

Department of Health And Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Paul Harris, a/k/a Harish)	
Pratulchandra Patel,)	Date: September 25, 2007
)	
Petitioner,)	
)	Docket No. C-07-169
- v. -)	Decision No. CR1659
)	
The Inspector General.)	

DECISION

I sustain the decision of the Inspector General (I.G.) to exclude Petitioner, Paul Harris, a/k/a Harish Pratulchandra Patel, from participating in Medicare and other federally financed health care programs, including State Medicaid programs, for a minimum period of 15 years.

I. Background

On October 31, 2006 the I.G. notified Petitioner that he was being excluded from participating in Medicare and other federally financed health care programs for a period of at least 15 years. The I.G. told Petitioner that he was being excluded as a consequence of his conviction of a criminal offense, as is defined at section 1128(a)(1) of the Social Security Act (Act), and due to the presence of evidence relating to several aggravating factors. Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

I held a pre-hearing conference in the case and instructed the parties to file briefs and proposed exhibits addressing their respective arguments. The I.G. filed a brief along with nine proposed exhibits which he designated as I.G. Ex. 1 - I.G. Ex. 9. Petitioner did not file anything in response. I sent an order to show cause to Petitioner instructing him to explain his failure to file a response to the I.G.'s submission. Petitioner did not respond to the order to show cause.

Petitioner's failure to file a brief and exhibits and a response to my order to show cause would be a basis for me to dismiss his request for hearing. However, I am electing to decide the merits of this case in view of the extensive submission made by the I.G. In doing so I consider those arguments that Petitioner made in his hearing request. For purposes of establishing a record I receive into evidence I.G. Ex. 1 - I.G. Ex. 9.

II. Issues, findings of fact and conclusions of law

A. Issues

The issues in this case are whether:

1. The I.G. is required to exclude Petitioner; and
2. The minimum 15-year exclusion imposed by the I.G. is reasonable.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading. I discuss each Finding in detail.

1. The I.G. was required to exclude Petitioner because Petitioner was convicted of a criminal offense related to the delivery of items or services under the Texas Medicaid program, a State health care program.

Section 1128(a)(1) of the Act mandates the exclusion of any individual who is convicted of a criminal offense that is related to the delivery of an item or service under Medicare or a State health care program (a State Medicaid program). The unrebutted evidence offered by the I.G. proves that Petitioner was convicted of crimes that included fraud against the Texas Medicaid program (Medicaid). Consequently, the I.G. must exclude him.

On October 15, 2003 a superseding indictment was issued against Petitioner in the United States District Court for the Western District of Texas. I.G. Ex. 3. It charged that Petitioner, a physician, had devised a scheme and artifice to defraud Medicaid. *Id.* at 2-3. Specifically, it charged that Petitioner:

- Examined patients receiving Medicaid and entered or caused to be entered false records and notations in the patients' medical records which supported fraudulent medical claims filed with Medicaid;

- Purchased and caused his employees to purchase a contraceptive drug at discount prices in Mexico which was smuggled into the United States, administered by Petitioner to his Medicaid patients, and billed Medicaid for the drug as if it had been obtained at the full price;
- Purchased or caused to be purchased a compounded form of the contraceptive drug at a discount pharmacy in Arkansas and submitted claims to Medicaid for the drug as if it was the full cost, commercially manufactured version of the drug;
- Submitted false Medicaid claims for performing trans-vaginal sonograms/echography that Petitioner had not, in fact, performed;
- Billed Medicaid fraudulently for the full cost of performing certain examinations when, in fact, the examinations were not complete;
- Billed Medicaid fraudulently for office visits that were made to appear to be separate from the aforesaid examinations when, in fact, they were not separable for billing purposes;
- Prepared and caused to be prepared medical claims forms that he submitted to Medicaid which contained false and fraudulent statements; and
- Caused via his fraud approximately \$304,798 to be paid to him by Medicaid.

Id. at 4-5. These allegations were incorporated, along with other allegations, into Count 1 of the indictment, which charged Petitioner with engaging in conspiracy to defraud Medicaid. *Id.* at 7-9.

On August 3, 2004, Petitioner agreed to plead guilty to Count 1. I.G. Ex. 4. As part of his plea he agreed to pay restitution of \$304,798. On January 19, 2006, a judgment of guilty was entered against Petitioner in United States District Court. His sentence included 13 months' incarceration plus the requirement that he pay restitution as he agreed to in his plea agreement. I.G. Ex. 5.

