

United States Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:

Petitioner,

- v. -

The Inspector General.

)
)
)
)
)
)
)
)
)
)
)
)

Date:

Docket No. C- -

INFORMAL BRIEF OF PETITIONER

The Inspector General (I.G.) argues that he is authorized to exclude you from participating in Medicare, Medicaid, and other federally-funded health care programs for at least _____ years, because you were convicted of one of the offenses that is described in section 1128(b)(1) of the Social Security Act.

The issues in this case are whether:

1. The I.G. has the authority to exclude you; and
2. The length of the exclusion that the I.G. determined to impose is reasonable.

I. Were you convicted of a criminal offense?

_____ Yes _____ No

Do you agree that you were convicted of a criminal offense?

_____ Yes _____ No

If you **disagree**, explain why you disagree. State which exhibits support your argument and explain why they do.

II. Were you convicted of an offense for which exclusion is authorized?

The I.G. argues that your exclusion is authorized, because you were convicted of one of the following offenses:

A. A misdemeanor occurring after August 21, 1996 relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct –

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program, other than Medicare or a State health care program (a State Medicaid program), operated by, or financed in whole or in part by, any federal, State, or local government agency; or

B. A criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by, or financed in whole or in part by, any federal, State, or local government agency.

Do you disagree with the I.G.'s argument?

____ Yes ____ No

If you **disagree**, explain why you disagree. State which exhibits support your argument and explain why they do.

III. Is the length of your exclusion unreasonable? The I.G. argues that the length of the exclusion that he determined to impose is reasonable. He argues that there is evidence relating to certain aggravating factors that he says supports the length of the exclusion.

A. Do you disagree with the I.G.'s identification of aggravating factors in your case?

____ Yes ____ No

If you **disagree**, state which of the aggravating factors cited by the I.G. you believe are not present. Explain why you disagree. State which exhibits support your argument(s) and explain why they do.

B. If you agree that there is/are an aggravating factor or factors present in your case but believe that the exclusion is nonetheless not justified by the presence of that factor or factors, explain your reasons for your argument. State which exhibits support your arguments and explain why they do.

C. Do you believe that a mitigating factor or factors exist(s) that support(s) reducing the length of your exclusion (before answering this question, read the list of potentially mitigating factors that is set forth at 42 C.F.R. § 1001.201(b)(3))?

Yes No

If you believe that a mitigating factor or factors exist(s), state what it is/they are and explain why the presence of the factor or factors should support reducing the length of your exclusion. State which exhibits support your argument(s) and explain why they do.

IV. Do you believe that an in-person hearing is necessary to decide your case?

Yes No

Do you have any testimony that you wish to offer at an in-person hearing?

Yes No

If you have testimony that you wish to offer, provide the following:

1. The name of each witness whose testimony you want to offer.

2. A description of each witness' proposed testimony and an explanation of why you believe that the testimony relates to any of the arguments you want to offer in connection with items I, II, and III.

3. An explanation of why the proposed testimony does not duplicate something that is already stated in an exhibit.

V. Do you have any other arguments you wish to make? If so, please state them here. State which exhibits support your argument(s) and explain why they do.

Petitioner or Petitioner's Representative

Date: _____