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Benefit Trends

HEALTH CARE REFORM – SPECIAL EDITION

Court Ruling on Medicare "Entitlement" has Ramifications for H.S.A. Eligibility and Perhaps also for Individual Mandate Under Affordable Care Act

LEGISLATIVE BRIEF

April 4, 2012

A recent court decision (Hall v Sebelius) by the Washington, D.C. court of Appeals has ramifications for H.S.A. eligibility and possibly for the individual mandate under the Affordable Care Act as well.

In this case, the three plaintiffs sought a legal declaration that the Government *cannot* pay Medicare Part A benefits on their behalf, because in order to receive additional benefits from their health coverage under the Federal Employees Health Benefit (FEHB) Program they had to show that they were not legally entitled to Medicare benefits. Both the District and Circuit courts held that the plaintiffs could NOT obtain such a declaration, because, as the Circuit court stated: "Citizens who receive Social Security benefits and are 65 or older are automatically entitled under federal law to Medicare part A benefits. To be sure, no one has to take the Medicare Part A benefits. But the benefits are available if you want them. There is no statutory avenue for those who are 65 or older and receiving Social Security benefits to disclaim their legal entitlement to Medicare part A benefits."

The three plaintiffs in this case were retired federal employees (one is former Republican House Majority Leader Dick Armey), and the named plaintiff had filed for and begun receiving his Social Security retirement benefits. They wanted to remain covered under their FEHB plan rather than enrolling in Medicare, but federal law (42 USC section 426(a)) provides that individuals who have attained age 65 and begin receiving Social Security retirement benefits are automatically entitled to hospital insurance under Medicare Part A. The lower court said applicable law allows plaintiffs to become un-entitled to Medicare Part A benefits only if they un-enrolled from Social Security retirement benefits and repaid all benefits they had received thus far. The court made an analogy to food stamps: an individual who is entitled to receive food stamps is not required to apply for them, but the individual is nonetheless entitled to them.

Ramifications for H.S.A. Eligibility

A Health Savings Account (H.S.A.) is the separate savings account to which an individual can contribute (or have contributions made on his or her behalf) if the individual is enrolled in an HDHP and:

- is not also enrolled in other non-HDHP coverage (with limited exceptions), and
- is not entitled to Medicare benefits (Part A, B, or D), and
- cannot be claimed as a dependent on someone else's tax return.

What does this mean for an employee who continues working after age 65 and enrolls in an HDHP offered by his/her employer? An individual is not entitled to Medicare Part A merely because he or she attains age 65. However, if the individual starts receiving Social Security retirement benefits, then he or she is *automatically* entitled to Medicare Part A and is no longer eligible for an H.S.A. contribution.

In the context of the H.S.A. eligibility issue, there are two circumstances under which older workers will not be entitled to Medicare benefits:

- If they have *not* filed for Social Security retirement benefits, they will not automatically be entitled to Medicare Part A.
- If they *have* filed for Social Security retirement benefits but are only age 62-64, they will not be entitled to Medicare Part A.

Possible Ramifications for the Affordable Care Act

One challenge to the constitutionality of the Individual mandate under the ACA is that Congress cannot require individuals to have or purchase health insurance. The Medicare Act, since its enactment in 1965, has mandated that individuals who have attained age 65 and who apply for and receive Social Security retirement benefits are *automatically* entitled to Medicare Part A (hospital) benefits. Although the Medicare Act does not require such individuals to *pay* for Part A benefits, it does mandate that they have Part A coverage; and they have, in effect, paid for it with the Hospital Insurance (HI) employment taxes that were withheld from their prior wages for at least 40 quarters.

Eligible → Entitled → Enrolled

Although the terms "eligible," "entitled" and "enrolled" might seem interchangeable in everyday parlance, for Social Security Act and Medicare purposes they have specific meanings. An individual is "eligible" for Social Security benefits if he or she is at least age 62 and has at least 40 quarters of coverage (i.e., contributions to Social Security over at least 10 years of a work life). To become "entitled" to Social Security retirement benefits, an eligible individual must apply; however, there is no similar requirement to become" entitled" to Medicare Part A benefits. Instead, the Medicare Act provides that an individual is automatically entitled to Part A benefits if the individual is at least age 65 and applies for and begins receiving Social Security retirement benefits. In explanations of Medicare and Social Security benefits, the term "enrolled" is often used synonymously with "entitled," but as the Hall case clarifies, this is not correct. Plaintiffs here were automatically *entitled* to Medicare Part A even though they did not take action to affirmatively *enroll* in Part A.