Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Edward M. Horvath, D.P.M.,
(O.I. File No. 3-04-40372-9),

Petitioner,

v.

The Inspector General.

Docket No. C-11-114

Decision No. CR2370

Date: May 11, 2011

DECISION

This matter is before me on the Inspector General's (I.G.'s) Motion for Summary Disposition affirming the I.G.'s determination to exclude Petitioner Edward M. Horvath, D.P.M., from participation in Medicare, Medicaid, and all other federal health care programs for a period of 13 years. The I.G.'s Motion and determination to exclude Petitioner are based on section 1128(a)(1) of the Social Security Act (Act), 42 U.S.C. § 1320a-7(a)(1). The undisputed facts of this case demonstrate that the minimum five-year exclusion must be imposed, and that the I.G.'s determination to enhance that period to 13 years, based on the aggravating factors found at 42 C.F.R. § 1001.102(b)(1), (2), (5), and (9), is reasonable. Accordingly, I grant the I.G.'s Motion for Summary Disposition.

I. Procedural Background

Until November 14, 2009, Petitioner Edward M. Horvath, D.P.M., was licensed as a podiatrist by the State of Maryland. A portion of his practice, known as Main Street Podiatry Center, included providing services to residents of nursing homes and senior apartment buildings.

Petitioner was charged on or about November 10, 2008, with two felony offenses relating to the submission of false and fraudulent claims to the Medicare and Medicaid programs for podiatry services he did not provide. Represented by counsel, Petitioner negotiated a plea agreement with prosecutors, and on March 5, 2009 he appeared in the Circuit Court for Baltimore City, Maryland, and pleaded guilty to Counts One and Two of the Criminal Information, admitting his guilt to Felony Medicaid Fraud and Felony Theft from Medicare, in violation of MD. CODE ANN. CRIM. LAW §§ 8-509 and 7-104. He was sentenced on September 15, 2009 to 14 months of home detention and five years probation on each count, the sentences to be served concurrently. In addition, he was ordered to pay restitution to the Maryland State Medicaid program in the sum of $350,000. I.G. Exs. 2, 3, 4, 5, and 7.

The Maryland Board of Podiatric Medical Examiners (MBPME) suspended Petitioner's license to practice podiatry effective November 14, 2009, for a one-year period with all but six months stayed. In addition, the suspension was to remain in effect until Petitioner met the conditions outlined in the MBPME's Consent Order. The MBPME's action was explicitly based on Petitioner's conviction and sentence in the Circuit Court, and the MBPME's Consent Order adopted language finding that the criminal violations of which Petitioner was convicted were directly related to his practice of podiatric medicine, in violation of the Maryland Podiatry Act, MD. CODE ANN., HEALTH-OCC. § 16-311(a)(3). I.G. Ex. 6.

On September 30, 2010, the I.G. notified Petitioner that he was to be excluded pursuant to the terms of section 1128(a)(1) of the Act for a period of 13 years based on his conviction. The I.G. notified Petitioner that the period of exclusion was enhanced based on the presence of four aggravating factors. Acting *pro se*, Petitioner sought review of the I.G.'s action by letter dated November 18, 2010. I convened a prehearing conference by telephone on December 20, 2010, pursuant to 42 C.F.R. § 1005.6, in order to discuss procedures best suited for addressing the issues presented by this case. The parties agreed that this case could be decided based on the parties' written submissions. By Order of December 21, 2010, I established a schedule for the submission of documents and briefs.

The record in this case closed for purposes of 42 C.F.R. § 1005.20(c) with the receipt of Petitioner's response brief on March 29, 2011. The evidentiary record on which I decide the issues before me contains nine exhibits. The I.G. proffered eight exhibits marked I.G. Exhibits 1-8 (I.G. Exs. 1-8). Petitioner proffered one exhibit marked Petitioner's Exhibit 1 (P. Ex. 1). In the absence of objection, I have admitted all proffered exhibits.

II. Issues

The legal issues before me are limited to those set out at 42 C.F.R. § 1001.2007(a)(1). In the context of this record, they are:

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

b. Whether the length of the proposed period of exclusion is unreasonable.

