Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ramón Antonio Pichardo, M.D.,
(OI File Number: M-08-40170-9),

Petitioner

v.

The Inspector General.

Docket No. C-10-882

Decision No. CR2321

Date: February 10, 2011

DECISION

This matter is before me on the Inspector General's (I.G.'s) Motion for Summary Disposition of the I.G.'s revised determination to exclude Petitioner *pro se* Ramón Antonio Pichardo, M.D., from participation in Medicare, Medicaid, and all other federal health care programs for a period of 27 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), requiring the exclusion of any individual or entity convicted of a criminal offense related to the delivery of an item or service under Medicare or any state health care program. The predicate for this action is Petitioner's conviction of "Conspiracy to Commit Health Care Fraud." 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 27 years, based on the aggravating factors found in 42 C.F.R. § 1001.102(b)(1), (2) and (5), is reasonable. For those reasons, I grant the I.G.'s Motion for Summary Disposition.

I. Procedural Background

By letter dated June 30, 2010, the I.G. notified Petitioner *pro se* Ramón Antonio Pichardo, M.D., that he was being excluded under section 1128(a)(1) of the Act, from participating in Medicare, Medicaid, and all federal health care programs for a period of 30 years. The notice informed Petitioner that the mandatory five-year exclusion period was being enhanced to 30 years due to the presence of four aggravating factors. The I.G. later revised its determination, finding that only three aggravating factors were present and thus reduced Petitioner's period of exclusion from 30 to 27 years. On July 30, 2010, Petitioner filed a request for an Administrative Law Judge (ALJ) hearing pursuant to 42 C.F.R. § 1005.2.

On August 19, 2010, I scheduled a prehearing conference for September 15, 2010, to discuss the issues presented and establish a briefing schedule, pursuant to 42 C.F.R. § 1005.6. By letter dated August 26, 2010, and received by the Civil Remedies Division on September 7, 2010, Petitioner, an inmate at a federal correctional institution, waived participation in the prehearing conference and requested that "this matter be decided on the review of documents of record." Accordingly, I issued an Order on September 9, 2010, setting forth directives and information to assist the parties in presenting their cases, and to convey the information described at 42 C.F.R. § 1005.6(b).

In accordance with my Order, on October 7, 2010, the I.G. filed a Motion for Summary Disposition and supporting Brief-in-Chief (I.G. Br.), five proposed exhibits (I.G. Exs. 1-5), and nine attachments consisting of copies of selected United States Code and Code of Federal Regulations provisions marked A through I (I.G. Attachments A-I). On October 29, 2010, Petitioner filed his Answer Brief in opposition to the I.G.'s Motion and Brief-in-Chief (P. Br.). At the same time, Petitioner filed eight proposed exhibits (P. Exs. 1-8) and five attachments consisting of copies of selected portions of the United States Code and the Federal Rules of Civil Procedure marked A through E (P. Attachments A-E). The I.G. filed a Reply Brief (I.G. Reply) on November 24, 2010, and Petitioner's Response Brief (P. Resp.) was filed December 7, 2010, and received on December 15, 2010. In the absence of objection, I have admitted I.G. Exs. 1-5, I.G. Attachments A-I, P. Exs. 1-8, and P. Attachments A-E.

The briefing cycle in this case closed for purposes of 42 C.F.R. § 1005.20(c) with the receipt of Petitioner's Response on December 15, 2010.

II. Issues

The legal issues before me are expressly limited to those set out at 42 C.F.R. § 1001.2007(a)(1). In the specific 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 I.G.'s position on all issues is correct. Section 1128(a)(1) of the Act mandates Petitioner's exclusion, for his predicate conviction 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 27 years is not unreasonable, because the three aggravating factors relied on by the I.G. found in 42 C.F.R. § 1001.102(b)(1), (2), and (5) are fully established in the record, and because Petitioner has not demonstrated any mitigating factors, nor are any apparent in the record before me.

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). This mandatory exclusion must be imposed for a minimum of five years. Section 1128(c)(3)(B) of the Act; 42 U.S.C. § 1320a-7(c)(3)(B). Petitioner does not deny that the I.G. has a basis upon which to exclude Petitioner.

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 27 years, and relies on the three aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), and (5). Petitioner does not deny the presence of these aggravating factors or contest the I.G.'s proof of them.

