Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Venkata Srinivas Mannava,
(OI File No. 3-12-40208-9),

Petitioner,

v.

The Inspector General.

Docket No. C-16-773

Decision No. CR4802

Date: March 2, 2017

DECISION

Petitioner, Venkata Srinivas Mannava, is a pharmacist who participated in two criminal schemes: in one, he knowingly filled forged prescriptions for the narcotic oxycodone; in the other, he billed insurance programs for prescriptions that had not been requested or dispensed. He was convicted on one felony count of conspiracy to obtain controlled substances by prescription fraud and one felony count of conspiracy to commit health care fraud. Based on these convictions, the Inspector General (IG) has excluded him for 13 years from participating in Medicare, Medicaid, and all federal health care programs, as provided for in sections 1128(a)(3) and 1128(a)(4) of the Social Security Act (Act). Petitioner concedes that he must be excluded for a minimum period of five years but challenges the length of the exclusion beyond the five years. For the reasons discussed below, I find that the IG properly excluded Petitioner and that the 13-year exclusion falls within a reasonable range.

Background

By letter dated May 30, 2016, the IG notified Petitioner Mannava that he was excluded from participating in Medicare, Medicaid, and all federal health care programs for a

period of 13 years, because he had been convicted of criminal offenses related to: 1) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service; and 2) the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. The letter explained that sections 1128(a)(3) and 1128(a)(4) of the Act authorize the exclusion. IG Ex. 1.

Petitioner concedes that he was convicted and is subject to exclusion. P. Brief (Br.) at 2.

Each party submitted a written argument (IG Br.; P. Br.). The IG also submitted ten exhibits (IG Exs. 1-10) and a reply brief (IG Reply). Petitioner submitted five exhibits (P. Exs. 1- 5). In the absence of any objection, I admit into evidence IG Exs. 1-10 and P. Exs. 1- 5.

The parties agree that this case does not require an in-person hearing. IG Br. at 14; P. Br. at 4.

Issue

Because the parties agree that the IG has a basis upon which to exclude Petitioner from program participation, the sole issue before me is whether the length of the exclusion (13 years) is reasonable. 42 C.F.R. § 1001.2007.

Discussion

Section 1128(a)(3) of the Act mandates that the Secretary of Health and Human Services exclude from participation in federal healthcare programs any individual who has been convicted of felony fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service. *See* 42 C.F.R. § 1001.101(c).

Section 1128(a)(4) mandates that the Secretary exclude from program participation any individual or entity convicted of a felony criminal offense "relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance." *See* 42 C.F.R. § 1001.101(d).

Unlawful dispensing of a controlled substance (§1128(a)(4)). Petitioner was a pharmacist who, while working at a discount pharmacy in Washington, D.C., filled forged prescriptions for oxycodone, a schedule II controlled substance. Between December 2010 and the end of October 2011, he filled 631 prescriptions, totaling 145,440 pills. All were presented by the same person (a drug dealer), who paid in cash (a total of

$211,829.74). The prescriptions presented were for multiple patients (some real people and some fictitious); all were written on the same long-discontinued prescription form; and all included the forged signature of the same long-retired doctor. IG Ex. 6 at 2-3; IG Ex. 9 at 2-8, 13.

Healthcare fraud (§1128(a)(3)). At about the same time that his involvement in the drug-selling conspiracy ended, Petitioner Mannava immersed himself in a second illegal scheme. From October 2011 through December 2012, he conspired with others to defraud health insurance programs, including the Medicaid program. Along with others, he billed the insurers for prescription refills that were never requested or filled. Whenever it was time to refill a prescription, the conspirator would do so, billing the insurer. If the beneficiary did not retrieve the refill, the pharmacy kept the money and the drugs. To further the scheme, Petitioner personally reviewed the prescription software system at several pharmacy locations to identify prescription refills that were immediately available for billing. IG Ex. 6 at 4-6; IG Ex. 9 at 9-10. He agreed that the scheme cost insurers more than $2 million but less than $7 million in financial losses. IG Ex. 9 at 12; *see* IG Ex. 6 at 6-7.

Guilty plea. In a plea agreement signed February 24, 2014, Petitioner Mannava admitted that he was guilty of both felonies. IG Ex. 9. On June 18, 2015, the district court for the District of Columbia accepted his plea, finding him guilty of conspiracy to obtain a controlled substance by prescription, in violation of 21 U.S.C. §§ 843(a)(3) and 846, and conspiracy to commit healthcare fraud, in violation of 18 U.S.C. §§ 1347 and 1349 and 18 U.S.C. § 2. IG Ex. 7.