The controlling authorities require that these issues be resolved in favor of the I.G.'s position. Section 1128(a)(1) of the Act mandates Petitioner's exclusion for his predicate conviction, and this is not in dispute. A five-year period of exclusion is the minimum period established by section 1128(c)(3)(B) of the Act, 42 U.S.C. § 1320a-7(c)(3)(B). The enhancement of that period to 13 years is not unreasonable because the four aggravating factors relied on by the I.G. found in 42 C.F.R. § 1001.102(b)(1), (2), (5), and (9) are fully established in the record, and because Petitioner has not demonstrated any mitigating factor that would reduce the proposed period of exclusion.

III. Controlling Statutes and Regulations

Section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), requires the exclusion from participation in Medicare, Medicaid, and all other federal health care programs of any individual or entity convicted of a criminal offense related to the delivery of an item or service under title XVIII of the Act (the Medicare program) or any state health care program. The terms of section 1128(a)(1) are restated in similar language at 42 C.F.R. § 1001.101(a). Petitioner does not deny that the I.G. has a basis upon which to exclude him.

The Act defines "conviction" as including those circumstances "when a judgment of conviction has been entered against the individual . . . by a . . . State . . . court," Act § 1128(i)(1); "when there has been a finding of guilt against the individual . . . by a . . . State . . . court," Act § 1128(i)(2); or "when a plea of guilty . . . by the individual . . . has been accepted by a . . . State . . . court," Act § 1128(i)(3). These definitions are repeated at 42 C.F.R. § 1001.2.

An exclusion based on section 1128(a)(1) is mandatory and the I.G. must impose it for a minimum period of five years. Act § 1128(c)(3)(B), 42 U.S.C. § 1320a-7(c)(3)(B). The regulatory language of 42 C.F.R. § 1001.102(a) affirms the statutory provision. The mandatory minimum period of exclusion may be enhanced in some limited circumstances and on the I.G.'s proof of certain narrowly-defined aggravating factors listed at 42 C.F.R. § 1001.102(b). In this case, the I.G. seeks to enhance the period of Petitioner's exclusion to 13 years, and relies on the four aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), (5), and (9). Petitioner does not deny the presence of these aggravating factors or contest the I.G.'s proof of them.

In cases such as this one where the I.G. proposes to enhance the period of exclusion by relying on any of those aggravating factors, a petitioner may attempt to limit or nullify the proposed enhancement through proof of certain mitigating factors, carefully defined

at 42 C.F.R. § 1001.102(c)(1)-(3). Petitioner bears the burden of proof and persuasion regarding mitigating factors by a preponderance of the evidence. 42 C.F.R. § 1005.15(b) and (c). In this case, the mitigating factor set out at 42 C.F.R. § 1001.102(c)(2) requires discussion.

IV. Findings and Conclusions

I find and conclude as follows:

1. On his accepted plea of guilty on March 9, 2009, in the Circuit Court for Baltimore City, Maryland, Petitioner Edward M. Horvath, D.P.M, was found guilty of one count of Medicaid Fraud in violation of MD. CODE ANN., CRIM. LAW § 8-509, and one count of Theft from Medicare in violation of MD. CODE ANN., CRIM. LAW § 7-104, both felonies. I.G. Ex. 2, at 1; I.G. Ex. 5, at 1.

2. Petitioner was sentenced on his guilty plea in the Circuit Court on September 15, 2009. As part of his sentence, Petitioner was ordered to serve 14 months of home detention and five years probation on each count, the sentences to be served concurrently, and was ordered to pay restitution in the sum of $350,000 to the Maryland Medical Assistance Program (Medicaid). I.G. Ex. 2; I.G. Ex. 7.

3. The accepted plea of guilty and finding of guilt described above constitute a "conviction" within the meaning of sections 1128(a)(1) and 1128(i)(1), (2), and (3) of the Act, and 42 C.F.R. § 1001.2.

4. A nexus and a common-sense connection exist between the criminal offenses to which Petitioner pleaded guilty and of which he was convicted, as noted above in Findings 1, 2 and 3, and the delivery of an item or service under the Maryland Medical Assistance Program, a state health care program. I.G. Exs. 3, 4, and 5; *Berton Siegel, D.O.,* DAB No. 1467 (1994); *Alexander Nepomuceno Jamias*, DAB CR1480 (2006).

