicare-eligible and, therefore, did not satisfy the definition of "early retiree." Therefore, CMS denied the Plan Sponsor's reimbursement request.

The Plan Sponsor contends in its request for appeal that the plan participant at issue "has not reached the age of Medicare eligibility (65 years) and has informed [the Plan Sponsor] that he has not applied for Medicare or that he is eligible to apply." *See* Plan Sponsor's Request for Appeal at 1. In its Reply Brief, CMS concedes that the plan participant at issue did not attain the age of Medicare eligibility during the relevant plan year, but contends that the "individual may be eligible for Medicare based on having end-stage renal disease or on the individual's disability status." Reply Brief at 2.

In support of its argument, CMS submitted evidence from the Medicare Beneficiary Database (MBD). CMS uses the MBD to determine an individual's Medicare eligibility. *Id.* at 3. The evidence submitted from the MBD indicates that the plan participant became Medicare-eligible on March 1, 2005 and the enrollment reason is indicated as "disability – under age 65 entitlement." *Id.* at 22, 25.

I find that the evidence submitted by CMS demonstrates that the plan participant at issue was entitled to Medicare during the plan year. The MBD is CMS's system of records "that reflects individual Medicare and Medicaid health insurance coverage . . . [and is] CMS's singular, reliable and authoritative data source, from which all systems can retrieve current, standard, valid and timely data necessary for Medicare Program administration." 66 Fed. Reg. 63,392 (Dec. 6, 2011). Accordingly, I find that the evidence submitted from the MBD is accurate and authoritative. As previously stated, the evidence from the MBD indicates that the plan participant became eligible for Medicare, beginning on March 1, 2005, based on disability. Accordingly, I find that CMS did not err in its determination that the plan participant did not qualify as an early retiree.

Conclusion

Based on the foregoing, I uphold CMS's adverse reimbursement determination.

/s/
Constance B. Tobias
Chair, Departmental Appeals Board