

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

Penn-Harris-Madison School Corporation  
Docket No. A-12-12  
Decision No. ER2  
March 12, 2012

**DECISION**

Penn-Harris-Madison School Corporation (Plan Sponsor) appeals from an adverse reimbursement determination 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 for a portion of the relevant plan year and, therefore, denied reimbursement for that time period.

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. The Social Security Act explains that an individual who "has attained the age of 65," *inter alia*, is eligible for benefits under Part A. *See* The Social Security Act, § 226, 42 U.S.C. § 426 (2007), *incorporated by reference at* § 1811, 42 U.S.C. § 1395c. Finally, regulations state that "[a]n individual attains a given age on the first moment of the day preceding the anniversary of his birth corresponding to such age." 20 C.F.R. § 404.2(c)(4); *see also* 42 C.F.R. § 411.170(c)(1).

### **Case Background and Analysis**

On October 20, 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 2011 plan year, the plan participant became Medicare-eligible on November 1, 2011. Therefore, CMS denied the Plan Sponsor's reimbursement request for the time period from November 1, 2011 through November 30, 2011. The Plan Sponsor contends in its request for appeal that the plan participant did not become Medicare-eligible until her birthday, which was December 1, 2011.

I agree with CMS that the plan participant become Medicare-eligible on November 1, 2011. Both parties agree that the date of birth of the plan participant is December 1, 1946. However, for purposes of Medicare eligibility, the plan participant attained the age of 65 on November 30, 2011, the day before her birthday. *See* 20 C.F.R. § 404.2(c)(4). The regulations further provide that "[e]ntitlement begins with the first day of the first month in which the individual meets the requirements . . . ." 42 C.F.R. § 406.10(b)(1). In this case, because the plan participant attained the age of 65 on November 30, 2011, she was entitled to Medicare benefits beginning on November 1, 2011. Accordingly, CMS did not err in its determination that the plan participant did not qualify as an early retiree from November 1, 2011 through November 30, 2011.

### **Conclusion**

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

---

Constance B. Tobias  
Chair, Departmental Appeals Board