5. By reason of Petitioner's conviction, a basis exists for the I.G.'s exercise of authority, pursuant to section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), to exclude Petitioner from participation in Medicare, Medicaid, and all other federal health care programs.

6. As a consequence of the same set of circumstances that served as the basis for the conviction and exclusion described above, Petitioner has been the subject of an adverse action by the MBPME, effective November 14, 2009. I.G. Ex. 6.

7. Because the acts resulting in Petitioner's conviction caused a financial loss to a government program of $5,000 or more, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(1) is present.

8. Because the acts that resulted in Petitioner's conviction were committed from January 2001 to October 2007, over a period of one year or more, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(2) is present.

9. Because Petitioner was sentenced to 14 months of home detention, the aggravating factor set out at 42 C.F.R. § 1001.102(b)(5) is present.

10. Because Petitioner has been the subject of an adverse action by the MBPME based on the same set of circumstances that served as the basis for the conviction described above, the aggravating factor set out at 42 C.F.R. §1001.102(b)(9) is present.

11. None of the mitigating factors set out at 42 C.F.R. § 1001.102(c)(1)-(3) are present.

12. The I.G.'s exclusion of Petitioner for a period of 13 years is supported by fact and law, is within a reasonable range, and is therefore not unreasonable. I.G. Exs. 2, 5, 6, and 7; Findings 1-11 above.

13. There are no disputed issues of material fact and summary disposition is therefore appropriate in this matter. *Michael J. Rosen, M.D.*, DAB No. 2096 (2007); *Thelma Walley*, DAB No. 1367 (1992); 42 C.F.R. § 1005.4(b)(12).

V. Discussion

The essential elements necessary to support an exclusion based on section 1128(a)(1) of the Act are: (1) the individual to be excluded must have been convicted of a criminal offense; and (2) the criminal offense must have been related to the delivery of an item or service under Title XVIII of the Act (Medicare) or any state health care program. *Tamara Brown,* DAB No. 2195 (2008); *Thelma Walley*, DAB No. 1367; *Boris Lipovsky, M.D.*, DAB No. 1363 (1992); *Lyle Kai, R.Ph.,* DAB CR1262 (2004), *rev'd on other grounds*, DAB No. 1979 (2005), *aff'd sub nom. Kai v. Leavitt*, Civ. No. 05-00514 (D. Haw. July 17, 2006); s*ee also Russell Mark Posner*, DAB No. 2033, at 5-6 (2006). Those two essential elements are fully demonstrated in the evidence before me, and their demonstration encounters no challenge from Petitioner.

Although the two elements essential to the basic exclusion are not the points on which Petitioner rests his opposition to the I.G.'s actions, it is important to point out briefly the existence of the two essential elements necessary to support Petitioner's exclusion and to discuss the four aggravating factors established in the evidence before me.

Petitioner's conviction is shown by I.G. Exs. 2, 3, and 5: his guilty pleas were negotiated in terms set out in writing, were tendered and accepted on March 9, 2009. The Circuit Court found him guilty on that date, in satisfaction of the definitions of "conviction" set out at sections 1128(i)(2) and (3) of the Act. The judgment of conviction entered against him satisfied the definition of "conviction" set out at section 1128(i)(1) of the Act. The first essential element is established by the record.

