

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Lizabeth Dejesús Pérez,)	Date: December 19, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-493
)	Decision No. CR1715
The Inspector General.)	
_____)	

DECISION

I sustain the Inspector General’s (I.G.) determination to exclude Lizabeth Dejesús Pérez*, Petitioner, from participation in Medicare, Medicaid, and all federal health care programs for a five-year period pursuant to sections 1128(a)(1) and 1128(c)(3)(B) of the Social Security Act (Act).

I. Background

This case is before me pursuant to a request for hearing dated May 30, 2007, filed by Petitioner.

By letter dated March 30, 2007, the I.G. notified Petitioner that she was being excluded from participation in the Medicare, Medicaid, and all federal health care programs as defined in section 1128B(f) of the Act for a period of five years. The I.G. informed Petitioner that her exclusion was imposed under section 1128(a)(1) of the Act, due to her

* In many of the exhibits, Lizabeth Dejesús Pérez first name is spelled Lizbeth; however, in Petitioner’s hearing request, her first name is spelled Lizabeth.

conviction of a criminal offense (as defined in section 1128(i) of the Act) related to the delivery of an item or service under Medicare or a State health care program. Petitioner is represented by counsel.

On July 25, 2007, I convened a telephone prehearing conference during which the parties agreed that this case may be decided on the basis of written memoranda and documentary evidence, without the need for an in-person hearing. Consequently, I issued an Order establishing briefing deadlines. Pursuant to that Order, on August 27, 2007, the I.G. filed a brief (I.G. Br.), accompanied by eight proposed exhibits. In the absence of objection, I admit into evidence I.G.'s Exhibits (Exs.) 1-8. Petitioner's brief was due on September 27, 2007. Petitioner did not receive the I.G.'s brief, initially, and on September 10, 2007, the parties were notified that Petitioner's response brief would be due on or before October 11, 2007. On October 10, 2007, Petitioner requested, and was granted, a one week extension to file a response brief. Inasmuch as Petitioner failed to file her brief during the period of extension, I issued an order closing the record on November 2, 2007, and have proceeded to the issuance of a decision in this case.

It is my decision to sustain the determination of the I.G. to exclude Petitioner from participating in the Medicare, Medicaid, and all federal health care programs, for a period of five years. I base my decision to sustain the five-year exclusion in this case on the documentary evidence, the applicable law and regulations, and the arguments of the parties. It is my finding that Petitioner was convicted of a criminal offense related to the delivery of an item or service under a state health care program and that the I.G. has a basis for the exclusion.

II. Issues

Whether the I.G. had a basis for excluding Petitioner from participation in Medicare, Medicaid, and all federal health care programs as defined in 1128B(f) of the Act.

III. Applicable Law and Regulations

Section 1128(a)(1) of the Act authorizes the Secretary of Health and Human Services (Secretary) to exclude from participation in any federal health care program (as defined in section 1128B(f) of the Act), any individual convicted of a criminal offense relating to the delivery of a health care item or service under Title XVIII of the Act (Medicare) or a state health care program (Medicaid).

An exclusion under section 1128(a)(1) of the Act must be for a minimum period of five years. Act, section 1128(c)(3)(B).

Pursuant to 42 C.F.R. § 1001.2007, an individual or entity excluded under section 1128(a)(1) of the Act may file a request for a hearing before an administrative law judge.

IV. Findings and Discussion

The findings of fact and conclusions of law noted below, in bold face, are followed by a discussion of the findings.

Petitioner's conviction of a criminal offense related to the delivery of an item or service under the Medicaid program provides a basis for her exclusion by the I.G. from participation in the Medicare, Medicaid, and all other federal health care programs.

