

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Carolyn R. Parker  
(OI File No. H-15-42923-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-385

Decision No. CR4683

Date: August 16, 2016

**DECISION**

I affirm the Inspector General (IG) of the United States Department of Health and Human Services' exclusion of Carolyn R. Parker (Petitioner) from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of five years under 42 U.S.C. § 1320a-7(a)(1).

**I. Background**

By notice letter dated December 31, 2015, the IG excluded Petitioner from participation in Medicare, Medicaid, and all federal health care programs for five years. The IG cited section 1128(a)(1) of the Social Security Act (Act) as the basis for Petitioner's exclusion. The IG stated that he was taking this action based on Petitioner's conviction in the Osceola District Court (District Court), State of Arkansas, of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program.

On February 26, 2016, Petitioner timely requested a hearing before an administrative law judge. Petitioner stated she pled guilty to a misdemeanor theft charge, but denied that she actually committed the crime. Petitioner argued that she should not be excluded because her conviction was not for misappropriation of funds or related to “abuse of the system.”

On April 27, 2016, I held a prehearing conference by telephone, the substance of which is summarized in my April 29, 2016 Order and Schedule for Filing Briefs and Documentary Evidence (Order). In accordance with the Order, the IG filed a brief (IG Br.) and seven exhibits (IG Exs. 1-7). The IG also moved that I accept redacted versions of IG Exs. 2, 4, 5, and 6. Petitioner filed a response brief (P. Br.) with one exhibit (P. Ex. 1), which is a written statement from Petitioner titled “My Full Testimony.” The IG declined to file a reply to Petitioner’s submission.

## **II. Decision on the Record**

Neither party objected to any of the proposed exhibits. Therefore, I admit them all into the record. *See* Order ¶ 5; CRDP § 14(e).

I grant the IG’s unopposed motion to admit redacted versions of IG Exs. 2, 4, 5, and 6. I find that there is good cause to redact the names of Medicaid beneficiaries appearing in those documents in order to protect their privacy. 42 C.F.R. § 1005.18(d).

Both parties indicated that an in-person hearing was not necessary. IG Br. at 5; P. Br. at 2. Petitioner submitted her own written testimony (P. Ex. 1). The IG declined to reply to Petitioner’s submission; therefore, I conclude that the IG waived its opportunity to cross-examine Petitioner. *See* 42 C.F.R. § 1005.16(b). Because neither party seeks an in-person hearing, I decide this case based on the written record.

## **III. Issue**

Whether the IG has a basis for excluding Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for five years pursuant to 42 U.S.C. § 1320a-7(a)(1). *See* 42 C.F.R. § 1001.2007(a)(1)-(2).

## **IV. Jurisdiction**

I have jurisdiction to decide this case. 42 U.S.C. § 1320a-7(f); 42 C.F.R. § 1005.2.

## V. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>

The IG indicated that 42 U.S.C. § 1320a-7(a)(1) was the basis for Petitioner's mandatory exclusion. IG Ex. 1. The statute provides:

(a) Mandatory exclusion.

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

Thus, the elements the IG must prove to sustain Petitioner's exclusion pursuant to 42 U.S.C. § 1320a-7(a)(1) in this case are: (1) Petitioner was convicted of a criminal offense, and (2) Petitioner's offense was related to the delivery of an item or service under Medicare or a state health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program. 42 C.F.R. § 1001.101(a).

***A. Petitioner pled guilty to three counts of theft from Medicaid beneficiaries residing at a long term care facility, and the District Court sentenced her to 15 days in jail.***

Petitioner was the business office manager at Osceola Therapy and Living (the facility), a long term care facility that is both a Medicare and Medicaid provider. IG Ex. 7; P. Ex. 1 at 1. In that role, Petitioner was responsible for overseeing trust accounts for the residents at the facility. P. Ex. 1 at 1. The practice of the former facility administrator for whom Petitioner worked was for the administrator to sign for withdrawals made on the residents' trust accounts if a family member was not there to sign for it and, sometimes, even for residents who were able to sign for the withdrawals themselves. P. Ex. 1 at 1. The facility hired a new administrator, and Petitioner decided to resign her position. P. Ex. 1 at 1-2.

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<sup>1</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

The new facility administrator audited the residents' trust accounts. Based on this audit, the facility administrator filed a report with the Osceola Police Department alleging that Petitioner had used resident trust account funds to pay her phone bill and that of her husband. IG Ex. 3 at 1; IG Ex. 4. The police obtained from the facility administrator copies of checks signed by Petitioner paid to Verizon Wireless as follows: October 23, 2014, in the amount of \$241.90 and December 9, 2014, for \$487.10. IG Ex. 3 at 1. Ultimately, Petitioner was charged with three counts of theft related to resident trust accounts. IG Exs. 4, 5. According to state records, the residents who were the victims of the theft were on Medicaid. IG Ex. 6 at 4, 7, 9.

