

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Katrina Harris, L.P.N.,)	Date: June 14, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-96
)	Decision No. CR1608
The Inspector General.)	
_____)	

DECISION

I sustain the Inspector General's (I.G.) determination to exclude Katrina Harris, Petitioner (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).

BACKGROUND

This case is before me pursuant to a request for hearing dated November 6, 2006, by Petitioner.

By letter dated September 29, 2006, 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 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.

On December 19, 2006, I convened a telephone prehearing conference during which I advised Petitioner that she is entitled to have legal counsel if she wishes, but that my office could not appoint an attorney to represent her. Petitioner stated that she did not have an attorney and would represent herself.

I advised Petitioner that this case appeared to be resolvable without an in-person hearing. I stated that the parties would have the opportunity to submit their legal arguments in writing.

Consequently, I issued an Order establishing briefing deadlines. Pursuant to that Order, on March 14, 2007, the I.G. filed a brief (I.G. Br.), accompanied by four proposed exhibits, I.G. Exhibits (Exs.) 1-4. In the absence of objection, I admit into evidence I.G. Exs. 1-4. Although granted until April 18, 2007, Petitioner did not file a response brief, nor did she request an extension. Consequently, on May 30, 2007, I notified the parties that inasmuch as the briefing period had passed, I was closing the record and proceeding 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.¹ 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.

ISSUE

Whether the I.G. had a basis for excluding Petitioner from participation in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(a)(1) of the Act.

¹ Although Petitioner did not file a response brief, her contentions are briefly outlined in her request for hearing.

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, § 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.

FINDING AND DISCUSSION

The finding of fact and conclusion of law noted below, in bold face, is followed by a discussion of the finding.

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

Petitioner was a licensed practical nurse licensed in Ohio and rendered health care services under the Ohio Medical Assistance Program. I.G. Exs. 3 and 4. On August 16, 2005, a Special Grand Jury returned a one count indictment against Petitioner, charging that, within Franklin County, Ohio, as part of a course of criminal conduct, she did knowingly make false or misleading statements or representations to the Ohio Department of Job and Family Services, in claims for services purportedly rendered under the Ohio Medical Assistance Program. I.G. Ex. 3, at 1.

On December 5, 2005, in the Franklin County, Ohio Court of Common Pleas, Petitioner entered a guilty plea to a lesser included misdemeanor offense of Medicaid fraud in the first degree involving a violation of Ohio Rev. Code Ann. § 2913.40(B). The court accepted the plea and sentenced Petitioner to pay court costs and make restitution in the sum of \$664.60. I.G. Ex 2.

In her request for hearing, Petitioner does not dispute her conviction of Medicaid fraud nor does she contest the I.G.'s authority to exclude her, but rather, she contests the length of the exclusion. I.G. Ex. 4. Thus, there is no dispute that she was convicted of a program-related crime. I note, moreover, that the record establishes that Petitioner pled guilty to an offense related to the delivery of an item or service under a state health care program, and that the Franklin County, Ohio Court of Common Pleas accepted her plea. Therefore, I find that Petitioner was convicted of a criminal offense, as defined in section 1128(i)(3) of the Act, and that the offense was related to the delivery of an item or service under the Ohio Medicaid program. As a result of Petitioner's program-related conviction, the I.G. was required to exclude her pursuant to section 1128(a)(1) of the Act, for a mandatory period of at least five years. Therefore, Petitioner's argument that a three-year exclusion should have been imposed because she has made restitution and was forthright and cooperative during her investigation, is unavailing. I.G. Ex. 4.

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/

Jose A. Anglada
Administrative Law Judge