The language of Count One charges that Petitioner submitted and caused to be submitted claims for payment to Medicaid when he knew that the services had not been provided. I.G. Ex. 4, at 2. The language of Count Two charges that Petitioner filed claims for the provision of podiatry services to Medicare beneficiaries that he knew had not been provided. *Id.* at 3. The submission of false claims to the Medicaid or Medicare programs has been consistently held to be a program-related crime within the reach of section 1128(a)(1). *Jack W. Greene,* DAB No. 1078 (1989), *aff'd sub nom. Greene v. Sullivan,* 731 F. Supp. 835 (E.D. Tenn. 1990); *Julius Williams, III*, DAB CR1464 (2006); *Kennard C. Kobrin*, DAB CR1213 (2004); *Norman Imperial*, DAB CR833 (2001); *Egbert Aung Kyang Tan, M.D.*, DAB CR798 (2001); *Lorna Fay Gardner*, DAB CR648, *aff'd,* DAB No. 1733 (2000); *Mark Zweig, M.D.,* DAB CR563 (1999); *Alan J. Chernick, D.D.S.,* DAB CR434 (1996). I find the factual underpinnings of Petitioner's offenses demonstrate the required nexus and common-sense connection between the criminal acts and the Medicaid and Medicare programs. *Berton Siegel, D.O.,* DAB No. 1467. Moreover, the Circuit Court ordered Petitioner to pay restitution in the amount of $350,000 to the Maryland Medicaid program. I.G. Ex. 7. As I have written elsewhere, if an individual has been convicted of a criminal offense, proof that any sentence based on that conviction included the payment of restitution to a protected program creates a rebuttable presumption of a nexus or common-sense connection between the conviction and the delivery of an item or service under the program. *Alexander Nepomuceno Jamias,* DAB CR1480. Thus, the second essential element is established by the record.

The I.G. relies on four aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), (5), and (9) in seeking to enhance the period of Petitioner's exclusion to 13 years. The aggravating factor set out at 42 C.F.R. § 1001.102(b)(1) is present when there is a showing of financial loss to a Government program or other entities of more than $5,000. The court records show that Petitioner was required to pay restitution in the amount of $350,000 to the Maryland Medicaid program.[*] The "amount of loss" aggravating factor is present here.

The aggravating factor at 42 C.F.R. § 1001.102(b)(2) is present when "the acts resulting in the conviction, or similar acts, were committed over a period of one year or more." The Criminal Information to which Petitioner pleaded guilty is clear in its recitation that the acts that formed the basis of Petitioner's convictions continued for well over a one-year period: the acts relating to the Medicaid Fraud conviction occurred between January 1, 2002 to October 1, 2007, and the acts relating to the Theft from Medicare conviction

[*] The I.G.'s notice letter notes the amount of financial loss as $250,000; the plea agreement notes that Petitioner agreed to pay $400,000 in restitution with $50,000 to be paid at the time of his sentencing; and the sentencing document notes that Petitioner was ordered to pay $350,000 in restitution. Any discrepancy in the amount of financial loss does not affect my decision since each amount noted is substantially above the $5,000 threshold required for the "financial loss" factor to be used as an aggravating factor. I.G. Ex. 1, at 1; I.G. Ex. 3, at 2; I.G. Ex. 7; 42 C.F.R. § 1001.102(b)(1).

occurred between January 1, 2001 to October 1, 2007. I.G. Ex. 4, at 2, 3. Thus, the "period of time" aggravating factor is present here.

The aggravating factor set out at 42 C.F.R. § 1001.102(b)(5) is present when the "sentence imposed by the court included incarceration." In this case, Petitioner was sentenced to 14 months of home detention and five years probation on each count, the sentences to be served concurrently. I.G. Ex. 2; I.G. Ex. 5. Petitioner's sentence meets the definition of incarceration at 42 C.F.R. § 1001.2, and the "incarceration" aggravating factor is therefore present here.

The aggravating factor set out at 42 C.F.R. § 1001.102(b)(9) is present when a convicted individual "has been the subject of any other adverse action by any . . . local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion." The MBPME suspended Petitioner's license effective November 14, 2009. The MBPME's action was explicitly based on Petitioner's conviction and sentence as discussed above. I.G. Ex. 6. The "other adverse action" aggravating factor is present here. The I.G. has therefore properly invoked and proven all four aggravating factors.

Evidence relating to aggravating factors may be countered by evidence relating to any mitigating factors set forth at 42 C.F.R. § 1001.102(c)(1)-(3). Here, Petitioner asserts that the documentation errors and billing irregularities that resulted in his conviction were affected by his Attention Deficit Hyperactivity Disorder (ADHD) and his Depressive Disorder. Petitioner maintains that these two psychiatric disorders existed when he committed his crimes, and that he is therefore entitled to claim benefit of the mitigating factor set out at 42 C.F.R. § 1001.102(c)(2). P. Ans. Br. at 4-5. Petitioner's claim to the benefit of this mitigating factor requires some discussion here, although it is not ultimately successful.

