

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Theresa Seawright,)	Date: February 25, 2008
)	
Petitioner,)	
)	Docket No. C-08-26
- v. -)	Decision No. CR1740
)	
The Inspector General.)	

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Theresa Seawright, from participating in Medicare and other federally funded health care programs for a period of at least five years. The exclusion in this case is mandated by Petitioner's conviction of a criminal offense as is described at section 1128(a)(1) of the Social Security Act (Act).

I. Background

On September 28, 2007 the I.G. notified Petitioner that she was being excluded from Medicare and other federally funded health care programs for a minimum of five years because she had been convicted of a criminal offense related to the delivery of an item or service under a State Medicaid program. Petitioner requested a hearing in order to challenge the I.G.'s determination and the case was assigned to me for a hearing and a decision.

I held a pre-hearing conference by telephone at which I directed the parties to file briefs and exhibits addressing their respective positions. Additionally, I informed the parties that either of them had a right to request an in-person hearing. The I.G. timely submitted a brief and three proposed exhibits which he identified as I.G. Exhibit (I.G. Ex.) 1, I.G. Ex. 2, and I.G. Ex. 3. Petitioner failed to file a brief or exhibits. Neither party filed a request for an in-person hearing.

I sent an order to show cause to Petitioner directing her either to file her brief and proposed exhibits or to explain her failure to do so. Petitioner did not respond to the order to show cause. I have considered dismissing Petitioner's hearing request in light of her failure to file a brief, exhibits, or a response to my order to show cause. I have decided, however, to resolve the merits of this case in light of the I.G.'s evidentiary presentation. In doing so I address the arguments that Petitioner made in her hearing request, which I am designating as Petitioner Exhibit (P. Ex.) 1. I receive into evidence I.G. Ex. 1, I.G. Ex. 2, I.G. Ex. 3, and P. Ex. 1.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether the I.G. is required to exclude Petitioner from participating in Medicare and other federally funded health care programs for a period of at least five years.

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 and I discuss each Finding in detail.

1. Petitioner was convicted of a criminal offense as is described at section 1128(a)(1) of the Act.

Section 1128(a)(1) mandates the exclusion of any individual who is convicted of a criminal offense related to the delivery of an item or service under Medicare or a State Medicaid program. The un rebutted evidence offered by the I.G. proves that Petitioner was convicted of such an offense.

Petitioner practiced as a nurse who worked as an independent provider for the Ohio Medicaid program. On February 28, 2007 she entered a plea of guilty in an Ohio State court to a single count of an indictment charging her, under Ohio law, with having committed fraud against the Ohio Medicaid program. I.G. Ex. 2, at 1. She was sentenced to pay \$1,368 as restitution and to a period of probation. *Id.*

Petitioner does not deny that she was convicted of a criminal offense as is described at section 1128(a)(1) of the Act. *See* P. Ex. 1. Her arguments address only the reasonableness of her exclusion. *Id.*

Petitioner's crime consisted of filing false claims for Medicaid services which had not, in fact, been provided. I.G. Ex. 3. Her conviction plainly was of a crime that is related to the delivery of items or services under the Ohio Medicaid program because it constituted theft of program monies.

2. An exclusion of five years is mandatory.

The Act mandates an exclusion of at least five years of an individual who is convicted of an offense as is described at section 1128(a)(1). Act, § 1128(c)(3)(B). I have no choice in this case but to sustain the I.G.'s determination to exclude Petitioner for the minimum statutory period inasmuch as she was convicted of an 1128(a)(1) offense.

In her hearing request Petitioner offers several equitable arguments against a five-year exclusion. She asserts that she never jeopardized the well-being of her patients. She acknowledges that she should not have submitted claims for services that she did not perform. She requests that I take into consideration her history as a nurse and as a law abiding citizen. She avers that the exclusion will comprise a hardship for herself and her family. P. Ex. 1. However, and notwithstanding Petitioner's arguments, I have no authority to mitigate the exclusion in this case because it is for the minimum statutory period.

_____/s/_____
Steven T. Kessel
Administrative Law Judge