The court sentenced Petitioner Mannava to three years probation, and ordered him to pay a $200 assessment and $4,729,789 in restitution. IG Ex. 7 at 3, 5.

Based on the aggravating factors and one mitigating factor, the 13-year exclusion is reasonable.[1]

I now consider whether the length of the exclusion, beyond five years, falls within a reasonable range.

Aggravating factors. An exclusion under either section 1128(a)(3) or 1128(a)(4) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2). Federal regulations set forth criteria for lengthening exclusions beyond the five-year minimum. 42 C.F.R. § 1001.102(b). Evidence that does not pertain to one of the aggravating or mitigating factors (42 C.F.R. § 1001.102(c)) listed in the regulations may not be used to decide whether an exclusion of a particular length is reasonable.

[1] I make this one finding of fact/conclusion of law.

Among the factors that may serve as bases for lengthening the period of exclusion are the two that the IG cites to justify the period of exclusion in this case: 1) the acts resulting in the conviction, or similar acts, resulted in a financial loss to a government program or other entity of $5,000 or more; and 2) the acts resulting in the conviction, or similar acts, were committed over a period of one year or more.[2]

Financial loss to the Medicaid program (42 C.F.R. § 1001.102(b)(1)). Petitioner's actions resulted in program financial losses that were significantly greater than the $5,000 threshold for aggravation. First, as part of his plea to the healthcare fraud charge, Petitioner agreed that the scheme cost insurers between $2 million and $7 million. IG Ex. 9 at 12; *see* P. Ex. 2 at 6 (indicating Petitioner's agreement of a projected restitution amount between $2.5 million and $7 million). The district court narrowed down the amount and ordered Petitioner to pay $4,729,789 in restitution to the Medicaid offices for Maryland and the District of Columbia. IG Ex. 7 at 5; *see* P. Ex. 2 at 14.

Restitution has long been considered a reasonable measure of program losses. *Jason Hollady, M.D.*, DAB No. 1855 (2002). I consider the size of the program's financial losses here an exceptionally aggravating factor that compels a period of exclusion significantly longer than the five-year minimum. *See Jeremy Robinson,* DAB No. 1905 (2004); *Donald A. Burstein, Ph.D.*, DAB No. 1865 (2003).

Petitioner, however, argues that the amount of restitution was based on flawed information, citing to arguments of counsel following the trial and conviction of his employer/co-conspirator, Reddy Vijay Annappareddy. Although far from clear, it seems that Mr. Annappareddy's criminal trial was riddled with errors, some of which concerned program financial losses associated with Mr. Annappreddy's fraudulent schemes. While Mr. Annappareddy's motion for a new trial was pending, the prosecution destroyed evidence, thinking that it had the defendant's permission to do so. P. Ex. 3 at 5-6, 8.

Petitioner quotes a statement from the judge hearing those post-conviction arguments: "there was a surplus." P. Ex. 3 at 5. From this, he argues that there were no program losses in his own case. But it is far from clear what the judge was referring to. The

[2] The IG did not add an additional aggravating factor that potentially applies: the convicted individual has been the subject of any other adverse action by any federal, state, or local government agency or board, if the adverse action is based on the same set of circumstances that serves as a basis for the exclusion. 42 C.F.R. § 1001.102(b). Here, based on Petitioner's felony convictions, the Maryland State Board of Pharmacy ordered his license suspended for one year. Although the board stayed the suspension, it put Petitioner on probation for three years and imposed other requirements. IG Ex. 5. This is an adverse action based on the same set of circumstances that underlie Petitioner's exclusion.

criminal action against Mr. Annappareddy was a much bigger case, which went well beyond the conspiracy involving Petitioner. In the Annappareddy case, the government alleged "around $8 million dollars or more" in losses attributable to fraud. P. Ex. 5 at 6. And that scheme lasted years longer than Petitioner's. As the arguments of counsel indicate, the fraudulent prescriptions went back to at least 2008. P. Ex. 3 at 25 ("[N]ow you see from 2008, 2009, 2010, the shortages gradually were adding together . . . ."); P. Ex. 3 at 47-48 ("[P]rior to . . . 1/20/11, there was a loss of $490,954, shortage of 24 out of 68 drugs. . . . [T]hat showed the fraud was going on long before . . . .").