In cases 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). 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, Petitioner has not pleaded a defined mitigating factor, and without disregarding the rule assigning Petitioner the burden of proof of mitigating factors, none appear in the record before me.

IV. Findings and Conclusions

Based on the undisputed material facts in the record before me, I find and conclude as follows:

1. On May 22, 2008, the Federal Grand Jury sitting for the United States District Court for the Southern District of Florida charged Petitioner with twelve criminal counts including: "Conspiracy to Defraud the United States, to Cause the Submissions of False Claims, and to Pay Health Care Kickbacks," "Conspiracy to Commit Health Care Fraud," "Submission of False Claims," "Money Laundering Conspiracy," and "Money Laundering." I.G. Ex. 3. Count Two of the Indictment, "Conspiracy to Commit Health Care Fraud," charged that the purpose of the conspiracy was "to unlawfully enrich" Petitioner and his co-conspirators by "(a) submitting false and fraudulent claims to Medicare; (b) offering and paying cash kickbacks and bribes to Medicare beneficiaries for the purpose of such beneficiaries arranging for the use of their Medicare beneficiary numbers by the conspirators as the bases of claims filed for HIV infusion therapy; (c) concealing the submission of false and fraudulent claims to Medicare, the receipt and transfer of the proceeds from the fraud, the payments of kickbacks; and (d) diverting proceeds of the fraud for the personal use and benefit of [Petitioner and his] co-conspirators." I.G. Ex. 3, at 8-9.

2. On September 11, 2008, Petitioner, represented by counsel, pleaded guilty to Count Two of the Indictment, "Conspiracy to Commit Health Care Fraud," in violation of 18 U.S.C. § 1349. I.G. Ex. 4; *see* I.G. Ex. 3, at 1-3, 8-9. Petitioner admitted to "knowingly and willfully conspiring with others to execute a scheme and artifice to defraud and to obtain by means of materially false and fraudulent pretenses, representations, and promises money owed by, and under the custody and control of a health care benefits program (as defined in Title 18, United States Code, Section 24(b)), in violation of Title 18, United States Code, Section 1347." I.G. Ex. 4, at 1.

3. On November 20, 2008, Petitioner was sentenced to a 48-month term of imprisonment followed by three years of supervised release, and was required to pay $4,200,000 in restitution to the United States. I.G. Ex. 5.

4. On June 30, 2010, the I.G. notified Petitioner that he was being excluded from participation in Medicare, Medicaid, and all federal health care programs for a period of 30 years, based on the authority set out in section 1128(a)(1) of the Act and the aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), (5), and (9). I.G. Ex. 1.

5. Petitioner timely perfected this appeal from the I.G.'s action by filing his *pro se* hearing request on July 30, 2010.

6. On September 28, 2010, acting pursuant to 42 C.F.R. § 1001.2002(e), the I.G. notified Petitioner that, based upon information disclosed in Petitioner's hearing request, the I.G. found the aggravating factor at 42 C.F.R. § 1001.102(b)(9), inapplicable, and therefore reduced Petitioner's exclusion from 30 to 27 years. I.G. Ex. 2.

7. The guilty plea, adjudication of guilt, and sentence based on Petitioner's violation of 18 U.S.C. § 1349, as described in Findings 2 and 3 above, constitute a conviction related to the delivery of an item or service under Medicare or Medicaid within the meaning of section 1128(a)(1) of the Act. *Berton Siegel, D.O.*, DAB No. 1467 (1994).

8. Because of his conviction, Petitioner was subject to, and the I.G. was required to impose, a period of exclusion from Medicare, Medicaid, and all other federal health care programs of not less than five years. Sections 1128(a)(1) and 1128(c)(3)(B) of the Act.

9. The acts resulting in Petitioner's conviction as described in Findings 2 and 3 above caused a financial loss to the United States of approximately $6,800,000. I.G. Ex. 4, at 6; I.G. Ex. 3, at 6.

10. Because the acts resulting in the conviction, or similar acts, that caused, or were intended to cause, a financial loss to a Government program or to one or more entities of $5,000 or more, the aggravating factor set out in 42 C.F.R. § 1001.102(b)(1) is present.

11. The acts of which Petitioner was convicted occurred from about November 2002 through April 2004. I.G. Ex. 3, at 2, 8; P. Br. at 2.

12. Because Petitioner's acts resulting in his conviction as described in Findings 2 and 3 above, took place over a period of more than one year, the aggravating factor set out in 42 C.F.R. § 1001.102(b)(2) is present.