Crimes consisting of filing, or conspiring to file, false and fraudulent reimbursement claims for medical services against a State health care program are obviously crimes that relate to a delivery of items or services under that program and fall within the mandatory exclusion language of section 1128(a)(1). Petitioner's plea and conviction in this case, in the absence of any contradictory evidence, establish plainly that Petitioner was convicted of such a crime.

2. The 15-year exclusion is reasonable.

Section 1128 is a remedial statute. Its purpose is not to impose punishment on an excluded individual beyond that which he or she receives as a sentence for his or her crime. Rather, its purpose is to protect federally financed programs such as Medicare and State Medicaid programs and the beneficiaries and recipients of program funds from someone who is demonstrably untrustworthy.

The Secretary of the United States Department of Health and Human Services published regulations establishing factors to be used in deciding whether an exclusion imposed pursuant to section 1128(a)(1) is reasonable. These factors, known as aggravating and mitigating factors, are published at 42 C.F.R. §§ 1001.102(b) and (c). The factors operate as rules of evidence for determining the reasonableness of an exclusion.¹ Only evidence which relates to an aggravating or a mitigating factor is relevant to deciding whether an exclusion is reasonable. And, like rules of evidence, although the factors establish what is and what is not relevant to deciding reasonableness, they do not mandate the weight that must be assigned to relevant evidence. The factors establish no formula for deciding the length of an exclusion.

In this case the I.G. offered persuasive and unrebutted evidence relating to four aggravating factors. Petitioner did not offer any evidence relating to mitigating factors. The I.G. proved the following:

- Petitioner's criminal activity caused Medicaid to suffer a financial loss in excess of \$5,000. 42 C.F.R. § 1001.102(b)(1). The evidence offered by the I.G. proved that Petitioner pled guilty to defrauding Medicaid of \$304,798.
- Petitioner perpetrated his crime over a period of more than a year. 42 C.F.R. § 1001.102(b)(2). Petitioner pled guilty to engaging in Medicaid fraud during a period that began on September 19, 1997 and which continued until July 25, 2000. I.G. Ex. 5, at 1.
- Petitioner was incarcerated for his crime. 42 C.F.R. § 1001.102(b)(5). Petitioner's sentence included a period of 13 months' imprisonment. *Id.* at 2.

¹ Any exclusion imposed pursuant to section 1128(a)(1) must be for a minimum of five years. Act, section 1128(c)(3)(B). Thus, the aggravating and mitigating factors relate only to evidence which may be used to adjudicate the reasonableness of an exclusion for a period of more than five years.

- Petitioner was subject to adverse administrative actions based on the same facts that are the basis for excluding him. 42 C.F.R. § 1001.102(b)(9). These actions include Petitioner's voluntary surrender of his license to practice Medicine in the States of Texas and New York on April 7 and August 17, 2006, respectively. I.G. Ex. 6; I.G. Ex. 7; I.G. Ex. 8.

In his hearing request Petitioner argues that the actual loss suffered by Medicaid from his actions was at most \$30,000 and possibly as low as \$10,000. He seems to say that he admitted defrauding Medicaid of more than \$304,000 only as a way of negotiating a plea. However, Petitioner offers no evidence to support this contention and, moreover, it is highly self-serving. I find it not to be credible. Petitioner also seems to assert that his crimes were more a consequence of problems at the hospital at which he practiced than any criminal intent on his part. This assertion is also self-serving and not supported by any evidence.

The evidence relating to aggravating factors offered by the I.G. shows that Petitioner engaged in serious and concerted crime against Medicaid for a period of about three years and that his crime defrauded Medicaid of a very substantial sum, more than \$300,000. What is evident from the charge to which Petitioner pleaded was that his criminal activity involved a great deal of planning and thought on Petitioner's part. His scheme was complex and it required Petitioner to enlist not only the support of others but to engage in relatively sophisticated transactions (as in importing drugs from Mexico and generating false medical treatment records). Such complexity and sophistication is the hallmark of untrustworthiness. Given that, the 15-year exclusion imposed by the I.G. is merited.

/s/
Steven T. Kessel
Administrative Law Judge