

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Isla Dorene Weber,)	Date: November 20, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-641
)	Decision No. CR1696
The Inspector General.)	

DECISION

Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded Petitioner, Isla Dorene Weber, from participation in Medicare, Medicaid, and all federal health care programs until she obtains a valid Florida nursing license. Petitioner appeals. I find that Petitioner's Florida nursing license was revoked for reasons bearing on her professional competence and performance, so the I.G. appropriately excluded her from program participation.

Discussion

In a letter dated May 31, 2007, the I.G. advised Petitioner that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because her license to provide health care as a practical nurse in the State of Florida had been revoked, suspended or otherwise lost or was surrendered while a formal disciplinary proceeding was pending before the Florida Board of Nursing (State Board) for reasons bearing on her professional competence, professional performance, or financial integrity. I.G. Ex. 1, at 1. Petitioner timely requested review and the matter has been assigned to me for resolution.

I held a telephone prehearing conference on August 30, 2007, during which Petitioner conceded that her state license has been revoked, but contested whether that revocation was related to her professional competence, professional performance, or financial integrity. Order and Schedule for Filing Briefs and Documentary Evidence (Order) at 1 (August 31, 2007). During that conference I noted that, based on the documentation and the representations of the parties, it appeared that the dispute here is legal, not factual, so the matter could be resolved based on the written record, without need for an in-person hearing. I directed the parties to include with their submissions a request for an in-person hearing if they believed that material facts are in dispute, and such testimony is necessary. Order at 2. Neither party has suggested that an in-person hearing is necessary.

The I.G. has submitted four exhibits (I.G. Exs. 1-4). Petitioner included with her submission a number of documents, none marked as exhibits. We have therefore marked her documents as P. Exs. 1-3. I admit into evidence I.G. Exs. 1-4 and P. Exs. 1-3.

1. Because the state licensing authority suspended Petitioner's nursing license for reasons bearing on her professional competence or performance, the I.G. may appropriately exclude her from participation in Medicare, Medicaid, and other federally funded health care programs.¹

The statute authorizes the Secretary to exclude from participation in any federal health care program an individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial integrity.” Act, § 1128(b)(4)(A). *See also* 42 C.F.R. § 1001.501.

The record establishes that, by order dated October 27, 2006, the State Board revoked Petitioner’s nursing license, based on charges that she abandoned her patients, and was non-compliant with the Intervention Project for Nurses. I.G. Ex. 3. According to the order “her continued practice of nursing represents a threat to the public health and safety.” *Id.* at 2.

Petitioner does not deny the State Board’s actions, but challenges the facts underlying the State Board’s conclusions. She also complains that she attempted to contest the license revocation, but was told that it was too late.

¹ My findings of fact and conclusions of law are set forth, in italics and bold, in the discussion captions of this opinion.

I am bound by the State Board's final determination. Where, as here, an exclusion is based on the existence of a determination made by another governmental agency, the basis for the underlying determination is not reviewable. 42 C.F.R. § 1001.2007(d); *Roy Cosby Stark*, DAB No. 1746 (2000). I am required to determine the reasons for the State Board's actions, but not whether its reasoning was valid. Here, the State Board unquestionably revoked Petitioner's nursing license because of her professional competence and performance. I must therefore sustain the exclusion.

2. The exclusion period may not be less than the period during which Petitioner's nursing license is revoked.

Neither I nor the I.G. have much discretion in determining the duration of an exclusion under section 1128(b)(4), since that duration is set by statute. For a person excluded under section 1128(b)(4), the statute requires that the period of exclusion "shall not be less than the period during which the individual's or entity's license. . .is. . .revoked." Act, section 1128(c)(3)(E). I therefore have no authority to change the length of the exclusion period. *Tracey Gates, R.N.*, DAB No. 1768, at 9 (2001).

Conclusion

For the above reasons, I conclude that the I.G. properly excluded Petitioner from participation in Medicare, Medicaid, and all other federal health care programs so long as her nursing license is revoked.

/s/

Carolyn Cozad Hughes
Administrative Law Judge