

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Robert H. Glover, D.C.,
(OI File Number: H-12-40790-9),

Petitioner,

v.

The Inspector General.

Docket No. C-13-72

Decision No. CR2765

Date: April 24, 2013

DECISION

Petitioner, Robert H. Glover, was a chiropractor licensed in the State of California, whose license to practice was revoked. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded him from participation in Medicare, Medicaid, and all federal health care programs until he regains his license. Petitioner now appeals the exclusion.

For the reasons set forth below, I find that the California licensing authority revoked Petitioner's chiropractic license for reasons bearing on his professional competence and performance, so the I.G. has appropriately excluded him from program participation.

Background

In a letter dated August 31, 2012, the I.G. advised Petitioner Glover that he was excluded from participation in Medicare, Medicaid, and all federal health care programs because his license to practice medicine or provide health care as a chiropractor in the State of California was revoked, suspended, or otherwise lost or was surrendered while a formal disciplinary proceeding, bearing on his professional competence, professional

performance, or financial integrity was pending before the Board of Chiropractic Examiners. The letter explained that section 1128(b)(4) authorizes the exclusion. I.G. Exhibit (Ex.) 1. Petitioner Glover requested review, and the matter is before me for resolution.

The I.G. submitted its brief (I.G. Br.) and three exhibits (I.G. Exs. 1-3). In the absence of any objection, I admit into evidence I.G. Exs. 1-3. Petitioner submitted his brief (P. Br.) and a cover letter dated March 15, 2013 (P. Ltr.). He has also filed the Petition for Reconsideration (P. Pet. for Recon.) that he submitted to the State Board of Chiropractic Examiners with twelve exhibits attached.

I directed the parties to indicate in their briefs whether an in-person hearing would be necessary. The parties agree that an in-person hearing is not necessary. I.G. Br. at 5; P. Br. at 3.

Discussion

- 1. Because California's chiropractic licensing board revoked Petitioner Glover's license for reasons bearing on his professional competence or performance, the I.G. may appropriately exclude him from participation in Medicare, Medicaid, and other federally funded health care programs.¹***

The Act authorizes the Secretary of Health and Human Services to exclude from program participation an individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial integrity.” Act § 1128(b)(4)(A); *see also* 42 C.F.R. § 1001.501.

The parties agree that, following a hearing before a state administrative law judge (ALJ), the California Board of Chiropractic Examiners revoked Petitioner’s chiropractic license, effective March 7, 2012, because Petitioner Glover’s interaction with one of his patients, during treatment, involved gross negligence and sexual misconduct. I.G. Ex. 2 at 4, 20-21.

Although he concedes (as he must) that the state board revoked his license for reasons bearing on his professional performance, Petitioner argues that the ALJ decision was wrong and that the state board never reviewed it. P. Ltr. at 1; P. Br. at 2-4. But Petitioner may not use this forum to challenge the state proceedings. The regulations explicitly preclude any such collateral attack:

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

When the exclusion is based on . . . 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). *See Donna Rogers*, DAB No. 2381 at 4-5 (2011).

Petitioner also submits evidence attesting to his character, and discusses the impact the exclusion has on his ability to work in the health care field. P. Br. at 4; *see* exhibits attached to P. Pet. for Recon. As the Departmental Appeals Board observed in *Donna Rogers*, such arguments are not relevant. I may not review the I.G.’s decision to impose an exclusion under section 1128(b)(4) “on the ground that the excluded person is a good person or well-thought of in the profession or suffering from the loss of his/her vocation.” *Rogers*, DAB No. 2381, at 6.

The statute requires that Petitioner Glover’s period of exclusion “shall not be less than the period during which [his] . . . license. . . is revoked” Act § 1128(c)(3)(E); *see also* 42 C.F.R. § 1001.501(b)(1).

Finally, Petitioner also asks that I waive his exclusion. P. Br. at 4. As the I.G. points out, I have no authority grant a waiver. I.G. Reply at 4; 42 C.F.R. § 1001.1801(f).

Conclusion

For the above reasons, I conclude that the I.G. properly excluded Petitioner Glover from participation in Medicare, Medicaid, and all other federal health care programs for so long as his chiropractic license is revoked.

/s/
Carolyn Cozad Hughes
Administrative Law Judge