13. As the result of his conviction as described in Findings 2 and 3 above, Petitioner was sentenced to incarceration for a term of 48 months. I.G. Ex. 5.

14. Because Petitioner was sentenced to a term of incarceration, the aggravating factor set out in 42 C.F.R. § 1001.102(b)(5) is present.

15. None of the mitigating factors set out in 42 C.F.R. § 1001.102(c) is present.

16. The I.G.'s exclusion of Petitioner for an additional 22 years, for a total period of 27 years, is not unreasonable based upon the quality of the circumstances surrounding the three aggravating factors clearly established in this case and the absence of any mitigating factors. I.G. Exs. 3-5; Findings 1-15, above.

17. There are no remaining disputed issues of material fact and summary disposition is 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

Petitioner asserts that the I.G.'s exclusion is not valid based on its failure to meet certain allegedly-applicable procedural requirements. Specifically, Petitioner contends that the I.G. failed to meet the notice requirements in accordance with section 1128A of the Act and that even if the notice was properly served, that it is invalid based on a six-year statute of limitations provision established under section 1128A of the Act. Petitioner's arguments are predicated on the assumption that the notice requirements and statute of limitations provisions under section 1128A(c)(1) of the Act apply to his exclusion, brought under section 1128(a)(1) of the Act. Therefore, I will first address this threshold issue: whether the service of process and statute of limitations provisions under section 1128A(c)(1) of the Act apply to Petitioner's exclusion brought under section 1128(a)(1) of the Act.

As noted, Petitioner's arguments rest on the assumption that the procedural requirements found in the Civil Monetary Penalties Law (CMPL), under section 1128A of the Act, apply to his contested exclusion brought under section 1128(a) of the Act. Petitioner, in essence, contends that both the notice requirements and statute of limitations provisions under section 1128A are applicable to his case, that the I.G. did not meet either requirement, and that the exclusion should therefore be dismissed.[1]

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[1] Section 1128A provides that the cases initiated under its section are subject to a statute of limitations and service of process requirements. In pertinent part:

> The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Section 1128A(c)(1) of the Act.

Petitioner's arguments rest entirely on his incorrect assumption that section 1128A(c)(1) also applies to exclusions imposed under section 1128(a). Although it is true that an individual may be excluded under section 1128A of the Act, and that the Secretary would have six years from the underlying act within which to commence an action pursuant to that section, the I.G. has not brought this exclusion under section 1128A of the Act. Instead, the I.G. imposed the mandatory exclusion at issue pursuant to section 1128(a)(1) of the Act because of Petitioner's conviction of a criminal offense related to the delivery of an item or service under Medicare, and in which no statute of limitations applies. In other words, part 1001 of 42 C.F.R., which contains the regulatory provisions promulgated pursuant to section 1128(a) of the Act, and that section itself, set no deadlines for the I.G. to act. *Randall Dean Hopp*, DAB No. 2166, at 4 (2008); *Kevin Bowers*, DAB No. 2143 (2008). On the other hand, part 1003 of 42 C.F.R., promulgated pursuant to section 1128A of the Act, contains a six-year statute of limitations at 42 C.F.R. § 1003.132.

It is well settled that the CMPL's six-year statute of limitations and notice requirements provided in section 1128A(c)(1) do not apply to exclusions imposed under section 1128(a)(1) of the Act, such as the present case.[2] The I.G. correctly pointed to prior ALJ decisions addressing the same argument:

> [w]hile it is true that an individual or entity may be excluded under the CMPL as a result of the submission of false or fraudulent claims for reimbursement, pursuant to section 1128A of the Act, the exclusion at issue in this case is predicated upon Petitioner's criminal conviction [under section 1128(a)(1) of the Act]; therefore, section 1128A of the Act, and the referenced statute of limitations, do not apply.

Jorge Miguel Perez, DAB CR951, at 4 (2002), citing *Arlene Elizabeth Hunter*, DAB CR505, at 6 (1997); *see also Kathleen Ann Kahler*, DAB CR498 (1997).

