

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Stanley A. Bittman, Ph.D.)	
)	DATE: September 24, 1991
Petitioner,)	
)	
- v. -)	Docket No. C-383
)	
The Inspector General.)	Decision No. CR153

DECISION

On March 27, 1991 the Inspector General (I.G.) notified Petitioner that he was being excluded from participation in Medicare and any State health care program for a period of five years.¹ The I.G. told Petitioner that he was being excluded as a result of his conviction of a criminal offense related to the delivery of an item or service under Medicaid. Petitioner was advised that the exclusion of individuals convicted of such an offense is mandated by section 1128(a)(1) of the Social Security Act (Act). The I.G. further advised Petitioner that the law required that the minimum period of such an exclusion be for not less than five years. The I.G. informed Petitioner that he was being excluded for the minimum mandatory period of five years.

Petitioner timely requested a hearing and the case was assigned to me for a hearing and a decision. The I.G. moved for summary disposition. Petitioner filed a response to the motion.

I have considered the arguments made by the I.G. in his motion as well as those made by Petitioner in his

¹ "State health care program" is defined by section 1128(h) of the Social Security Act to cover three types of federally-financed health care programs, including Medicaid. I use the term "Medicaid" hereafter to represent all State health care programs from which Petitioner was excluded.

response to the motion. I have also considered the undisputed material facts of this case and applicable law. I conclude that the five-year exclusion imposed and directed by the I.G. against Petitioner is mandated by law. Therefore, I enter summary disposition in favor of the I.G.

ISSUE

The issue in this case is whether Petitioner was convicted of a criminal offense within the meaning of section 1128(a)(1) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On November 28, 1990 Petitioner was charged with and pled guilty to a criminal misdemeanor offense in a Kentucky State court. I.G. Ex. 2/1-4.²
2. Petitioner pled guilty to the criminal offense of making, presenting, or causing the submission of false or fraudulent information on cost reports to an employee or officer of the Kentucky Medical Assistance Program and knowing such cost report to contain false, fictitious, or fraudulent information. See I.G. Ex. 2/1-4; KRS 205.850(4), 205.990(5), 502.020.
3. The Kentucky Medical Assistance Program is the Kentucky State agency which is charged with implementing that State's Medicaid program. KRS 205.510 - 205.630.
4. Petitioner was an official of an entity which did business with the Kentucky Medicaid program. By allowing false cost reports to be filed with Medicaid, Petitioner abetted the fraudulent inflation of reimbursement received by the entity from Medicaid.
5. Petitioner was convicted of a criminal offense related to the delivery of an item or service under Medicaid. Findings 1-4; Social Security Act, section 1128(a)(1).

² The I.G. attached seven exhibits to his motion for summary disposition. Petitioner did not contest the authenticity or relevancy of these exhibits, nor has he denied the relevant material facts contained in the exhibits. I have admitted the exhibits into evidence. I refer to the I.G.'s exhibits as "I.G. Ex. (number)/(page)."

6. The Secretary of the Department of Health and Human Services (Secretary) delegated to the I.G. the authority to determine, impose, and direct exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21662 (May 13, 1983).

7. On March 27, 1991, the I.G. excluded Petitioner from participating in Medicare and directed that he be excluded from participating in Medicaid, pursuant to section 1128(a)(1) of the Act.

8. There are no disputed issues of material fact in this case and summary disposition is appropriate. Findings 1-4.

9. The exclusion imposed and directed against Petitioner by the I.G. is for five years, the minimum period required under the Act. Social Security Act, sections 1128(a)(1) and 1128(c)(3)(B).

10. The exclusion imposed and directed against Petitioner by the I.G. is mandated by law. Findings 5, 9; Social Security Act, section 1128(a)(1).

ANALYSIS

There are no disputed material facts in this case. The undisputed facts are that on November 28, 1990, Petitioner pled guilty to a state misdemeanor offense of making, presenting, or causing the submission of false or fraudulent information on cost reports to an officer or employee of Kentucky's Medicaid program. His guilty plea amounted to admission of fraud against Medicaid. The I.G. imposed and directed a five-year exclusion against Petitioner in March 1991, pursuant to section 1128(a)(1) of the Act.

Section 1128(a)(1) requires the Secretary (or his delegate, the I.G.) to exclude from participation in Medicare, and to direct the exclusion from participation in Medicaid, of:

[a]ny individual or entity that has been
convicted of a criminal offense related to the
delivery of an item or service under . . .
[Medicare] or under . . . [Medicaid].

By allowing false cost reports to be filed with Medicaid, Petitioner abetted the fraudulent inflation of reimbursement received by the entity from that program. Medicaid was the victim of Petitioner's fraud. Petitioner's conviction for allowing false or fraudulent

information to be filed with the Kentucky Medicaid program constitutes a criminal offense within the meaning of section 1128(a)(1). Napoleon S. Maminta, M.D., DAB App. 1135 (1990).

Petitioner contends that he played only a passive role in any crimes perpetrated against the Kentucky Medicaid program. He asserts that the Kentucky Attorney General acknowledged Petitioner's passive role by permitting him to plead guilty to a misdemeanor, rather than to a felony offense. I accept these assertions as true for purposes of deciding the I.G.'s motion for summary disposition. Even with that factual background, I nevertheless find that Petitioner pled guilty to a criminal offense within the meaning of section 1128(a)(1) of the Act. This section does not distinguish between levels of culpability in crimes related to the delivery of an item or service under Medicare or Medicaid. A conviction of a criminal offense as defined by section 1128(a)(1) mandates an exclusion.

Petitioner also contends that the Commissioner of the Kentucky Department for Medicaid Services will likely request the Secretary to waive Petitioner's exclusion pursuant to section 1128(c)(3)(B) of the act. Petitioner requests that I defer my decision in this case until final action by the Secretary on the waiver request.

The authority of the Secretary to waive an exclusion is unrelated to my duty to decide hearing requests pursuant to section 1128. The Secretary may either grant or deny such a request without regard to my decision on the exclusion. Therefore, there is no ground for me to defer my decision.

CONCLUSION

Based on the undisputed material facts and the law, I conclude that the five-year exclusion from participating in Medicare and Medicaid imposed and directed against Petitioner by the I.G. was mandated by sections 1128(a)(1) and 1128(c)(3)(B) of the Act. Therefore, I enter summary disposition in favor of the I.G., sustaining the five-year exclusion.

/s/

Steven T. Kessel
Administrative Law Judge