Elsewhere in the transcript, the judge says:

> Initially, the loss amounts were projected at $4.5 million. However, at the end of the presentation of the government's case, the government conceded that an error had been made, and those amounts were reduced to a little over $2 million.

P. Ex. 3 at 52; *see* P. Ex. 3 at 33 (suggesting that the issue of loss calculations had not been resolved). I am not sure what part of Mr. Annappareddy's criminal enterprise the judge is referring to, but the statement seems inconsistent with the proposition that there were no program losses.[3]

In any event, as the IG points out, the restitution amount has not been reduced *in Petitioner's case*. He may not rely on the post-trial arguments in another proceeding to attack collaterally his own conviction:

> When the exclusion is based on the existence of a . . . determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying . . . determination . . . is not reviewable and the individual or entity may not collaterally attack it, either on substantive or procedural grounds, in this appeal.

42 C.F.R. § 1001.2007(d); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009); *Roy Cosby Stark*, DAB No. 1746 (2000).

[3] In his plea agreement Petitioner conceded program losses of at least $2 million, which is still significantly more than the $5,000 threshold and should be considered an exceptionally aggravating factor.

Duration of crime (42 C.F.R. § 1001.102(b)(2)). If both conspiracies are considered together, Petitioner's criminal acts were committed over a period of more than two years (October 2010 through December 2012). Even if I considered the crimes separately, the healthcare fraud conviction lasted for over a year and would, by itself, justify extending the period of exclusion.

Petitioner argues that the felonies are separate crimes so the time frames should not be added together, and, inasmuch as the duration of his second felony was not much more than a year, little additional time should be added to the minimum five years. In effect, Petitioner is arguing for one exclusion-free felony. He committed two offenses over a two-year period, but claims that he is subject to exclusion as if he had committed just one.

That the IG followed the prosecutor's and the court's lead and considered the two felonies part of the same overall case has been to Petitioner's advantage. If the actions were considered separately, his drug conviction alone would mandate a five –year exclusion. The health care fraud conviction would add a minimum of five, and arguably ten, years if the IG considered the drug conviction a "prior" conviction, and applied 42 C.F.R. §1001.102(d)(1). To that ten or 15 year total, the aggravating factors would be applied, and Petitioner would be looking at an exclusion longer than 13 years.

Mitigating factor. The regulations consider mitigating just three factors: 1) a petitioner was convicted of three or fewer misdemeanor offenses and the resulting financial loss to the program was less than $1,500; 2) the record in the criminal proceedings demonstrates that a petitioner had a mental, physical, or emotional condition that reduced his culpability; and 3) a petitioner's cooperation with federal or state officials resulted in others being convicted or excluded, or additional cases being investigated, or a civil money penalty being imposed. 42 C.F.R. § 1001.102(c).

The parties agree that, for one of the conspiracies, the health care fraud, Petitioner Mannava cooperated with law enforcement and his cooperation qualifies as a mitigating factor. That decrease is already reflected in the 13-year exclusion, which would have been longer had Petitioner not cooperated. He did not cooperate with law enforcement in the drug case.

Petitioner also claims that his mental health issues constitute a mitigating factor. But the record in his criminal proceedings does not establish that his mental or emotional condition reduced his culpability. The sentencing judge did not absolve him of any culpability: "Even though you say you were coerced by your employer, you did engage

in this [fraud] and admitted to that."[4] P. Ex. 5 at 31. Because the court did not find that his mental condition reduced his culpability, this is not a mitigating factor, and any mental distress experienced *following* his arrest and conviction would not create a mitigating factor.

For more than two years, Petitioner engaged in felonious conspiracies, one of which cost the Medicaid program significant amounts of money. I recognize that, in one of the conspiracies, he cooperated with law enforcement. Nevertheless, based on the two aggravating factors and the one mitigating factor, I find that the 13-year exclusion falls within a reasonable range.

Conclusion

The IG properly excluded Petitioner from participating in Medicare, Medicaid, and other federal health care programs. So long as the period of exclusion is within a reasonable range, based on demonstrated criteria, I have no authority to change it. *Joann Fletcher Cash*, DAB No. 1725 at 7 (1992) (citing 57 Fed. Reg. 3298, 3321). I find that the 13-year exclusion falls within a reasonable range.

/s/
Carolyn Cozad Hughes
Administrative Law Judge

[4] I note that the alleged coercion applied to the healthcare fraud only. No evidence shows that Petitioner's employer knew about the drug scheme until the police were involved.