Likewise, Petitioner's arguments regarding service of process are entirely and obviously inapplicable to the present case. Petitioner asserts that section 1128A(c)(1) invokes FED. R. CIV. P. 4, and so requires that the I.G. provide personal service of the exclusion notice, or include a waiver of personal service form with the notice if mailed. P. Br. at 2-3. However, as with Petitioner's statute of limitations argument, this notice provision is also

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[2] The applicable notice requirements for exclusions based on convictions under section 1128(a)(1) of the Act, are found in section 1128(c) of the Act, as specified in 42 C.F.R. §§ 1001.2001(a) and 1001.2002(c), and do not bear the same requirements as those under section 1128A. I note that the I.G.'s April 1, 2010 letter, submitted with Petitioner's hearing request, meets the "notice of intent to exclude" requirements, and the I.G.'s June 30, 2010 letter, admitted as I.G. Ex. 1, meets the requirements of the notice of exclusion. *See* 42 C.F.R. §§ 1001.2001(a) and 1001.2002(c).

not applicable to the present case. As discussed, the I.G. did not exclude Petitioner under section 1128A of the Act and therefore the related procedural requirements are not at play in this case predicated upon Petitioner's criminal conviction under section 1128(a)(1).

The two 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); s*ee Russell Mark Posner*, DAB No. 2033, at 5-6 (2006). Petitioner has chosen not to contest the existence of these two essential elements, and they are objectively established by I.G. Exs. 3, 4, and 5.

The first essential element, the fact of Petitioner's conviction, is conclusively established by the records in evidence, which include the Indictment in the United States District Court for the Southern District of Florida (I.G. Ex. 3); Petitioner's plea agreement (I.G. Ex. 4); and the judgment in which Petitioner was sentenced (I.G. Ex. 5). The court's acceptance of Petitioner's guilty plea to Count Two, after which the court found him guilty and entered judgment of conviction, satisfies the definition of "conviction" set out at sections 1128(i)(1)-(3) of the Act. I.G. Exs. 3-5.

It is also clear that Petitioner's conviction is related to the delivery of an item or service under Medicare. The charge in Count Two of the Indictment, "Conspiracy to Commit Health Care Fraud," to which Petitioner pleaded guilty specifically charged that the purpose of the conspiracy was "to unlawfully enrich" Petitioner and his co-conspirators by "(a) submitting false and fraudulent claims to Medicare; (b) offering and paying cash kickbacks and bribes to Medicare beneficiaries for the purpose of such beneficiaries arranging for the use of their Medicare beneficiary numbers by the conspirators as the bases of claims filed for HIV infusion therapy; (c) concealing the submission of false and fraudulent claims to Medicare, the receipt and transfer of the proceeds from the fraud, the payments of kickbacks; and (d) diverting proceeds of the fraud for the personal use and benefit of [Petitioner and his] co-conspirators." I.G. Ex. 3, at 8-9.

The general allegations surrounding the conspiracy set out in the Indictment — and specifically incorporated in Count Two — relate that Petitioner was a medical doctor who purported to order and provide HIV infusion services to Medicare beneficiaries at CNC Medical. CNC Medical was a medical clinic that purported to specialize in treating patients with HIV by providing infusion therapy. From in or around November 2002 through in or around April 2004, approximately $6.8 million in false claims were submitted to the Medicare program for HIV infusion services allegedly rendered at CNC Medical. I.G. Ex. 3, at 3-4.

The submission of false claims to the Medicare and Medicaid programs has consistently been 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); *Lorna Fay Gardner*, DAB CR648 (2000), *aff'd*, DAB No. 1733 (2000). Moreover, there can be little question that conspiring to submit false claims for infusion therapy services to Medicare beneficiaries is related to the delivery of a health care item or service. *Salvacion Lee, M.D.*, DAB CR920 (2002), *aff'd*, DAB No. 1850 (2002). I further note that conviction for a conspiracy to defraud Medicare has been found related to the delivery of items or services under Medicare and I have found it so related here. *Salvacion Lee, M.D.*, DAB No. 1850; *Douglas Schram, R.Ph.*, DAB No. 1372 (1992); *Victor Aponte-Aponte, M.D.*, DAB CR2165 (2010). I find the factual underpinnings of the offense to which Petitioner pleaded guilty conclusively demonstrate the required nexus and common-sense connection between Petitioner's criminal act and the Medicare program. *Berton Siegel, D.O.*, DAB No. 1467; *Victor Aponte-Aponte, M.D.*, DAB CR2165.