Petitioner pled guilty to three counts of theft of property in violation of Arkansas Code § 5-36-103. IG Ex. 2; *see also* P. Ex. 1 at 3. On April 20, 2015, the District Court entered judgment and sentenced Petitioner to 15 days in jail. IG Ex. 2.

***B. Petitioner was convicted of a criminal offense for the purposes of 42 U.S.C. § 1320a-7(a)(1).***

Under 42 U.S.C. § 1320a-7(a)(1), Petitioner must be “convicted of a criminal offense” before she can be excluded. An individual is considered “convicted” when a judgment of conviction has been entered by a federal, state, or local court, or a plea of guilty or no contest has been accepted in a federal, state, or local court. 42 U.S.C. § 1320a-7(i)(1), (3). In the present matter, Petitioner entered a guilty plea and, based on that guilty plea, the District Court entered a judgment against Petitioner for three violations of Arkansas Code § 5-36-103, and sentenced her to 15 days in jail. IG Ex. 2. Based on these facts, I conclude that Petitioner was convicted of a criminal offense for purposes of 42 U.S.C. § 1320a-7(a)(1).

***C. Petitioner’s criminal offense of theft from Medicaid beneficiary trust accounts is an offense related to the delivery of an item or service under a state health care program (i.e., Medicaid).***

An individual must be excluded from participation in any federal health care program if the individual was convicted under federal or state law of a criminal offense related to the delivery of an item or service under Medicare or a state health care program. 42 U.S.C. § 1320a-7(a)(1); 42 C.F.R. § 1001.101(a). A state health care program includes a state’s Medicaid program. 42 U.S.C. § 1320a-7(h); 42 C.F.R. § 1001.2 (definition of *State health care program*).

It is significant that the term “related to” simply means that there must be a nexus or common sense connection. *See Quayum v. U.S. Dep’t of Health & Human Servs.*, 34 F. Supp. 2d 141, 143 (E.D.N.Y. 1998); *see also Friedman v. Sebelius*, 686 F.3d 813, 820 (D.C. Cir. 2012) (describing the phrase “relating to” in another part of section 1320a-7 as “deliberately expansive words,” “the ordinary meaning of [which] is a broad one,”

and one that is not subject to “crabbed and formalistic interpretation”) (internal quotation marks omitted).

In the present case, Petitioner was the business office manager for a long term care facility enrolled in the Medicare and Medicaid programs. IG Exs. 4, 7. The IG asserts, and Petitioner does not dispute, that the three residents from whom Petitioner pled guilty to stealing funds were Medicaid beneficiaries. IG Br. at 3 n.4; IG Ex. 6 at 4, 7, 9. Long term care facilities enrolled in the Medicare or Medicaid programs must safeguard resident funds that are entrusted to the facilities’ care. *See* 42 C.F.R. § 483.10(c). Therefore, the function of properly handling residents’ funds is a “management or administrative service[] relating to the delivery of items or services” under the Medicaid program. 42 C.F.R. § 1001.101(a).

***D. Petitioner must be excluded for the statutory minimum of five years under 42 U.S.C. § 1320a-7(c)(3)(B).***

Petitioner asserts that she should not be excluded because she only pled guilty to the misdemeanor theft offenses to avoid the possibility of being convicted of a felony. Petitioner indicates that she is innocent of the charges that were made against her. Petitioner states that she never would have pled guilty had she known that she would serve time in jail and be excluded from continuing her career in the health care field. P. Br.; P. Ex. 1 at 3-4.

I cannot consider Petitioner’s argument because it is an impermissible collateral attack on her criminal conviction. I have no authority to review the facts in her criminal case and determine whether she is in fact guilty or not. 42 C.F.R. § 1001.2007(d).

Because I have concluded that a basis exists to exclude Petitioner under 42 U.S.C. § 1320a-7(a)(1), Petitioner must be excluded for a minimum period of five years. 42 U.S.C. § 1320a-7(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2).

**VI. Conclusion**

I affirm the IG’s determination to exclude Petitioner from participating in Medicare, Medicaid, and all other federal health care programs for the statutory five-year minimum period under 42 U.S.C. § 1320a-7(a)(1), (c)(3)(B).

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/s/  
Scott Anderson  
Administrative Law Judge