

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Rufus Edgar Sadler
(OI File No. 2-13-40288-2),

Petitioner,

v.

The Inspector General.

Docket No. C-16-669

Decision No. CR4747

Date: November 30, 2016

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Rufus Edgar Sadler, M.D., from participating in Medicare, Medicaid, and other federally funded health care programs for a period of at least three years.

I. Background

Petitioner requested a hearing from the I.G.'s determination to exclude him. The I.G. filed a brief in support of his determination, eight proposed exhibits (I.G. Ex. 1-I.G. Ex. 8), and a reply brief. Petitioner filed a brief plus two proposed exhibits (P. Ex. A and P. Ex. B). I receive the parties' exhibits into the record.

Petitioner moved that I convene an in-person hearing in order that I may receive his testimony. I deny that motion for two reasons. First, Petitioner failed to comply with my July 26, 2016 pre-hearing order directing the parties to reduce any proposed testimony to writing made under oath. Petitioner offered no such written direct testimony. Second,

the proposed testimony – as described by Petitioner – is inadmissible because it constitutes a collateral challenge to the basis for his conviction. 42 C.F.R. § 1001.2007(d).

II. Issues, Findings of Fact and Conclusions of Law

A. Issues

The issues are whether a basis exists to exclude Petitioner and whether exclusion for a minimum of three years is reasonable.

B. Findings of Fact and Conclusions of Law

The I.G. excluded Petitioner on the asserted authority of section 1128(b)(1) of the Social Security Act (Act). In relevant part this section authorizes the exclusion of any individual convicted of a criminal offense, under federal or State law, relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any federal, State, or local government agency. Act § 1128(b)(1)(B).¹

Petitioner does not deny that he was convicted of a misdemeanor consisting of theft (petit larceny). He asserts that his conviction did not relate to theft from a program – a Head Start program – operated by a government agency and he contends that he was not convicted of a section 1128(b)(1) crime. The record belies those arguments.

Evidence offered by the I.G. proves unequivocally that Petitioner was convicted of a misdemeanor consisting of theft of Head Start funds. He was charged with stealing property from a program known as Sharon Baptist Headstart. I.G. Ex. 5 at 1. Petitioner pled guilty to a charge of petit larceny, and his sentence included restitution for the benefit of the Sharon Baptist Board of Directors. I.G. Ex. 7 at 3-4. I take notice that the financing for Head Start Programs comes from federal funds.

Petitioner asserts that he didn't steal Head Start funds but that he took money from another entity known as S.B. Kids, Inc., which, he contends, does not receive federal funds. Thus, according to Petitioner, section 1128(b)(1) is inapplicable. That argument finds no support in the record of Petitioner's conviction. He was convicted of stealing from a Head Start program. The I.G.'s authority to exclude Petitioner derives

¹ This section applies to crimes occurring after the enactment of the Health Insurance Portability and Accountability Act of 1996, on August 21, 1996. The parties do not dispute that Petitioner's crimes transpired after that date.

from that conviction and not from what Petitioner now contends are the true facts of his case. Moreover, Petitioner's argument is, effectively, a collateral attack on the basis for his conviction. He asserts that the documents that define the criminal charge, his conviction, and his sentence to pay restitution all misstate the true nature of his crimes. That is not an allowable argument. As a matter of law he may not attack the basis of his conviction in this forum. 42 C.F.R. § 1001.2007(d).

An exclusion imposed pursuant to section 1128(b)(1) of the Act will be for a period of at least three years in the absence of aggravating or mitigating evidence that justifies lengthening or shortening the exclusion period. 42 C.F.R. § 1001.201(b)(1). The I.G. imposed an exclusion of three years in this case predicated in part on the absence of either aggravating or mitigating evidence. Petitioner does not contest the absence of such evidence. Therefore, I find the three-year minimum exclusion to be reasonable.

_____/s/_____
Steven T. Kessel
Administrative Law Judge