Because the I.G. has established a basis for Petitioner's exclusion pursuant to section 1128(a)(1), his exclusion for five years is mandatory pursuant to section 1128(c)(3)(B) of the Act. 42 U.S.C. § 1320a-7(c)(3)(B). That period is reasonable as a matter of law. *Mark K. Mileski*, DAB No. 1945 (2004); *Salvacion Lee, M.D.*, DAB No. 1850; *Lorna Fay Gardner*, DAB No. 1733 (2000); *David A. Barrett*, DAB No. 1461 (1994).

The I.G. may determine to enhance the minimum five-year exclusion if certain aggravating factors are present. 42 C.F.R. § 1001.102(b). The I.G. relies here on the three aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), and (5) in seeking to enhance the period of Petitioner's exclusion to 27 years. If the I.G. finds that any aggravating factor justifies an enhanced exclusion, specific mitigating factors described at 42 C.F.R. § 1001.102(c) may also be considered as a basis for reducing the period, to no less than the five-year minimum. Petitioner does not challenge the existence of these aggravating factors and proposes no mitigating factors. These regulations, however, do not limit the additional period of exclusion that the I.G. may impose based upon the presence of aggravating factors nor do they specify how much of an extension is warranted by the existence of an aggravating factor. *Kenneth Rizzo*, DAB CR1435, at 7 (2006). Rather, "the circumstances of a particular case" drive the weight that a decision maker can give the aggravating and mitigating factors. 57 Fed. Reg. 3298, 3314 (January 29, 1992). For example, the evidence supporting only one aggravating factor may be so significant that it could outweigh multiple mitigating factors. *Id*. at 3314-3315. Furthermore, "[t]he weight accorded to each mitigating and aggravating factor cannot be established according to a rigid formula, but must be determined in the context of the particular case at issue." *Id*. at 3315.

The first aggravating factor on which the I.G. relies is present when "[t]he acts resulting in the conviction, or similar acts . . . caused . . . a financial loss to a Government program

. . . of $5,000 or more." 42 C.F.R. § 1001.102(b)(1). In the Plea Agreement, Petitioner concedes that his "participation in the conspiracy resulted in a loss to the United States of more than $2,500,000 and less than $7,500,000." I.G. Ex. 4, at 6. As the I.G. points out, even "at a minimum, based on Petitioner's admission that he caused more than $2.5 million in financial losses to the program, his conduct resulted in a loss in excess of 500 times the $5,000 regulatory threshold." I.G. Br. at 9. I do not find it unreasonable that the amount of loss supports the I.G.'s decision to impose a "significant addition to the minimum period of exclusion." *Id*.

The court records also show that Petitioner was required to pay $4,200,000 in restitution to the United States. I.G. Ex. 5, at 5-6. The Departmental Appeals Board (Board) has consistently characterized restitution in amounts substantially greater than the regulatory standard as an "exceptional aggravating factor" entitled to significant weight. *Jeremy Robinson*, DAB No. 1905 (2004); *Donald A. Burstein, Ph.D.*, DAB No. 1865 (2003). The I.G. has established this first aggravating factor, and Petitioner does not contest that the factor is present.

The second aggravating factor asserted by the I.G. is present if "[t]he acts that resulted in the conviction, or similar acts, were committed over a period of one year or more." 42 C.F.R. § 1001.102(b)(2). Here, the language of the charge to which Petitioner pleaded guilty demonstrates the existence of this factor. The Indictment describes the period during which Petitioner conducted the criminal acts as occurring in or around November 2002 and continuing until approximately April 2004. I.G. Ex. 3, at 2. The acts that resulted in Petitioner's conviction took place over a period greater than the one-year regulatory standard. The I.G. has established this second aggravating factor, and Petitioner does not deny its presence.

The third aggravating factor asserted by the I.G. is present when the "sentence imposed by the court included incarceration." 42 C.F.R. § 1001.102(b)(5). In this case, Petitioner was sentenced to a 48-month term of imprisonment. I.G. Ex. 5, at 2. The I.G. has established this third aggravating factor, and Petitioner does not deny its presence.

As noted above, evidence relating to aggravating factors may be countered by evidence relating to any of the mitigating factors set forth at 42 C.F.R. § 1001.102(c)(1)-(3). It is well-settled that Petitioner bears the burden of going forward with the evidence, and the burden of persuasion, to establish a mitigating factor. *See Stacey R. Gale*, DAB No. 1941 (2004); *Arthur C. Haspel, D.P.M.*, DAB No. 1929 (2004); *see also Dr. Darren James, D.P.M.*, DAB No. 1828 (2002). In this case, Petitioner has not attempted to prove the presence of any of the defined mitigating factors, and without disregarding the rule that assigns Petitioner the burden of persuasion, my review of the record has not suggested that any of those factors are present.