Since Petitioner's mitigating factor is in the nature of an affirmative defense, Petitioner bears the burden of proving the mitigating factor by a preponderance of the evidence. *Russell Mark Posner*, DAB No. 2033; *Barry D. Garfinkel, M.D.*, DAB No. 1572 (1996). This allocation of the burden of proof, set out at 42 C.F.R. § 1005.15(b)(1), is fully consistent with Board pronouncements. *Stacey R. Gale,* DAB No. 1941 (2004); *Dr. Darren James, D.P.M.,* DAB No. 1828, at 7-8 (2002).

The mitigating factor Petitioner claims is set out in the following language:

> (2) The record in the criminal proceedings, including sentencing documents, demonstrates that the court determined that the individual had a mental, emotional or physical condition before or during the commission of the offense that reduced the individual's culpability . . . .

42 C.F.R. § 1001.102(c)(2).

Petitioner's psychiatric condition is not in and of itself a mitigating factor under the regulation. Rather, the regulation requires that Petitioner produce evidence that *the court determined that he had a mental, emotional or physical condition that reduced his culpability*, and the regulation further requires that any such evidence must address Petitioner's capacities *before or at the time of* the criminal acts. *Frank R. Pennington, M.D.*, DAB No. 1786, at 6 (2001); *Jospeh M. Rukse, Jr., R.Ph.*, DAB No. 1851(2002). In reviewing the record of the criminal proceedings in the matter now before me, I find that there is nothing in the evidence sufficient to support a reasonable inference that the sentencing judge made a determination that Petitioner's July 2009 assessments for ADHD and Depressive Disorder reduced his culpability for the crimes he committed between 2001 and 2007. I.G. Exs. 2, 3, 4, 5, 6, and 7.

Now, although Petitioner's July 27, 2009 assessment was completed six weeks before his sentencing on September 15, 2009, Petitioner himself admits that the assessment was not presented to the sentencing court: "[T]he discovery of the underlying psychiatric condition was subsequent to the court proceedings and was not know at the time." P. Ans. Br. at 3. No reference to the assessment or to the psychiatric problems it discusses can be found in any of the court records before me; notably, Petitioner's March 5, 2009 plea agreement contains no such references. Thus, by the terms of Petitioner's own concession, the sentencing court had no information whatsoever before it that could have affected its view of his culpability for his crimes, although Petitioner enjoyed six months — from the time of his guilty pleas on March 9, 2009, to the date of his sentencing — in which to assess his psychiatric problems and bring them to the court's attention.

However, in cases like this one, where there is no explicit reference by the sentencing court to a petitioner's reduced culpability because of a "mental, emotional or physical condition," the Board has developed a comprehensive and case-specific rule for the examination of a claim in mitigation based on 42 C.F.R. § 1001.102(c)(2). The details and application of that rule are outlined in *Russell Mark Posner*, DAB No. 2033 and *Arthur C. Haspel*, D.P.M., DAB No. 1929, at 3 (2004). The rule suggests that not only the sentencing record as a whole but the *entire record* must be examined for indications that the sentencing court reached a determination of Petitioner's reduced culpability.

In this case, even a hint that a link existed between Petitioner's psychiatric condition and its possible effects on the sentence he received is nonexistent. This is not a situation in which the sentencing court imposed an extremely light sentence, thereby potentially raising the inference that it had implicitly made a determination of reduced culpability. Here, Petitioner and prosecutors agreed on a range of months — the prosecution asking 18 months, Petitioner asking 12 months — for Petitioner's incarceration and the sentencing judge imposed a term in the broad center of that range. I.G. Ex. 2; I.G. Ex. 3, at 2. Petitioner's July 2009 assessment is the only qualified evidence of his psychiatric condition. The assessment is not even in itself a firm assertion of Petitioner's reduced culpability, and it was put to that use only later, in the MBPME proceeding. P. Ans. Br. at 2. The only reference to Petitioner's psychiatric condition in the MBPME proceedings

is the requirement that he undergo psychiatric evaluation to assess his fitness to return to the practice of podiatry. I. G. Ex. 6, at 8. The record of the MBPME proceedings is devoid of any reference to Petitioner's reduced culpability for the acts that led to his discipline by that body. Thus, I can find neither in the record of Petitioner's sentencing, nor in the record before me as a whole, evidence sufficient to support a reasonable inference that the sentencing court made the determination of reduced culpability necessary for Petitioner to claim benefit of the mitigating factor set out at 42 C.F.R. § 1001.102(c)(2). Petitioner has not established this mitigating factor.

