

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Anton Heins III, M.D.,

Petitioner

v.

The Inspector General.

Docket No. C-10-579

Decision No. CR2174

Date: July 07, 2010

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Anton Heins III, M.D., from participating in Medicare and other federally funded health care programs for at least five years.

I. Background

Petitioner is a physician. The I.G. determined to exclude Petitioner from participating in Medicare and other federally funded health care programs for a period of at least five years. The I.G. determined that Petitioner had been convicted of a criminal offense within the meaning of section 1128(a)(1) of the Social Security Act (Act). Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision.

I directed the parties to file briefs and proposed exhibits. The I.G. filed a brief and two proposed exhibits (I.G. Ex.1 – I.G. Ex. 2). Petitioner filed a brief and no proposed exhibits. Neither the I.G. nor Petitioner requested that I convene an in-person hearing.

I receive into evidence I.G. Ex. 1 and I.G. Ex. 2.

II. Issues, Findings of Fact and Conclusions of Law

A. Issues

The issues are whether:

1. Petitioner was convicted of a criminal offense as is described at section 1128(a)(1) of the Act; and
2. An exclusion of five years is mandatory.

B. Findings of Fact and Conclusions of Law

I make the following findings of fact and conclusions of law.

1. Petitioner was convicted of a criminal offense as is described at section 1128(a)(1) of the Act.

Section 1128(a)(1) of the Act mandates the I.G. to exclude any individual who is convicted of a criminal offense related to the delivery of an item or service under Medicare or a State Medicaid program. The facts of this case unequivocally establish that Petitioner was convicted of such an offense.

On August 25, 2009, Petitioner pled guilty in New Hampshire Superior Court to the misdemeanor offense of Unsworn Falsification. I.G. Ex. 1 at 1. Specifically, Petitioner pled guilty to the following charge:

with a purpose to deceive a public servant in the performance of his or her official function, . . . [Petitioner] submitted a claim for reimbursement to the [New Hampshire] Medicaid program for the initial evaluation of a client when the client had already paid him in full, causing him to receive a Medicaid payment to which he was not entitled.

Id. at 2; I.G. Ex. 2 at 3-4. Petitioner's conviction was for a crime that is related to an item or service under the New Hampshire Medicaid program. Effectively, Petitioner pled guilty to demanding reimbursement from that program for a service, which was not reimbursable by that program. It was related to a Medicaid item or service, because the claim was based on a medical service that was provided to a program recipient that would have been reimbursable by Medicaid but for the fact that the recipient had already paid him for that service. Petitioner's crime, then, constituted a form of fraud against the New Hampshire Medicaid program.

Petitioner argues that his crime was unrelated to the delivery of an item or service under Medicaid, because fraud against Medicaid was not a necessary fact of his conviction. He argues that the crime of which he was convicted was a generic offense, which makes it unlawful to willfully utter a false statement to any government agency without regard to the function of the agency or the program that the agency administers. Consequently, according to Petitioner, he was not convicted of uttering a false statement to the New Hampshire Medicaid program, but merely of uttering a false statement to a government agency.

This argument is unpersuasive. It ignores the obvious. Petitioner's crime is a program related offense within the meaning of section 1128(a)(1) of the Act, even if the State statute pursuant to which he was convicted is a generic criminal section not specifically directed at Medicaid fraud. Petitioner was specifically charged with, and convicted of, filing a false Medicaid claim.

2. An exclusion of five years is mandatory.

An exclusion imposed pursuant to section 1128(a)(1) must be for at least five years. Act § 1128(c)(3)(B). Petitioner's five year exclusion is reasonable as a matter of law, because it is for the mandatory minimum period.

_____/s/
Steven T. Kessel
Administrative Law Judge