The I.G.'s discretion in weighing the importance of aggravating and mitigating factors in exclusion cases commands great deference when reviewed by ALJs. *Paul D. Goldenheim, M.D., et al.*, DAB No. 2268 (2009); *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 source of this doctrine is the belief of the regulations' authors that the I.G. is invested with "vast experience in implementing exclusions . . . ." 57 Fed. Reg. 3298-3321. This rule evolved in such Board decisions as *Barry D. Garfinkel, M.D.*, DAB No. 1572 (1996); *Frank A. DeLia, D.O.*, DAB No. 1620 (1997), and *Gerald A. Snider, M.D.*, DAB No. 1637 (1997). With the Board's decisions in *Joann Fletcher Cash*, DAB No. 1725 (2000); *Stacy Ann Battle, D.D.S., et al.*, DAB No. 1843, *Keith Michael Everman, D.C.*, DAB No. 1880, and *Jeremy Robinson*, DAB No. 1905, the rule took its present form.

Stated in its present form, the rule forbids that ALJs substitute their own views of what period of exclusion might appear "best" in any given case for the view of the I.G. on the same evidence. In general, the Board has insisted that ALJs 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 No. 1905. Neither circumstance is present in this case.

Accordingly, the only question now before me is whether the length of the period of exclusion is within a reasonable range. In the instant case, the proposed 27-year period is commensurate with the range established as reasonable in such cases as *Emem Dominic Ukpong*, DAB No. 2220 (2008); *Jeremy Robinson*, DAB No. 1905; *Thomas D. Harris*, DAB No. 1881 (2003); *Frances Unoka Nwoshuocha*, DAB CR2057 (2010); *Francisca Mbanaja, a/k/a Francisca M. Simien*, DAB CR2230 (2010); *Paul C. Osuji*, DAB CR2146 (2010); *Christian Okey Onwuegbusi*, DAB CR2013 (2009); *Russell J. Ellicott, D.P.M.*, DAB CR1552 (2007); *Lawrence J. White*, DAB CR1584 (2007); *Becalo Utuk*, DAB CR1547 (2006); *Stanley Junious Benn*, DAB CR1501 (2006); and *Arkady Rozenberg*, DAB CR987 (2002).

I rely on those cases as points of reference because they were, like this one, based on convictions for crimes of financial dishonesty and, like this one, contained evidence of the aggravating factors set out at 42 C.F.R. § 1001.102(b)(1), (2), and (5). The loss attributed to Petitioner's crime is so far in excess of the minimum showing required as to illustrate the exceptional scale of his untrustworthiness, the temporal span of his criminal activity is sufficient for him to have demonstrated persistent and enduring untrustworthiness, and his four-year sentence illustrates the sentencing court's view of the severity of punishment earned by that untrustworthiness. I have no difficulty in concluding that the length of the period of exclusion is within a reasonable range, and it is therefore not unreasonable.

I note once more that Petitioner appears here *pro se*. Because of that fact I have taken additional care in reading his submissions and other pleadings. In doing so, I have been 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). I have searched all of Petitioner's submissions for any arguments or contentions that might raise a valid, relevant defense to the proposed exclusion. That search has been unproductive. I have found nothing that could be so construed.

Resolution of a case by summary disposition is appropriate when there are no disputed issues of material fact and when the undisputed facts, clear and not subject to conflicting interpretation, demonstrate that one party is entitled to judgment as a matter of law. *Michael J. Rosen, M.D.*, DAB No. 2096; *Thelma Walley*, DAB No. 1367. Summary disposition is authorized by the terms of 42 C.F.R. § 1005.4(b)(12). This forum looks to FED. R. CIV. P. 56 for guidance in applying that regulation. *Robert C. Greenwood*, DAB No. 1423 (1993); *Thelma Walley*, DAB No. 1367. The material facts in this case are undisputed, clear, and unambiguous, and support summary disposition as a matter of law.

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, Ramón Antonio Pichardo, M.D., from participation in Medicare, Medicaid, and all other federal health care programs for a period of 27 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