

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Annacilia Tira,
(OI File No. H-15-40057-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-3112

Decision No. CR4273

Date: October 2, 2015

DECISION

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Annacilia Tira, from participating in Medicare and other federally funded health care programs, including State Medicaid programs, until she regains her license to provide health care as a certified nursing assistant in the State of Florida.

I. Background

The I.G. excluded Petitioner under the authority of section 1128(b)(4) of the Social Security Act (Act). Petitioner requested a hearing. The I.G. filed a brief and three exhibits, identified as I.G. Ex. 1 – I.G. Ex. 3, in support of the exclusion determination. Petitioner filed a brief in opposition. I receive the I.G.'s exhibits into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether the I.G. may exclude Petitioner pursuant to section 1128(b)(4) of the Act.

B. Findings of Fact and Conclusions of Law

In relevant part section 1128(b)(4) permits the I.G. to exclude anyone:

whose license to provide health care has been revoked or suspended by any State licensing authority . . . for reasons bearing on that individual's or entity's professional competence, professional performance, or financial integrity.

Act § 1128(b)(4)(A).

The relevant facts of this case are as follows. Petitioner was licensed to work as a certified nursing assistant in the State of Florida. On November 6, 2014, the State of Florida Board of Nursing issued a final order revoking Petitioner's professional license. I.G. Ex. 3. In its order, the Board of Nursing noted that an administrative complaint had been filed against Petitioner and that she had failed to appear to challenge that order or to otherwise contest it. *Id.* at 1. The administrative complaint that was the predicate to the order charged that Petitioner had improperly influenced a patient to either co-sign or sign contracts to purchase automobiles for Petitioner and her daughter. I.G. Ex. 2 at 2-3. The value of the two automobiles was cited as being close to \$39,000. *Id.* at 3.

The evidence offered by the I.G. plainly establishes grounds to exclude Petitioner pursuant to section 1128(b)(4)(A). The evidence proves that a disciplinary proceeding was brought against Petitioner, that the subject of the proceeding related to Petitioner's financial integrity (her use of undue influence in her capacity as a certified nursing assistant to influence a patient to co-sign or sign contracts for the purchase of automobiles priced at nearly \$39,000 for the benefit of Petitioner and her daughter), and that the proceeding had an adverse result consisting of the revocation of Petitioner's professional license.

Petitioner now argues that she did not unduly influence her patient to co-sign or sign contracts for the purchase of automobiles. She argues, in effect, that she is innocent of the charges that are the basis for the Board of Nursing's decision to revoke her license and that her patient never actually paid for the cars in question. This is a substantive defense to the Board of Nursing's decision and it is irrelevant. The I.G.'s authority to exclude Petitioner derives from the Board of Nursing's decision and not from the

