



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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The Honorable Dave Loebsack  
Member, U.S. House of Representatives  
209 West 4<sup>th</sup> Street, Suite 104  
Davenport, IA 52801

Attention:

Dear Representative Loebsack:

I am responding to your inquiry dated February 15, 2017, on behalf of your constituent, . asked whether he must pay a fine to the Internal Revenue Service (IRS) because he established a health savings account (HSA) and received contributions from his employer when he was not eligible to participate in an HSA.

The answer is no. Although must withdraw the funds from his account and include them in his income, he doesn't have to pay a fine.

wrote that he retired from his job and enrolled in Medicare Parts A and B in September 2014. He explained that in February 2015, he returned to work for the same employer and enrolled in his employer's health plan and was provided with an HSA. After learning that his Medicare enrollment disqualified him from eligibility for an HSA, he wrote to Social Security to request cancellation of his Medicare enrollment. He wrote that he has never received a decision on his request.

Under Internal Revenue Code section 223, to be eligible for an HSA, an individual must:

- Be covered under a high-deductible health plan (HDHP) on the first day of the month

- Not be covered by any other health plan that is not an HDHP (with certain limited exceptions)
- Not be entitled to benefits under Medicare
- Not be claimed as a dependent on another person's tax return

"Entitled to benefits under Medicare" means enrolled in Medicare. Thus, if an individual is enrolled and receiving benefits from any part of Medicare, he or she cannot contribute to an HSA. \_\_\_\_\_ is correct that his Medicare enrollment disqualified him from establishing an HSA. He never had a valid HSA because he was never eligible to establish an HSA. Accordingly, he must withdraw the funds from his account and include them in his income. This withdrawal will not be subject to a fine, however.

The question of whether an employee enrolled in Medicare can withdraw from the program and thereby participate in an employer's HSA program is not within the jurisdiction of the IRS. This question should be directed to the Social Security Administration at 1-800-772-1213; ask for Form CMS-1763, Request for Termination of Premium Hospital and/or Supplemental Medical Insurance.

I hope this information is helpful. If you have more questions, please contact me at \_\_\_\_\_ or \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Denise Trujillo  
Chief, Health and Welfare Branch  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)