1. Between September 2004 and April 2005, Petitioner was employed as a personal care aide (PCA) by A Guardian Angel and Angels-R-Us. I.G. Ex. 3, at 1-3.
2. While employed as a PCA, Petitioner falsified time and visitation records, claiming to provide health care services to two or more Medicaid beneficiaries in different locations at the same time. I.G. Ex. 3, at 1-5; I.G. Ex. 4, at 1-4.
3. Many of these false records prepared by Petitioner were utilized by her employers to generate claims for reimbursements from Nevada Medicaid. I.G. Ex. 3, at 2-5.
4. The Nevada Medicaid Fraud Control Unit (MFCU) conducted an investigation into Petitioner's conduct in connection with the submission of false claims for reimbursement submitted to Medicaid by Petitioner's employers. I.G. Ex. 3, at 1.
5. The investigation established that Petitioner intentionally made or caused to be made, false claims for reimbursement from Nevada Medicaid in an amount greater than \$250, in violation of Nevada law. I.G. Ex. 3, at 2; I.G. Ex. 4, at 2-3.
6. The investigation established that Petitioner intentionally falsified documents knowing they would be used to generate payments for services she did not provide, and received monies for work she did not perform in excess of \$250, in violation of Nevada law. I.G. Ex. 3, at 2; I. G. Ex. 4, at 3-4.

7. Between September 2004 and April 2005, Petitioner fictionalized time sheets for more than 120 days of service provided to Medicaid beneficiaries, falsely documenting that she was working in two separate locations at exactly the same time. I.G. Ex. 3, at 3-5.

8. Between September 2004 and April 2005, Nevada Medicaid paid more than \$250 to Petitioner's employers for Petitioner's alleged services provided to Medicaid beneficiaries. I.G. Ex. 3, at 5.

9. Between September 2004 and April 2005, Petitioner received a salary in excess of \$250, based on Petitioner's falsified time sheets. I.G. Ex. 3, at 5.

10. During the MFCU investigation, Petitioner admitted that she had inaccurately completed time sheets and service records. I.G. Ex. 3, at 4.

11. During the MFCU investigation, Petitioner admitted that she did provide home health care to her patients as documented. I.G. Ex. 3, at 4-5.

12. On March 31, 2006, Petitioner was criminally charged, as a provider of health care services in Clark County, Nevada, with having committed the offenses of (1) submitting false claims, a felony violation of Nevada Revised Statute (NRS) 422.540(1) and NRS 422.540(2), one count; and (2) theft, a felony violation of NRS 205.0832(1)(c), and NRS 205.0835(3), one count. I.G. Ex. 4, at 1.

13. During Petitioner's May 1, 2006 felony arraignment, she pleaded guilty to the lesser included offense of acting without lawful authority. I.G. Exs. 5, 6.

14. On May 31, 2006, the Justice Court, Las Vegas Township, Clark County, Nevada accepted Petitioner's guilty plea and entered a judgment of conviction against her. I.G. Ex. 2.

15. On May 31, 2006, the Justice Court, Las Vegas Township, Clark County, Nevada ordered Petitioner to pay \$2,397 in restitution and \$500 in enforcement costs; to perform 80 hours of community service; and to serve 30 days incarceration, suspended, conditioned upon Petitioner's compliance with the balance of the order. I.G. Ex. 2, at 2.

16. Petitioner was convicted of a criminal offense related to the delivery of an item or service under a State health care program within the meaning of section 1128(a)(1) of the Act. I.G. Exs. 2, 4, and 5.

17. Petitioner was convicted of a criminal offense within the meaning of section 1128(i)(3) of the Act because she entered a plea of guilty and the court accepted that plea. I.G. Ex. 2.

18. Petitioner was convicted of a criminal offense within the meaning of section 1128(i)(1) because a judgment of conviction was entered against her by the Justice Court, Las Vegas Township, Clark County, Nevada. I.G. Ex. 2.

19. Petitioner's criminal offense was related to the delivery of an item or service under the Nevada Medicaid Program. I.G. Exs. 2, 3, 4, and 5.

20. The delivery of a Medicaid service is an element in the chain of events giving rise to Petitioner's offense of acting without lawful authority. I.G. Exs. 2, 3, 4 and 5.

21. Petitioner's plea of guilty to acting without lawful authority in violation of Nevada Revised Statute 207.230, constitutes a conviction of a criminal offense related to the delivery of an item or service under Medicaid. I.G. Exs. 2, 3, 4, and 5.

22. The I.G. has basis for excluding Petitioner from Medicaid, Medicare, and all federal health care programs.

23. Petitioner's five-year exclusion is reasonable because it is the minimum period of exclusion permitted by law in this case.

V. Conclusion

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act mandate that Petitioner be excluded from Medicare, Medicaid, and all other federal health care programs, for a period of at least five years, because she was convicted of a criminal offense related to the delivery of an item or service under Medicaid.

/s/
José A. Anglada
Administrative Law Judge