Petitioner argues that his involvement in 200 hours of community service should also be considered a mitigating factor, based on language in *Arthur D. Freiberg, D.P.M.*, DAB CR63 (1990). P. Ans. Br. at 5-6. His argument is based on the *Freiberg* Administrative Law Judge's (ALJ) determination that remorse — ostensibly manifested by Freiberg's engagement in community service — was a legitimate mitigating factor because it suggested that Freiberg had from it learned trustworthiness. Even at the time, under regulations that did not enumerate or define what factors might be considered mitigating, community service was not seen by all ALJs as being indicative of trustworthiness. *Leonard N. Schwartz, R.Ph.*, DAB CR36 (1989). But the regulations have been modified substantially since *Freiberg*, and community service is not now among the factors identified as the only ones that "may be considered mitigating" at 42 C.F.R. § 1001.102(c)(1)-(3).

Petitioner maintains that the length of his exclusion is unreasonable. However, the I.G.'s discretion in exclusion cases when weighing the importance of aggravating and mitigating factors commands great deference when reviewed by ALJs. *Jeremy Robinson*, DAB No. 1905; *Keith Michael Everman, D.C.*, DAB No. 1880 (2003); *Stacy Ann Battle, D.D.S., et al.,* DAB No. 1843 (2002). The ALJ may not substitute his or her own view of what period of exclusion might appear "best" in any given case for the view of the I.G. on the same evidence. An ALJ may reduce an exclusionary period only when they discover some meaningful evidentiary failing in the aggravating factors upon which the I.G. relied, or when they discover evidence reliably establishing a mitigating factor not considered by the I.G. in setting the enhanced period. *Jeremy Robinson*, DAB 1905. Here, all four of the aggravating factors relied on by the I.G. have been established as pleaded and Petitioner has not established the mitigating factor based on reduced culpability. Given these consideration, the I.G.'s determination to enhance the term of Petitioner's exclusion to 13 years is manifestly not unreasonable. Its length is well within a reasonable range and is commensurate with the range established as reasonable in *Russell Mark Posner*, DAB No. 2033; *Stacey R. Gale*, DAB No. 1941; *Jeremy Robinson*, DAB No. 1905 (2004); *Thomas D. Harris*, DAB No. 1881 (2003); *Fereydoon Abir, M.D.*, DAB No. 1764 (2001); *Joann Fletcher Cash,* DAB No. 1725 (2000); *Lawrence J. White*, D.D.S., DAB CR 1584 (2007); and *Stanley Junious Benn*, DAB CR1501 (2006).

Because Petitioner appears here *pro se*, I have taken additional care in reading his submissions, guided by the Board's reminders that *pro se* litigants should be offered "some extra measure of consideration" in developing their records and their cases. *Louis*

Mathews, DAB No. 1574 (1996); *Edward J. Petrus, Jr., M.D., et al.*, DAB No. 1264 (1991). In doing so, I have found nothing that might suggest a valid defense to the exclusion or its enhanced term.

Summary disposition is authorized by the terms of 42 C.F.R. § 1005.4(b)(12). Resolution of a case by summary disposition is particularly fitting when settled law can be applied to undisputed material facts. *Marvin L. Gibbs, Jr., M.D.,* DAB No. 2279 (2009); *Michael J. Rosen, M.D.*, DAB No. 2096 (2007). The material facts in this case are undisputed and unambiguous. They support summary disposition as a matter of settled law, and this Decision issues accordingly.

VI. Conclusion

For the reasons set forth above, the I.G.'s Motion for Summary Disposition should be, and it is, GRANTED. The I.G.'s exclusion of Petitioner Edward M. Horvath, D.P.M., from participation in Medicare, Medicaid, and all other federal health care programs for a period of 13 years pursuant to the terms of section 1128(a)(1) of the Act, 42 U.S.C. § 1320a-7(a)(1), is sustained.

/s/
Richard J. Smith
Administrative Law Judge